

A N A L Y S I S O F T H E Q U A L I T Y O F C O U R T D E C I S I O N S I N M I S D E M E A N O R C A S E S



**ANALYSIS
OF THE QUALITY
OF COURT DECISIONS
IN MISDEMEANOR
CASES**

ANALYSIS OF THE QUALITY OF COURT DECISIONS IN MISDEMEANOR CASES

Original title of the publication:
АНАЛИЗА НА КВАЛИТЕТОТ НА СУДСКИТЕ ОДЛУКИ
ВО ОБЛАСТА НА ПРЕКРШОЧНАТА ПОСТАПКА

Published by:
European Policy Institute – Skopje
Association for Development Initiatives – Zenith, Skopje

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Translation from Macedonian to English:
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Graphic design and print:
Relativ

Skopje, July 2021

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје
347.95:35.076.7.077.2(497.7)(047.31)

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Analysis of the quality of court decisions in misdemeanor cases : Електронски извор / [author Mariana Loncar Velkova ; translation from Macedonian to English Ana Popova Manasievska]. - Skopje : European policy institute : Zenith, 2021. - 30 стр. ; 30 см

Начин на пристапување (URL): <https://epi.org.mk/post/17423?lang=en>. - Превод на делото: Анализа на квалитетот на судските одлуки во областа на прекршочната постапка. - Текст во PDF формат, содржи 30 стр. - Наслов преземен од екранот. - Опис на изворот на ден 20.09.2021

ISBN 978-608-4702-49-8 (Институт за европска политика)

ISBN 978-608-4758-14-3 (Зенит)

а) Прекршочни постапки -- Судски одлуки -- Македонија -- Истражувања

COBISS.MK-ID 54588165



This Report was developed under the Project Partnership Justicia – Regaining Citizens' Trust, funded by the European Union, through the Central Funding and Contracting Sector at the Ministry of Finance of the Republic of North Macedonia. The contents of this Report do not reflect the official opinions and positions of the European Union. Responsibility for the information and views expressed in this Report lies entirely with the authors.



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PREFACE

This analysis was made within the project "Partnership Justitia: "Restoring Citizens' Trust", funded by the European Union and implemented by the European Policy Institute and ZENIT Association. The project aims to contribute to restoring citizens' trust in the Macedonian justice system by significantly involving civil society in the substantive reforms. The final beneficiaries of this project are the institutions in the justice system. The purpose of this analysis is to contribute to improving the quality of court decisions in misdemeanor cases and the procedure itself so as to meet the expectations of citizens and protect their right to a fair and equitable trial and access to justice.



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**ANALYSIS
OF THE QUALITY
OF COURT
DECISIONS IN
MISDEMEANOR
CASES**

1.1. CHARACTERISTICS OF THE SAMPLE USED IN THE ANALYSIS

In the course of the analysis of the quality of court decisions in misdemeanor cases decisions issued at the four appellate areas were taken into consideration. The four appellate areas are determined by law according to the seats of the Courts of Appeal and are established for the area of jurisdiction of several courts of first instance (basic courts). On the territory of the Republic of North Macedonia there are four Courts of Appeal based in Bitola, Gostivar, Skopje and Stip. Subject of analysis were decisions that met the following criteria: to be issued in the course of 2017, 2018, 2019 and 2020, to be anonymized and to be issued in cases in which one party was a natural person. Due to these criteria, the selected court decisions were mostly issued in misdemeanor cases related to public peace and order and traffic violations.

The decisions issued in misdemeanor cases were obtained with a written request from the courts or downloaded from the web-site www.dejure.mk. During this process of collecting decisions issued by the basic and appellate courts, it was very difficult to find a large number of court decisions, due to the very limited number of anonymized decisions published, or because some courts had no such decisions published on the official court platforms.

This analysis was made on a total of 60 decisions from four appellate areas, as follows: 14 decisions from the Appellate Area - Bitola (7 decisions issued by basic courts and 7 decisions from the Court of Appeals - Bitola); 14 decisions from the Appellate Area - Gostivar (6 decisions issued by basic courts and 8 decisions from the Court of Appeal Gostivar); 23 decisions from the Appellate Area - Skopje (11 from the Basic Criminal Court Skopje and 12 decisions from the Court of Appeals); 9 decisions from the Appellate Area - Stip (4 decisions from basic courts and 5 decisions from the Appellate Court Stip).

The analysis was based on a set of qualitative indicators as per the Methodology for Analyzing the Quality and Uniformity of Court Decisions and it does not quantify the results obtained with the quantitative indicators according to the Methodology. Each decision was individually analyzed without being compared with the others, by applying the indicators from the mentioned Methodology.

