ANALYSIS OF THE QUALITY AND UNIFORMITY OF COURT DECISIONS IN CIVIL CASES

ANALYSIS OF THE QUALITY AND UNIFORMITY OF COURT DECISIONS IN CIVIL CASES

ANALYSIS OF THE QUALITY AND UNIFORMITY
OF COURT DECISIONS IN CIVIL CASES

Original title of the publication:
АНАЛИЗА НА КВАЛИТЕТ И ВОЕДНАЧЕНОСТ НА
СУДСКИТЕ ОДЛУКИ ВО ГРАЃАНСКО-ПРАВНАТА ОБЛАСТ

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

Editor:
Jovan Ananiev, Ph.D

Author:
Dushko Georgevski

Language editor:
Dejan Vasilevski

Translation from Macedonian to English:
Ana Popova Manasievska

Graphic design and print:
Relativ

Skopje, July 2021

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

347.95:347(497.7)"2017/2020"(047.31)

GEORGEVSKI, Dushko

Analysis of the quality and uniformity of court decisions in civil cases / [author Dushko Georgevski; Translation from Macedonian to English Ana Popova Manasievska]. - Skopje : European policy institute : Zenith, 2021. - 63 стр. ; 30 см

Начин на пристапување (URL): https://epi.org.mk/post/17487?lang=en. - Превод на делото: Анализа на квалитет и воедначеност на судските одлуки во граѓанско-правната област. - Текст во PDF формат, содржи 63 стр. - Наслов преземен од екранот. - Опис на изворот на ден 02.09.2021. - Содржи и: Appendix 1-2

ISBN 978-608-4702-15-3 (Институт за европска политика)
ISBN 978-608-4758-12-9 (Зенит)

а) Судски одлуки -- Граѓанско право -- Македонија -- 2017-2020 -- Истражувања

COBISS.MK-ID 54829829

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.

CONTENTS

PREFACE

This analysis was made under the EU funded project "Partnership Justitia "Regaining Citizens' Trust", implemented by the European Policy Institute and the ZENIT Association. The project aims to contribute to restoring citizens' trust in the Macedonian justice system by significantly involving civil society in fundamental judiciary reforms. The final beneficiaries of this project are the institutions in the judiciary. The purpose of this analysis is to contribute to improving the quality of court decisions in the civil cases, to improve the procedure itself, as well as to contribute to improving the uniformity of decisions in order to respond to citizens' expectations with regard to their right to a fair and just trial and access to justice.

INTRODUCTION

The aim of this analysis is to assess the quality of decisions in all appellate areas in North Macedonia in accordance with the given methodology, as well as to analyse their uniformity, i.e. how many of the randomly selected decisions for which there is already established case law (principal legal opinions, sentences or conclusions of the Supreme Court of the Republic of North Macedonia or cases that were reviewed by the ECtHR), are in concordance with such case law. Also, these two criteria should show the quality and uniformity of decisions in continuity for each appellate area separately, which can also serve as a basis for extracting data on the quality and uniformity of decisions at the national level. Subject of analysis were decisions rendered in 2017, 2018, 2019 and 2020 in cases in which one party was a natural person.

By using quantitative and qualitative indicators and analysing the uniformity of court decisions, the quality and uniformity of court decisions for each appellate area were determined. At the end of this report the same criteria were applied in order to assess the situation at national level. At the end, based on the findings, recommendations are given to basic and appellate courts as well as to the Supreme Court of the Republic of North Macedonia and to the Judicial Council of the Republic of North Macedonia, in order to increase the quality and uniformity of future court decisions.

OBJECTIVES AND METHODOLOGY

This report was prepared upon the analysis of decisions rendered by basic and appellate courts. In some instances more decisions were analysed, than the number recommended in the methodology. An exception to this is the analysis of uniformity due to lack of appropriate decisions for which there is case law.

All decisions, regardless of the approach or the criteria used were analysed individually, without comparing them to other court decisions rendered by same instance or higher level courts.