The analysis did not cover the procedures of the state administration bodies, organizations or other bodies that exercise public authority over the implementation of laws prescribing misdemeanors, although indirectly, through such procedures the violation of the right of a large number of natural persons is prevented if the misdemeanor is committed by a legal entity. Otherwise, the Law on Misdemeanors¹ (LM) in Article 49, stipulates that “only courts can lead misdemeanor procedures and only competent courts can impose misdemeanor sanctions, although a misdemeanor procedure may be lead and a misdemeanor sanction may be imposed by a misdemeanor body or by an authorized official provided the fine set forth in the law is up to 250 euros in denar counter-value for natural persons, 500 euros in denar counter-value for a responsible person in a legal entity or for an official and 1,000 euros in denar counter-value for legal entities.

Namely, the citizens or appropriate organizations representing their interests can file a complaint to the competent state bodies, inspectorates, agencies (for example: Agency for Electronic Communications, Food and Veterinary Agency, Agency for Audio and Audiovisual Media) and other regulatory bodies that upon their application, initiate a misdemeanor procedure. In such and similar cases, in accordance with the relevant substantive law that body / institution, or regulatory body appoints, prevents and / or sanctions violations perpetrated by a legal entity and imposes relevant prescribed misdemeanor sanctions, which protect the citizens' interests.

This analysis did not take into account the decisions of the Administrative Court which has competence to decide on the rights and obligations in individual administrative matters, **as well as on the acts adopted in misdemeanor procedure**, when for deciding in second instance against such an act no other legal remedy is provided.

The mentioned areas that were not taken into account in this analysis should be subject to a more extensive future analysis that will analyze misdemeanor law in all its segments.

¹ Official Gazette of the Republic of North Macedonia no. 96/2019 17.05.2019

1.2 QUALITY ANALYSIS OF COURT DECISIONS AT APPELLATE AREAS

The indicators used during the qualitative analysis of court decisions of basic and appellate courts were:

- Structure of the court decision;
- Statement of the decision;
- Coherence;
- Legal syllogism on subsumption;
- Explanation of the background of the issue;
- Presentation of the case / question;
- Factual situation and evidentiary procedure;
- Reviewing and evaluating opposing arguments ;
- Clarity and consistency of the reasoning;
- Linguistic and grammatical correctness of the text;
- Clear guidelines for the basic court when remanding a decision for reconsideration;
- Clear reasons for quashing or overruling the decision of the first instance court;
- If the appellate court changes the scope or the amount of the sanction, if the reasons for that change are stated, as well why the opinion of the appellate court is different from the decision of the basic court;
- The complaints and allegations are answered;
- The presentation of the facts is not copied from the decision of the first instance court;
- When overruling the decision of the first instance court, the decision of the appellate court contains all the characteristics required for determining the factual situation, analyzes the evidence, cites the substantive law and it contains a reasoning, just like any decision of the first instance court. (in such a case, the rules for analyzing the quality of court decisions are equal to those used for analyzing the quality of the decisions of first instance courts, as given above and described in the section titled Qualitative Analysis);
- The decisions of the appellate court, which overrule the appeal, contain reasoning only for those complaint allegations that were not previously stated and which were not answered in the first instance court decision. The appellate court pays attention to the time limit for absolute statute of limitation of the case within which the first instance court has to decide.

1.2.1. QUALITY OF COURT DECISIONS IN THE BITOLA APPELLATE AREA

A total of 14 decisions were analyzed, 7 decisions issued by the basic courts and 7 decisions issued by the Court of Appeals - Bitola.

With regard to the **structure** of the court decision for this appellate area, it can be concluded that all analyzed judgments individually contain the necessary parts and are properly structured. In most cases the **statement of decisions** are clear and concise. Regarding **the coherence of the statement** of the decisions (whether it is in accordance with the reasoning) it has been determined that most of the decisions are in logical concordance with the reasoning and do not contradict themselves.

However, in some cases it is noticed that some *decisions are made without reasoning, i.e. only the imposed sanctions are listed without applying Article 113 paragraph 7 of the Law on Misdemeanors of 2019, which states in an exhaustive and cumulative manner in which cases decisions are issued without reasoning: "judgments issued in a summary procedure, and judgments by which the misdemeanor is admitted and the perpetrator waives the right to appeal, have no reasoning."*

Regarding the statement in one of the decisions it is noted that the basic elements are missing (time, place and manner of committing the misdemeanor, only the name of the street is indicated without stating the city where the misdemeanor was committed), and at the same time the decision does not explain why there is no reasoning. There is only a Statement of the decision in which the committed misdemeanor and the imposed sanctions are described, but there are no other reasons given supporting the specific ruling. The decision has no reasoning but only sanctions are imposed, without applying Article 113 paragraph 7 of the Law on Misdemeanors of 2019 where in an exhaustive and cumulative manner the cases in which decisions are made without reasoning are listed.

It can be noted that in the other judgments the content of the statement of decisions states the allegations of the parties and they are taken into account through the evidentiary procedure in which the status of important facts is determined and they are separated from the disputed ones.

In another decision there is a deviation from **legal syllogism** in case of subsumption where the legal logic is not observed in making the decision, i.e. *the sanction imposed is a warning, and the reasoning of the decision states that a criminal procedure was initiated which was stopped with a decision because the defendant and the injured party reconciled. The court, by rule, should have stopped the misdemeanor procedure guided by the rule: "not twice for the same"*.

*In one of the decisions, the sanction is a warning (as per Article 35 of the Law on Misdemeanor of 2019). The court presented the remaining evidence by reading them and stated that the defendant committed the misdemeanor, while when assessing the mitigating and aggravating circumstances the court took into consideration the material condition of the defendant, the fact that the defendant was not sanctioned previously, that no harmful consequences occurred for a third party, **but did not state whether the defendant felt remorse for the committed violation, which is one of the important factors to be considered by the court when deciding in what way to influence the defendant and achieve the goals of the sanction.***

Regarding the **quality of the reasoning** of court decisions (Ratio Decidendi), we should have in mind that in misdemeanor cases the decisions are short and thus the reasoning does not contain arguments presenting the significant and key allegations and aspects influencing the decision. The reasoning is usually very short because the evidence presented is scarce. In most of the judgments there is no opposition of arguments, and in terms of clarity and consistency of the reasoning itself, we could see that it is partly unclear, because the minutes from the questioning of the parties were copied. Witness testimonies are also missing, as well as the statements of the court experts witnesses

With regard to the **linguistic and grammatical correctness** of the text, the decisions are understandable for the perpetrators of the misdemeanors, and they contain short and clear sentences.

The **decisions of the Court of Appeals Bitola**, contain clear instructions for the basic court to reconsider the decision if it is being remanded, the reasons for quashing or overruling the decision of the first instance court are clearly stated, and the reasoning clearly states why a sanction has been modified indicating where was the difference in opinion with the basic court.

The complaint allegations are also answered, the facts of the case are not copied from the decision of the first instance court, only the appellate allegations that are not previously explained and to which there are no answers in the first instance court decision are explained and attention is paid to the deadline for absolute statute of limitation.

However, there are some deviations, for example: *it can be seen that a lot of time has passed from the misdemeanor was committed until the final decision was made, as for example in one of the judgments where it is concluded that: "Defendants are released from liability due to statute of limitation of the misdemeanor prosecution".* We have to ask why for a misdemeanor committed in 2012 the Basic Court Ohrid issued a decision in 2018, and the Bitola Court of Appeals reviewed the case in 2019, and the whole procedure lasted for 6 years.

In another decision, the Court established that the substantive law has been violated, but it considers that this violation is in favor of the defendant and because of that the decision is not overruled. This makes the decision unclear. In another decision related to a traffic accident, the Court of Appeals states that the first instance court had to issue a payment order (as stipulated in the law) that was not issued and states that this is contrary to the provisions of the law which stipulate as follows: "in case of a traffic accident the procedure is conducted before the court which imposes a fine and a driving ban", so it becomes unclear why the court upheld the applicant's appeal and issued a warning without taking into account the circumstances when such a sanction (warning) may be issued.

CONCLUSION

The analyzed judgments individually contain the necessary parts and are properly structured. Most of the decisions are clear and concise, the factual allegations of the parties are taken into account in the evidentiary procedure during which the state of the important facts is determined and they are singled out from the disputed ones. Regarding the coherence of statements of decisions, there is a logical concordance with the reasoning and they do not contradict themselves.

There are aberrations in some decisions, especially when the judgment is rendered without reasoning and without applying Article 113 paragraph 7 of the Law on Misdemeanors of 2019, where the situations when such decisions are possible are stated exhaustively and cumulatively.

The decisions of the Court of Appeal Bitola contain clear instructions for the basic courts, the reasons for quashing or reversing the decision of the first instance court are clearly stated, if the sanction is modified a clear explanation for the reasons is given, indicating where is the difference in opinion between the appellate and the basic court. The complaint allegations are also answered, the facts of the case are not copied from the decision of the first instance court, care is taken to explain only the complaint allegations that are not previously explained and answered in the first instance court decision, paying attention to the deadline for absolute statute of limitation. However, there are some shortcomings that do not significantly affect the quality of court decisions.

1.2.2. QUALITY OF COURT DECISIONS IN THE GOSTIVAR APPELLATE AREA

14 decisions were analyzed, 6 decisions issued by the basic courts of the appellate area Gostivar and 8 decisions issued by the Court of Appeals - Gostivar.

With regard to the **structure** of court decisions from this appellate area, it can be concluded that all judgments analyzed individually partially do not contain all the necessary parts and they are partially correctly structured.

Regarding the **statement of decisions**, it can be concluded that most of the decisions are clear and thus concise.

Regarding **the coherence of the statement** of the decisions (whether it is in agreement with the reasoning) it has been determined that most of the decisions are issued without a reasoning so it cannot be determined if they contradict themselves.