The main aim of the analysis was to perform a qualitative assessment of decisions rendered in the given period in all four appellate areas and at national level and to determine if there are any weaknesses in a particular appellate area. With regard to uniformity of court decisions the goal was to determine whether sufficient attention is paid to the balance between equality of people before the law and legal certainty, on the one hand and the lack of rigidity, development and judicial independence, on the other. The uniformity of court decisions is important because it ensures the rule of law, which is founded, among other things, on legal certainty and predictability. Citizens and legal entities have the right to know what were the judgments rendered in similar cases, and thus to have legal certainty in the country. The case law enables the courts to be more efficient and the parties and the lawyers to have the opportunity to know whether filing a lawsuit can lead to the desired result and to resolving a particular dispute.

Several indicators were used to analyse quality of court decisions: structure and coherence, legal logic, quality of the reasoning - explanation of the case background, presentation of the case, presentation and application of relevant laws and bylaws and legal principles, presentation of the facts of the case and evidentiary procedure, deliberation and evaluation of opposing arguments, clarity and consistency of the reasoning, linguistic and grammatical correctness of the text of the court decision. With regard to decisions rendered by the Courts of Appeal, the indicators were as follows: whether the decision contains clear instructions for the basic court when returning the decision for retrial, whether the reasons for revoking or changing the decision of the first instance court are clearly stated, whether the lawsuit allegations are answered, if the facts of the case are copied from the decision of the first instance court, if the decision of the first instance court is overturned, if the decision of the appellate court has all the features needed in order to determine the facts of the case, whether it analyses the evidence, cites the material law and contains a reasoning (criteria equally applicable to first instance court decisions), but also if the appellate court decisions rejecting the appeal, explain only the allegations which were not previously stated and answered in the first instance court decision.

One criterion which was used when selecting court decisions rendered by basic and appellate courts, was the decisions to refer to legal issues for which there is Macedonian case law, and for which the Supreme Court has adopted principal legal positions, principal

legal opinions, legal opinions and conclusions and decisions or conclusions of appellate courts meetings on the relevant issue. It should be underlined that the selection criterion was not whether the case law was cited in the court decisions, but whether the legal issues have already been the subject of another decision, i.e. if there is court practice on the specific issue.

The analyses were performed in Excel spread sheets - forms, and the assessment of the quality and quantity of court decisions is performed as follows:

- Form 1A was used to assess the quality of decisions rendered by basic courts, while form 1B was used to analyse the decisions of appellate courts;
- The first column in the form contains the indicators that will be quantitatively valued;
- The second column contains score of the court decision per indicators;
- The principle of analysis in the two forms is almost identical;
- If an indicator is not relevant for the specific court decision, an empty cell is left; for the quantitative assessment, the empty cells are not taken into account, but only those that have been entered a score from -1 to 3, including 0;
- If an indicator is not relevant for a specific court decision, score of -1 is given, if the indicator is present but the decision does not meet the minimum quality criteria it receives a 0, if the decision satisfies the minimum quality standards it receives 1, for medium quality 2 is given, and decisions having the highest quality per a specific indicator receive a score of 3.
- Column 3 contains coefficients related to complexity and importance of each indicator, by which weighting of each individual criterion is ensured. (For example, with regard to uniformity of court decisions a linguistic error cannot have the same weight as lack of legal logic or a lack of reference to European case law).
- With regard to quantitative analysis of the uniformity of court decisions, the first indicator I1 is eliminatory, which means that if there is no reference to the Macedonian case law or to the practice of the ECtHR, the analysis is stopped and the value -3 is entered in the respective cell. If the case law is cited, the analysis continues and 3 is entered. If in the analysed decision there is a reference only to the decision of the ECtHR, the relevant indicators are used, and if the court decision cites decisions both of domestic courts and of the ECtHR, then all indicators are evaluated, following the same principles as for quality of decisions, explained above.

- Attached to this report are the tables, Form 1A used for analysing the basic court decisions, Form 1B used for analysing the decisions of the appellate courts and the Form - Annex 2, used for analysing the uniformity of decisions. The quality index of the court decision is obtained at the end, as a quotient from the sum of the values of the indicators divided by the number of indicators evaluated.

In this way, we have determined the average quality of the basic court decisions per appellate area, of the decisions in each appellate area separately, as well as at the national level.

The decisions that were subject of analysis, were mostly downloaded from the Supreme Court web site containing published anonymised court decisions (95% of the decisions were found on this web-site). The rest of the decisions were from attorneys' case files, mostly those that were used in the uniformity analysis as they were related to a legal issue for which there is an established case law or a benchmark.

As regards this research, as well as regards the process for obtaining relevant data, we must note that despite officially addressing the courts and their services in charge of providing publicly available information, there was no cooperation and response to our requests, which delayed the research and the analysis process.

1.

QUALITATIVE ANALYSIS OF COURT DECISIONS IN CIVIL CASES

The qualitative analysis of the court decisions of basic and appellate courts was based on the following indicators:

- Decision structure;
- Operative part of the decision;
- Coherence;
- Legal syllogism in case of subsumption;
- Explanation of the background of the issue;
- Presentation of the case / question;
- Facts of the case and evidentiary procedure;
- Deliberating and evaluating opposing arguments;
- Clarity and consistency of the reasoning;
- Linguistic and grammatical correctness of the text;
- Clear instructions issued to the basic court when returning the judgment for retrial;
- The reasons for revoking or changing the decision of the first instance court are clearly stated;
- If the appellate court is changing the scope or the amount of the sanction, the reasons for this change are clearly stated in the reasoning and the differences in the assessment with the basic court are explained;
- The complaint allegations are answered;
- The facts of the case are not copied from the decision of the first instance court;
- When changing the decision of the first instance court, the decision of the appellate court contains everything needed: it establishes the facts of the case, analyses evidence, cites substantive law and it contains reasoning, just like any first instance court decision (in such a case, the rules for analysing first instance courts' decisions apply – as presented and described in the Qualitative Analysis section);
- The decisions of the appellate court rejecting the appeal, contain a reasoning only for those complaint allegations, which are not previously stated and which are not answered in the first instance court decision. The appellate court pays attention to the time barring period of the case for the retrial before the first instance court.

1.1. ANALYSIS SAMPLE

A total of 88 decisions from all four appellate areas were subject to analysis. The sample included decisions from the basic and appellate courts, selected in accordance with the guidelines in the methodology. All decisions were rendered between 01.01.2017 and 31.12.2020, with the exception of one decision that was rendered at the beginning of 2021.

The quality was analysed in total of 10 decisions of the Bitola Court of Appeals while quality and uniformity were analysed in five of them. Qualitative analysis was made on 10 decisions rendered by the basic courts in the Bitola appellate area, and uniformity was analysed in 7 of them.

In the Skopje appellate area, qualitative analysis was performed on 16 court decisions rendered by the basic courts in this appellate area, and uniformity was assessed in 12 court decisions. Quality was assessed in 12 decisions of the Skopje Court of Appeals and 7 of them were analysed with regard to their uniformity with case law.

A total of 8 decisions of the Gostivar Court of Appeals were analysed on the territory of the Gostivar appellate area. 4 of them were subject to qualitative analysis and 4 were assessed in terms of their uniformity. 12 decisions rendered by the basic courts in this appellate area were subject of analysis, 8 in terms of quality and 8 in terms of their uniformity. Several decisions were analysed with regard to both criteria, and some only according to one criterion, either quality or uniformity.

4 decisions from the Shtip appellate area were subject to qualitative analysis and 4 decisions were assessed with regard to their uniformity with the case law. Besides these, 8 decisions rendered by the basic courts in this area were subject to qualitative analysis, and 4 decisions were analysed with regard to their uniformity.

1.2. QUALITATIVE ANALYSIS OF COURT DECISIONS RENDERED IN INDIVIDUAL APPELLATE AREAS

1.2.1. Quality of court decisions in the Bitola appellate area

Индексите на квалитет на судските одлуки на основните судови од апелациското подрачје и на одлуките на Апелациониот суд Битола според извршените анализи се следните: 5,00, 5,09, 5,09, 5,18, 5,18, 5,09, 5,18, 4,63, 4,72, 5,09, 4,8, 5,00, 5,00, 5,00 и 5,14;

The analysis shows that in average the quality index for the whole appellate area is **5**.

The qualitative analysis of each decision shows that in general all decisions are properly structured, have clear operative parts and in principle do not contradict the given reasoning, regardless of the legal syllogism in case of subsumption. Even when a norm is not most appropriately applied to the specific legal relation, the courts reason their position on that issue until the end of the decision and there is coherence between the operative part and the reasoning.