In most of the decisions there are shortcomings, due to the fact that they are mostly issued without a reasoning, i.e. only the imposed sanctions are listed, without applying Article 113 paragraph 7 of the Law on Misdemeanors which stipulates the following: "Decision made in summary proceedings, and decisions whereby the defendant admits the misdemeanor and waives the right to appeal, have no reasoning." The law exhaustively and cumulatively states the situations in which decisions may be issued without a reasoning, and this may be the case provided the defendant admits the misdemeanor, compensated the damage and waives his/her right to appeal. However in some of the decisions it is evident that no such statement is given by the defendant, and in some the parties did not respond to the summons so the decision was made in absentia.

With regard to the statement of decisions in one of the decisions it can be seen that "*the amount of the fine is determined according to the purchase rate of the National Bank of the Republic of North Macedonia while it should be by the middle exchange rate of the National Bank of the Republic of North Macedonia*". For most of the judgments we did not analyze the legal logic because in most of the analyzed judgments the factual allegations of the parties are not presented and there is no evidentiary procedure.

In another decision, there is no **legal syllogism** in case of subsumption and the legal logic is not respected in making the decision. In the other judgments it can be noted that the reasoning takes into consideration the factual allegations by the parties through the evidentiary procedure where the state of important facts is determined and they are singled out from the disputed facts.

Regarding the **quality of the reasoning** of the court decision, Ratio Decidendi, we can say that the decisions in misdemeanor cases are short and thus the reasoning does not contain arguments regarding the important and key allegations and aspects.

The reasoning is usually very short without properly indicating the evidence that is considered (indicating only their number and date) nor whether the evidence submitted is properly certified. The evidence presented is usually scarce.

In most of the judgments there are no adversity of arguments, and in terms of clarity and consistency of the reasoning itself, we could determine that it is partly unclear, because the minutes from the questioning of the parties were copied. Witness testimonies are also missing, as well as the statements of the court experts witnesses.

With regard to the **linguistic and grammatical correctness** of the text, the decisions are partly illegible for the perpetrators of the misdemeanors, since they are not clearly formulated and contain grammatical errors.

Regarding the decisions of the Court of Appeals Gostivar, they contain clear reasons for reversing the decision of the first instance court, *but in one of the decisions when the sanction was modified it was not clearly stated why the modification was made, and what is the reason for difference in opinion with the basic court.*

The complaint allegations are answered, the facts of the case are not copied from the decision of the first instance court, care is taken to explain only the complaint allegations that are not previously explained and to which there are no answers in the first instance court decision, paying attention to the deadline for absolute statute of limitation.

However, there are shortcomings in the application of substantive law which is not carried out in accordance with the positive legal norms, **that is in one decision the substantive law is applied without pointing out the circumstances that lead to mitigation of misdemeanor sanctions, which makes the decisions unclear and incomprehensible.**

Irregularities are also noted in other decisions:

- One of the decisions is extensive and unclear, namely the basic court imposed a fine of 50 euros, citing Article 33 paragraph 5 in relation to Article 390 of the Law on Road Traffic Safety (it was a traffic accident). Article 390 paragraph 1 line 1 stipulates additionally a driving ban from 30 days to 3 months if the fine set forth in the law is 50 euros;
- In another decision, the Court of Appeals cites a provision stating that the fine is 45 euros as per Article 390 paragraph 1 of the Law on Road Traffic Safety, while the law in that article sets forth a fine of 50 euros and not a fine of 45 euros;

- In a third decision in which the sanction doubled, the fine if doubled will amount to 100 euros, while the decision states 90 euros. The driving ban is imposed for a period of 30 days while it should be at least 3 months (the law sets forth a sanction of 3-6 months);
- In a fourth decision there is an indication that is contradictory in itself, because the appellate court stated that the basic court with the decision exceeded its powers by mitigating the fine set in the law of 300 euros and imposed a fine of 200 euros, at the same time quoting Article 31 of the Law on Misdemeanors (2015) and stating that the fine can be reduced by a maximum of 1/3. It could be concluded that the basic court is allowed to reduce and it did reduce the amount of the fine in accordance with the Law on Misdemeanors of 2015. It remains unclear why the Court of Appeals refers to the Law on Misdemeanors published in the Official Gazette of RM 51/2011 and quotes articles from the Law on Misdemeanors of 2015.

CONCLUSION

In most of the decisions the substantive law is wrongfully applied, most often Article 113 paragraph (7) of the Law on Misdemeanor, which stipulates that a decision issued in summary procedure can be issued without a reasoning only if the defendant waives his right to appeal (in one of the cases the decision was made in absentia, so the defendant did not waive his right to appeal). In most of the analyzed decisions, the substantive law is not applied properly, substantial violations of the misdemeanor procedure are made, especially in relation to the reasoning in the decisions.

With regard to the decisions issued by the Court of Appeals that were subject to analysis we can say that most of them have shortcomings which are of immaterial nature, and in some of them regulations in force are applied incorrectly.

1.2.3. QUALITY OF COURT DECISIONS IN THE SKOPJE APPELLATE AREA

In order to carry out the analysis, efforts were made to obtain anonymized court decisions from the Basic Criminal Court Skopje; however initially the decisions could be reviewed only at the court premises. The court explained in written that anonymized decisions are not published on the court portal due to the large volume of work. However this is not an acceptable justification for the professional public. Further on, after repeating the request and carrying out several visits in person, we were emailed the decisions that matched the criteria in our request. A total of **23 decisions from the Appellate Area - Skopje**, were obtained and analyzed. Out of them 11 were issued by the Basic Criminal Court Skopje and 14 by the Appellate Court Skopje.

Regarding the **structure** of the court decisions from this appellate area, it can be concluded that all analyzed judgments individually contain the necessary parts and they are correctly structured. Regarding the **statement of decisions**, it can be seen that most of the analyzed decisions have clear and concise statements. Regarding the **coherence of the statement** of the decisions (whether it is in concordance with the reasoning) it has been determined that the decisions are in logical concordance with the reasoning and do not contradict themselves. It is noted that in the content of the statement the allegations of the parties are taken into account through the evidentiary procedure where the important undisputed facts are singled out from the disputed ones. The decisions do not digress from the legal syllogism in case of subsumption and the legal logic is respected when the decision is made.

As an example we can point out one of the decisions in a traffic accident case, in which the defendant committed two misdemeanors but he was sentenced to a single misdemeanor fine and a driving ban for three months. As per the law the amount of the fine conditions the length of the driving ban. In the specific case, a fine was amounting to 198 euros in denar counter-value (12,180 denars). The defendant did not confess to the misdemeanor, and the court heard the eyewitness and the injured party filing the misdemeanor charge and reviewed the case files. When deciding upon the misdemeanor sanction the court took into account all the circumstances, but did not accept and did not believe the statement of the defendant because it considered it unsubstantiated and contrary to the evidence presented. An adversarial procedure was conducted, in which all the necessary evidence were presented on the basis of which the court correctly issued a decision.

Regarding the **quality of the reasoning** of the court decision, Ratio Decidendi, it is usually based on the assessment of the evidence presented, although in the misdemeanor procedure the evidence is scarce. In most of the judgments there is a adversity of arguments, and in terms of clarity and consistency of the reasoning itself, we could see that in some of the decisions it is unclear, because the minutes from the questioning of the parties were copied. However, some of the decisions contain testimonies of

witnesses, and there is a correlation of the statements given and the reasoning as well as an explanation which statement were considered by the court when making the decision.

- In one decision the judge, when acting upon the submitted request, held an oral hearing, and the decision completely quotes the statements of the defendant, the injured party, and of the witness, which makes the decision extensive and thus unclear (only the reasoning is 10 pages long). The dilemma remains whether a misdemeanor decision should contain such a comprehensive reasoning, and should quote all statements. However, it can be concluded that the legal provisions have been fully complied with.
- One of the decisions was made in the absence of the defendant, but the legal provisions that apply to natural persons were fully applied. In the specific case a fine was imposed amounting to 250 euros (the fine set forth in the law is from 15 to 250 euros). The legal regulations in force were acted upon. There was a technical error in the reasoning where it was indicated that the return delivery note issued on 06.04.2020 was returned to the court containing a note "notified on 26.03.2020 did not request". Because of this it cannot be determined on which day the defendant was notified.
- In another decision, it is noted that the decision was made in the absence of the defendant. Considering that the defendant was duly summoned and did not appear in court, nor did he justify his absence, the court believed that the decision can be based on the submitted evidence, without questioning the defendant. Thus the court imposed the maximum fine set forth in the law. The summons was announced on the court bulletin board because the court did not have information on the residential address of the defendant at the moment when the summons was placed on the bulletin board of the court. The latter is especially important because the misdemeanor was committed on 15.12.2016, the request was submitted on 10.01.2017, and more than two years have passed until the day the summons was placed on the bulletin board (11.04.2019). First it should be verified if the defendant lives at the given address, and then the summons is placed on the court bulletin board. As per the law, when a summons is placed on a bulletin board, the article of the law according to which such a procedure for advertising / inviting is performed should also be indicated.
- In the third decision made in the absence of the defendant who was duly summoned but did not appear and did not justify his absence, a driving ban was imposed. In this case, the court considered that there was sufficient evidence to make a decision without examining the defendant, taking into account the case file, and in particular the fact that the defendant was moving faster (measured by radar) than the speed limit, as it was also recorded in the report signed by the defendant. By this the defendant admitted the violation. The court, taking into

account the case file, in accordance with the law made a decision in absence of the defendant, assessing all circumstances as provided by the law (both mitigating and aggravating) and correctly chose the misdemeanor sanction.