We could single out one decision made by the Krushevo Basic Court. In it, it is unusual and illogical for a lawsuit related to determining the right over property, to have also the value of the dispute determined, which is 40,000,000 denars. The Law on Court Fees and the Law on Litigation Procedure have clear provisions stipulating which fee base is taken into account when determining the value of a dispute. On the other hand, the court probably missed the preliminary review phase of the lawsuit. If it has been part of the procedure, the court could have quickly, efficiently and appropriately determined the value of the dispute before scheduling the preparatory hearing. Thus the court would have tasked the plaintiff to pay the court fees in accordance with value of the dispute. There are many discrepancies with regard to this issue in decisions from all appellate areas, and even within a single appellate area. The specific decision has been awarded a lower grade for quality due to this omission of the court.

In principle, all decisions have a complete and correct subsumption with an extensive postulate and principles applied by deduction of a small postulate with a logical conclusion containing all the necessary elements. The background of the issue is mostly explained in a concise and clear manner and there is reference to necessary actions undertaken by the court. In some decisions the issue is introduced even in the first pat.

There is a clear description of the facts and circumstances explaining the essence of the case; and the material facts and the application of legal principles are presented in separate paragraphs. In most of the decisions only facts that are relevant for the decision rendered are stated, although in some of them irrelevant facts are also stated, which needlessly burden the decision.

Legal norms applying to each issue are generally correctly explained by referring to the substantive law. Certain general rules in the specific cases are applied through deductive logic, and inductive logic is properly used and in most decisions it can be applied to an indefinite number of cases. Relevant regulations regarding each specific dispute are cited correctly.

The facts of the case presented in the decisions of the basic courts in this appellate area correspond to what is required by the substantive law and in relation to it produce the legal consequence contained in the judgment. The decisions contain only evidence supporting the reasoning. They contain correct evaluation of each piece of evidence separately and of all evidence together as one piece of evidence. With regard to the quality of evidence, they are mostly authentic, credible and consistent, and the irrelevant facts are rarely stated.

Most of the decisions present the arguments of the party that lost the dispute and compare them with the arguments of the party that won the dispute, putting them in correlation with the facts and the application of substantive law.

The analysis reveals that the reasoning is usually concise without being burdened with unnecessary details. In most of the decisions the text of the decision is not copied from minutes of previous hearings, the evidence is fully explained, not only copied from the minutes, the allegations of the parties are summarized, and they are rarely copied from the minutes. The decisions made with regard to procedural costs are reasoned in detail by analogy, and in some of the decisions there is a pronounced animosity towards the attorney's costs. For example, in a decision rendered by a basic court from the Bitola appellate area, the court disregarded the costs for compiling a request for an expert finding and opinion, considering it an unnecessary cost, and did not answer the question about the causal relationship between the request and the expert finding. The question is whether, whether the expert is obliged to prepare an expert report without receiving an official request, as well as in which circumstances the expert report should be requested and which questions should be answered in the expert finding and opinion. The same situation is repeated in another decision rendered by a basic court from the Bitola appellate area. Even more specific example is the decision of the Basic Court Bitola, where the court invokes the principal opinion of Supreme Court of the Republic of North Macedonia and uses analogy, explaining that if the lawyer is not entitled to transportation costs to attend the hearing, he is also not entitled to office closing costs. This analogy is not mentioned anywhere, and is used here especially to the detriment of the attorney, which is an actor in the court proceedings.

In general, all judgments are understandable, with short paragraphs (as much as possible, because in some judgments due to the extensive evidence and complexity of the facts of the case the paragraphs have to be long). The thoughts are well linked, each paragraph deals with one topic or issue, and the paragraphs in principle have coherent structure, and address one opinion or an issue from the beginning to the end of the paragraph. The judgments have correct grammar and contain sentences written in almost standard Macedonian language, but also contain words from local dialect. Some of them have technical errors, which can be seen as shortcomings, and some decisions do not have as clear and consistent reasoning as they could have.

CONCLUSION

The qualitative analysis of decisions rendered by the Court of Appeals in Bitola showed that the decision-making process respected the rules of logic. The specific facts in correlation with the provisions of the law in force applied produce a legal effect, as the decisions on the appeals are made. The operative part of the decisions is in correlation with the reasoning and is consistent with it. The reasoning is coherent and the arguments of the operative parts are logical, as well as the decision-making procedure and the application of the rules of court reasoning. In addition, decisions are generally understandable without unnecessary theorizing. The paragraphs are short, clear, and the sentences are appropriately interlinked. The whole idea of the decisions is transmitted from the very beginning to the end of the decision. There is a unity of paragraphs with complete argumentation. The sentences in the Macedonian standard language are grammatically correct without technical errors. In all decisions, the allegations of the parties were answered, they contain a reasoning explaining why they were accepted or rejected, and the facts of the case in general were not copied from the decision of the first instance courts, but they were descriptively presented by the Court of Appeals.