- In one of the misdemeanor decisions it is noted that the defendant was imposed negative driver's points, and the court had to state only the misdemeanor sanction: driving ban. The defendant did not appear in court in person, and the court considered that on the basis of the documents in the case file a driving ban of three months should be imposed, taking into account the quantity of alcohol in the blood and the fact that the defendant had not previously been convicted of a misdemeanor.
- Similar to the previous one, in another court decision rendered in the presence of the defendant, the court imposed a driving ban of 3 months considering that the amount of alcohol in the body is 0.55 per mille, taking into account that the defendant has a family and is employed, and he needs the vehicle for work. At the same time, the court took into account that the defendant expressed regret and remorse for the committed misdemeanor and was not previously sentenced for a misdemeanor and therefore imposed the minimum sanction set forth in the law.

With regard to the **linguistic and grammatical correctness** of the text, the decisions are understandable for the perpetrators of the misdemeanors, and they contain clear sentences.

Regarding the **decisions of the Court of Appeals Bitola**, the decisions contain clear instructions for the basic court to reconsider when remanding the decision, the reasons for quashing or modifying the decision of the first instance court are clearly stated, and the reasoning clearly states why a modification was made when there was a change in the in the sanction, indicating where was the difference in assessment with the basic court. *However, one of the decisions, which is basically clear and cites necessary legal provisions, is not mentioned / stated if the first instance court also assessed mitigating circumstances for reducing the duration of the driving ban, when imposing a misdemeanor sanction on the defendant. The court imposed a driving ban of 1 month in accordance with Article 29 of the Law on Misdemeanors (from 1 month to 12 months in the law). In this case, the Court of Appeals imposed a stricter sanction – driving ban but it did not provided any reasoning for that.*

The complaint allegations are also answered, the facts of the case are not copied from the decision of the first instance court, care is taken to explain only the appellate allegations that are not previously explained and to which there are no answers in the first instance court decision, paying attention ex officio to the legal changes and inconsistencies in the decision for applying the milder law and of the deadline for absolute statute of limitation.

It can be seen that a lot of time passes from the committed misdemeanor until the final decision is made, as for example in one of the judgments where it is concluded that for a misdemeanor committed in 2015, the decision was made in 2020.

In one of the decisions, although it is precise and clear decision citing legal provisions, it is not mentioned / stated if the first instance court also assessed mitigating circumstances for reducing the duration of the driving ban, when imposing a misdemeanor sanction on the defendant. The court imposed a driving ban of 1 month in accordance with Article 29 of the Law on Misdemeanors (from 1 month to 12 months in the law). In this case, the Court of Appeals imposed a stricter sanction – driving ban but it did not provide any reasoning for that.

In another decision it is evident that the Court of Appeals explains precisely and accurately why it accepts the mitigated misdemeanor sanction driving ban of 1 month, stating that this is supported by evidence in favor of the defendant, citing Article 29 of the Law on Misdemeanor (stipulating from 1 to 12 months). However, compared to another decision, the question arises as to how in the above case the decision of the basic court was upheld and affirmed, and in the latter case the misdemeanor sanction was increased. Given that we do not have the decisions of the basic court in these two cases we cannot make a complete comparison of the two decisions.

In one of the decisions, for a misdemeanor committed in 2015, the decision was made in 2020, which indicates that the procedure lasted for 5 years and 4 months. The question arises what is the effect of such a long misdemeanor procedure specifically related to a public peace and order case and how it affects the perpetrators after so many years.

CONCLUSION

The decisions are basically concise, clear and understandable, with a sufficient description of contradicting arguments. At the same time, laws and explanations are cited and the reasons why the decisions are upheld, reversed or remanded are explained, taking into account each segment of the decision of the basic court and evaluating it in its entirety, and not only the part that is appealed.

The legal logic has been respected in most of the decisions analyzed. The reasoning for most of the decisions is usually given through the assessment of the evidence presented, although in the misdemeanor procedure the evidence is scarce. The decisions contain testimonies of witnesses, and there is a correlation of the statements given and the reasoning and an explanation which statements were trusted by the court when making the decision. In most of the decisions there is a contradiction of arguments, and in terms of clarity and consistency of the reasoning itself, we could see that in some of the decisions the reasoning is unclear, because the minutes from the questioning of the parties were copied. The decisions are understandable for the perpetrators of the misdemeanors because they contain clear sentences.

The decisions of the Court of Appeals Skopje contain clear instructions for the basic court to reconsider the decision if the decision is remanded, the reasons for quashing or modifying the decision of the first instance court are clearly stated, and the reasoning clearly states why a change was made when the sanction was modified, indicating where was the difference in opinion with the basic court. However, in one of the decisions, which is basically clear and refers to the legal provisions, it is not mentioned / stated whether the first instance court assessed mitigating circumstances when lowering the misdemeanor sanction, in another decision a long period of time has passed before the final decision was made, and in a third decision a stricter sanction driving ban was imposed without giving reasons for it in the reasoning.

1.2.4. QUALITY OF COURT DECISIONS IN THE STIP APPELLATE AREA

8 decisions were subject to analysis, 4 decisions issued by the basic courts of the appellate area Stip and 4 decisions issued by the Court of Appeals - Stip.

Regarding the **structure** of the court decision for this appellate area, it can be concluded that all analyzed judgments individually contain the necessary parts and they are correctly structured.

Although in terms of **the statement of the decision** it can be concluded that most of the decisions are clear and concise, still some shortcomings are noticed. For example in one of the decisions "a fine in the amount of 400 euros" was imposed which means that the milder law was not applied as per the Law of 2019, in which case the perpetrator would have been fined with up to 250 euros. *In another decision, the fine was below the legal minimum because the defendant was unemployed and instead of the fine set forth in the law, amounting to 350 to 400 euros, the perpetrator was fined with 100 euros. The court stated the reason (unemployment of the defendant) but the court did not ask for direct evidence and did not offer the defendant community service as it is stipulated in the law. At the same time, not all mitigating circumstances have been fully investigated in this case.*

Regarding **the coherence of the statement** of the decisions (whether it is in concordance with the reasoning) it has been determined that most of the decisions are in logical concordance with the explanation and do not contradict themselves. However there are aberrations and it could be noted that in the content of the statement the allegations of the parties are taken into account through the evidentiary procedure but the state of important undisputed facts is not determined but they are singled out from the disputed ones.

- In one decision **legal syllogism** in case of subsumption is not adhered to and the legal logic is not respected. Namely in one of the decisions it could be noted that a fine of 400 euros is imposed, and the milder law is not applied (fine of 250 euros) as it is stipulated in the Law on Misdemeanors of 2019.
- In another decision, the fine imposed is not in accordance with Article 26 paragraph 1 of the LM of 2019 and the milder law has not been applied, although the decision cites that specific law. The maximum fine set forth in the law is from 15 to 250 euros, while the perpetrator was fined with 400 euros. A witness statement is presented in the decision, but it is not explained whether the witness was questioned and whether the statement is substantiated by the other evidence presented. There is no adversity in the procedure.
- In a third decision, a misdemeanor sanction of warning was imposed, without taking into account that the warning cannot be issued if the perpetrator did not fulfill the prescribed obligation, as well as when damages and consequences were caused and the public interest was endangered.

Regarding the **quality of the reasoning** of the court decision, Ratio Decidendi, it can be concluded that the reasoning is usually very short because the evidence presented is scarce. In most of the judgments there are no contradicting arguments, and in terms of clarity and consistency of the reasoning itself, we could see that it is partly unclear, because the minutes from the questioning of the parties were copied. Witness testimonies were also missing.

With regard to the **linguistic and grammatical correctness** of the text, the decisions are understandable for the perpetrators of the misdemeanors, and they contain short and clear sentences.

The decisions of the Court of Appeals Stip contain clear instructions for the basic court to reconsider the decision, the reasons for quashing or modifying the decision of the first instance court are clearly stated, and the reasoning clearly states why a change was made when the sanction was modified, indicating where was the difference in assessment with the basic court. The complaint allegations are also answered, the facts of the case are not copied from the decision of the first instance court, care is taken to explain only the complaint allegations that are not previously explained and to which there are no answers in the first instance court decision, paying attention to the deadline for absolute statute of limitation.

However, there are some shortcomings due to the following: one decision is unclear and incomprehensible, because it cites a report on the speed control of the vehicle and not the report on the breathalyzer test, although the defendant drove under influence of alcohol. This is the case because the misdemeanor was committed as per Article 228 paragraph 1 and it is criminalized in Article 228 paragraph 7 of the Law on Road Traffic Safety - the defendant drove the vehicle under the influence of alcohol and not at a higher speed. While citing the presented evidence, an error was made: "the decision cites the speed control report and not the breathalyzer test report".

CONCLUSION

The analysis of the decisions points to the fact that most of the decisions contain all necessary parts and they are properly structured, adopted on the basis of substantive law, and the content of the statement takes into account the factual allegations of the parties through the evidentiary procedure. However, there are shortcomings when, for example, the state of the important facts that stand out from the disputed ones is not determined, and in some of them there is a misapplication of the substantive law, or the adversity of the procedure is not taken into account, and in some cases a fine was imposed without clarifying whether mitigated circumstances applied or not.

The decisions of the Court of Appeals Stip are short and with less explanations (compared to the decisions of the Court of Appeals Skopje for example), but they are still understandable, the application of the laws was taken into account, except in one decision where the wrong evidence is cited (a speed report is cited, although the committed offense is driving under the influence of alcohol). This makes the decision contradictory, unclear and incomprehensible.

2.



ANALYSIS OF THE QUALITY OF COURT DECISIONS AT NATIONAL LEVEL

The court decisions from the four appellate areas were subject only to a qualitative analysis. The analysis focused on the structure of decisions, coherence of the statement of decisions, quality of the reasoning, linguistic and grammatical correctness of the text in the court decision. It can be concluded that at national level there are no deficiencies in terms of **structure** of court decisions from the four appellate areas.