1.2.2. Quality of court decisions in the Gostivar appellate area

The quality indices of the court decisions rendered in the Gostivar appellate area and of the decisions of the Gostivar Court of Appeals are the following: 5.18, 5.00, 4.36, 4.90, 5.09, 5.09, 5.18, 5.18, 4.57, 4.8, 4.8 and 4.8.

If an average of all decisions from this appellate area is calculated, an average of **4.91 QI** is obtained for the Gotivar appellate area.

The qualitative analysis of each individual court decision from this appellate area shows that in general all decisions have the proper structure, all have clear operative parts and in principle do not contradict the given reasoning, regardless of the legal syllogism in case of subsumption. Even when a norm is not most appropriately applied to the specific

legal relation, the courts reason their position on that issue until the end of the decision and there is coherence between the operative part and the reasoning given.

In principle, all decisions have a complete and correct subsumption with an extensive postulate and principles applied by deduction of a small postulate with a logical conclusion containing all the necessary elements. Almost all of them have concise and clear explanation of the background of the issue with reference to necessary court actions taken, and in some decisions more or less the issue is introduced in the first part of the decision.

The facts and circumstances that explain the substance of the case are clearly described, and material facts and legal principles applied are explained in separate paragraphs. Most of the decisions contain only facts relevant for the decision rendered, although some of them contain irrelevant facts that unnecessarily burden the decision.

An exception to most of the analysed decisions from this appellate area is a decision of a basic court, which contains a long explanation of the facts, statements of witnesses and parties were copied from the minutes, the reasoning at times is too long with many unnecessary details, since the minutes of the hearings were copied, it contains explanation of evidence and it contains a reasoning why the request was rejected. The analysis shows that the allegations of the parties were not summarized, responses were given to the objections of the opposing party, but all this could have been shorter and clearer if attention was paid only to the essential aspects necessary to reach a clear, lawful and correct judgment.

The analysis further shows that in general, all judgments have correct explanation of the legal norms for each issue and they are reasoned by citing the substantive law. Certain general rules in specific cases are applied through deductive logic, and the inductive logic properly used in most decisions can be applied to an indefinite number of cases. Relevant regulations regarding each specific dispute are cited correctly.

The case facts presented in the decisions of the basic courts in this appellate area correspond to what is required by the substantive law and in relation to it produce the legal consequence contained in the judgment. Decisions contain only evidence that supports the reasoning. The decisions contain correct evaluation of each piece of evidence separately and of all evidence together as one piece of evidence. With regard to the quality of evidence, they are mostly authentic, credible and consistent, and the irrelevant facts are rarely stated.

Most of the decisions present the arguments of the party that lost the dispute and compare them with the arguments of the party that won, putting them in correlation with the facts of the case and of application of substantive law.

The analysis reveals that the reasoning in the court decisions is concise, without unnecessary details, and in most of the decisions the minutes of the hearings are not copied. The evidence is fully explained and not only copied from the minutes, and the allegations of the parties are summarized and rarely copied from the minutes. The decisions about the costs of the court proceedings are explained in detail, with some exceptions.

In general, all judgments are understandable, with short paragraphs (as much as possible, because in some judgments due to the extensive evidence and complexity of the factual situation the paragraphs must be long). There is good connection of thoughts, each paragraph deals with one topic or issue, and the paragraphs in principle are coherent in structure, explaining one opinion or a problem from the beginning to the end. The judgments have correct grammar and sentences with almost proper use of Macedonian standard language, with some words from the local dialect and with a small number of technical errors.

One decision from this appellate area stands out with regard to its quality because the facts of the case are copied from the basic court decision, and this of course should not be the case. The facts of the case should be presented in a summary without copying, especially because they should be presented in short and clearly explain the facts of the case. Furthermore, another shortcoming of this decision is that the paragraphs are too long. This could have been avoided if the thoughts were shorter and presented in concise and precise manner. This would have contributed to achieving greater clarity of the reasoning. This decision contains several paragraphs presenting the facts of the case that are unnecessarily repeated several times, which makes this judgment long and not easy to understand. That is why it has been given a low score for clarity and consistency of the reasoning due because the facts of the case are just copied from the decision of the first instance court.

CONCLUSION

In conclusion we could say that the decisions of the basic courts in the Gostivar appellate area and the decisions of the Gostivar Court of Appeals, respect the rules of logic. The specific facts in correlation with the provisions of the laws in force applied produce legal effects, as the decisions on the appeals are made. The operative parts of the decisions correlate with the content of the reasoning and are consistent with them. The reasoning is coherent and the arguments given in the operative parts are logical, as well as the decision-making procedure and the application of rules of court reasoning. Decisions are generally understandable without unnecessary theorizing. The paragraphs are short, clear, and the sentences are appropriately interlinked. The general idea of the decision is transmitted from the very beginning to the end. There is a unity of paragraphs with full argumentation. The sentences written in Macedonian standard language are grammatically correct without technical errors. In all decisions, the allegations of the parties were answered, it is explained why they are upheld or overruled, and the facts of the case in general were not copied from the decision of the first instance courts, but they were descriptively presented by the Court of Appeals.

1.2.3. Quality of court decisions in the Skopje appellate area

The quantitative score obtained for each analysed judgement issued by the basic courts in Skopje appellate area are as follows: 1.45, 5.09, 5.18, 5.18, 4.54, 5.18, 4.7, 5.18, 5.00, 5.18, 5.18, 4.54, 5.18, 5.18, 5.18 and 5.18;

The average score obtained from the qualitative analysis of the decisions is 4.82 QI.

The qualitative analysis of judgments rendered by the Skopje Court of Appeals, provided the following results: 4.6, 4.8, 4.4, 3.0, 4.4, 5.14, 3.6, 4.8, 4.8, 4.8 and 4.8;

The average score from the qualitative analysis of these decisions is 4.46, QI, while the total average score for the entire Skopje appellate area including both the decisions of the basic courts and the Court of Appeal is 4.67.

Generally, we could say that everything that was said with regard to the decisions rendered by the courts in the Bitola and Gostivar appellate areas generally apply to the decisions of the basic courts on the territory of the Skopje Court of Appeals.

It could be noted that there is one decision which reduces the average quality index, a decision rendered by the Basic Court Skopje, specifically related to users of central heating that have been disconnected from the central heating network. Maybe this comment will justifiably touch the uniformity of court decisions as well, but these two criteria are still essentially related and ultimately assess the whole court decision.

From the analysis of this decision we conclude that it is unusual that the defendant in this procedure has referred to Article 52, paragraph 3 which was repealed by a decision of the Constitutional Court of the Republic of Macedonia of 04.02.2009, so the decisions made on the basis of this provision cannot produce legal actions. Also if the execution has started it should be stopped. The defendant also invoked the protection of personal data, because he never signed an agreement and he did not enter into a contractual relationship with the plaintiff. However, the first instance court did not take this as an indisputable, important and decisive fact in passing the judgment and during subsumption of the specific factual situation under the positive legal norms in the legal order of North Macedonia. However, it would have been enough for the basic court to refer directly to the ECHR (because our country has ratified the convention). Besides this many provisions of the current Law on Obligations can be applied to this particular case as later determined by the Supreme Court in its principal legal opinion of 20.02.2018. This is just one example that should be further analysed, and according to the information available at the moment, this situation affected from 10 to 20 thousand families, who at their request were disconnected from the plaintiff's heating system. However, the heating bills are paid by the citizens in order to avoid court proceedings or are constantly threatened with such court proceedings. Each two to three months the plaintiff submits invoices and notary payment orders to competent notaries.

Although this may seem an insignificant dispute or a dispute of little value, these decisions affect many citizens, and ultimately this way of administration of justice creates the impression of injustice for a huge number of citizens. For a dispute in the value of 1,000 to 1,500 denars after the court costs are added, as well as the notary costs, the enforcement costs and attorney's costs including the legal default interest, in the end the citizen has to pay about 10,000 denars.