Regarding the coherence of the statement of decisions (*whether they are in concordance with the reasoning*) there are some decisions that lack a reasoning and contain only a list of sanctions imposed, while Article 113 paragraph 7 of the Law for the Misdemeanors of 2019 is not applied. This Article in an exhaustive and cumulative manner lists all situations when decisions are made without a reasoning (*if the defendant admitted the misdemeanor, compensated the damage and waived the right to appeal*).

Also in some of decisions **legal syllogism** in case of subsumption is not adhered to and the legal logic is not respected.

Regarding **the quality of the reasoning** of the court decisions, Ratio Decidendi, although in the misdemeanor procedure the decisions are short and the reasoning is usually very short because the evidence presented is scarce, there is still no uniformity in the format of the reasoning. In some decisions the minutes taken during the questioning of the parties are copied and the testimonies of the witnesses are missing, as well as the statements of the expert witnesses are not there.

Whit regard to **linguistic and grammatical correctness** of the text in the court decisions, we can say that at national level there are no major nonconformities, they are understandable for the perpetrators of the misdemeanors, with certain exceptions.

The appellate courts show greater uniformity when it comes to court decisions, especially Bitola and Skopje Courts of Appeals. Most of the decisions contain clear instructions for the basic court to reconsider the decision and the reasons for quashing or modifying the decision of the first instance court are clearly stated. The reasoning clearly states why a change was made when the sanction was modified indicating where the difference in assessment with the basic court was. Also in most of the cases the complaint allegations are answered, the facts of the case are not copied from the decision of the first instance court, care is taken to explain only the complaint allegations that are not previously explained and to which there are no answers in the first instance court decision, paying attention to the deadline for absolute statute of limitation.

The exceptions to this were already presented in the individual analysis for each appellate area.



3.

GENERAL CONCLUSIONS

- It can be seen that there is greater uniformity of decisions issued in the Appellate Areas Skopje and Bitola.
- Greater uniformity of court decisions in the appellate areas of Gostivar and Stip is needed.
- It can be noted that in some of the cases statute of limitations has passed.
- In certain traffic accident cases, the misdemeanor payment order set forth in the law was not issued (to be paid within 8 days), which imposes higher costs on the defendant than those legally required in the misdemeanor procedure.
- It is noted that in certain cases the decision was made in summary procedure and without a reasoning, in the absence of the defendant and without hearing the defendant, without taking into account in which cases a reasoning is not required in the summary procedure, although the law explicitly lists the cases in which the court may issue a decision without a reasoning. Such decisions have erroneous application of substantive law.
- When it comes to mitigation of sanctions that is fines, the reasons for the mitigation are not always reasoned and the grounds on which the fine was imposed are not stated (the articles of the LM are not cited).
- There are situations when the court cites articles from the law which set forth fines that are different from those imposed by the court, and there are cases when the misdemeanor sanction is doubled but the amount differs from the one set forth in the law.
- There is a difference in the imposition of the misdemeanor sanction driving ban, for example a milder sanction is imposed (a period of 30 days when the minimum term in the law is 3 months).
- Some of the decisions impose a stricter sanction driving ban without a clear reasoning.
- There are differences in the length of the reasoning, in some cases it quotes all the statements, which makes it too extensive and difficult to read, and the decision is not clear and concise enough.
- The reasoning in some of the decisions contains technical and linguistic errors.
- It was not possible to make an assessment regarding the legal aspects, especially about issues related to the Macedonian case law, or about issues for which the Supreme Court has adopted general legal positions, general legal opinions, legal opinions, conclusions and decisions or conclusions of meetings of the appellate courts in the misdemeanor procedure because such documents could not be obtained. Certainly, greater cooperation between the institutions in order to harmonize views and opinions, especially for the application of laws in practice is needed. The analysis showed that it is necessary to adopt legal views and opinions for decision-making in summary procedure and in cases when a reasoning is not required.



4.

RECOMMENDATIONS

- In order to achieve greater dedication and attention when elaborating decisions, it is necessary to work on harmonization of court practice, especially through the programs of the Academy of Judges and Public Prosecutors and by delivering targeted courses on harmonization of decisions in terms of their structure, application of the law and the course of the misdemeanor procedure;
- It is necessary competent bodies better to monitor court decisions in all appellate areas, to conduct annual comparative analyzes, taking into account all quality and evaluation criteria given in the Methodology for Analyzing the Quality and Uniformity of Court Decisions;
- It is also necessary to organize meetings for exchange of experience and practice as well as to prepare instructions (guidelines) for certain legal issues;
- In the future, the Supreme Court should adopt general legal positions, general legal opinions, legal opinions and conclusions and decisions or conclusions of meetings of the appellate courts on certain issues in the misdemeanor procedure in order to establish a uniformed practice and improve the misdemeanor procedure.