That this way of decision-making is contrary to sound legal logic was also confirmed by the ECtHR ruling adopted on the application of the applicant Strezovski against the Republic of North Macedonia, where the court found that this action violated basic human rights of the defendant, as it is further explained bellow in this analysis. Therefore, this decision practically reduces the average grade given to basic court decisions in this appellate area, because it has received lower marks for legal syllogism in subsumption, for explaining the background of the issue, presenting the issue (the subject of the dispute), presentation and application of relevant laws and bylaws and legal principles, deliberation and evaluation of conflicting arguments, and in general, it is assessed as a judgment of below average quality according to the other criteria as well.

Similar decision is the decision of the Skopje Court of Appeals in which the Court of Appeals responds to inadmissible allegations related to a dispute of small value. The decision contains incorrectly established facts of the case and due to this this decision received low scores for several criteria, so the overall assessment of this decision is 3.0.

On the other hand, there is also one decision of the Court of Appeals Skopje which stands out from other decisions due to its high quality. It has received highest score in all criteria used in this analysis, and in general for its quality. This decision has a quality index of 5.14 and is a good example of how a court decision of the Court of Appeals should look like.

ЗАКЛУЧОК

The qualitative analysis of each and every one of these court decisions individually shows that in general all decisions are properly structured, all have clear operative parts and in principle do not contradict the given reasoning, regardless of the legal syllogism in case of subsumption and there is coherence between the operative part and the given reasoning.

In principle, all decisions have a complete and correct subsumption with an extensive postulate and principles applied by deduction of a small postulate with a logical conclusion containing all the necessary elements. The explanation of the background of the issue is mostly concise and clear with references to necessary court actions undertaken, and in some decisions the issue is introduced in the first part.

The facts and circumstances explaining the substance of the case are clearly described, and the explanation of the substantive facts and of the application of legal principles is given in separate paragraphs. Only facts that are important for explaining the decision are stated in most of the decisions, and in some of them irrelevant facts are stated that unnecessarily burden the decision.

Everything said above for the court decisions from Bitola and Gostivar appellate areas generally applies to the basic court decisions issued by basic courts in the Skopje appellate area, including as well the decisions of the Skopje Court of Appeals.

1.2.4. Quality of court decisions in the appellate area Shtip

The qualitative analysis of the decisions issued by basic courts from the Shtip appellate area rendered the following results: 5, 4.8, 5.18, 5.18, 5.18, 5.18, 4.9, 4.88 and 4.27.

The qualitative analysis of the decisions issued by the Shtip Court of Appeals gave the following results: 4.42, 2.6, 4.8 and 5.14;

The average grade for all court decisions subject to qualitative analysis from the Shtip appellate area is **4.73 QI**.

Here, as in the previous appellate areas, it is indisputable that court decisions are logically structured and have all necessary elements; in general, the reasoning is coherent and is not contrary to the operative part of the decision, so they support it from the very beginning to the end of the reasoning.

The legal logic of only a few of these decisions is not at the sufficient level. Specifically, there is one decision issued by a basic court in this appellate area, where it is evident that the court has missed the stage of preliminary review of the lawsuit and did not remove formal shortcomings. Because of this it did not determine the value of the dispute which affects the composition of the court, the right to request a revision, the amount of court fees and the procedural costs. Perhaps, in this case, the impact of not determining the true value of the dispute does not have many of the stipulated repercussions, but ultimately, the low value assigned, which does not correspond to the real value of the dispute negatively affects the budget of North Macedonia.

According to the results of the analysis, this practice of missing the preliminary review of lawsuits contributes to lack of uniformity of decisions. In a situation like this for a dispute of the same value one party pays lower costs, while another party is be exposed to significantly higher costs.

Also, in a way, quite concerning is the decision that has received QI of 2.6 for quality. Many facts and contentious legal issues which have been pointed out by the applicant in the appeal have been neglected by the court, the two children from the parties' marriage have been left without any financial support, and ultimately the court, for the benefit of the minor children, could have ex officio obtained the necessary documents and finally and completely resolve any dilemmas in this regard. Also incomprehensible is the manner of payment of alimony which, in our opinion is too low, regardless of the status of the defendant in terms of his employment. In the 21st century, an era of electronics and online banking, the court stated that the law does not specify in what way the defendant should make the payment. Even if there is no specific method of payment stipulated in the law, given the current conditions, this can be considered a legal gap and the court here should have made an effort and stipulated an obligation for payment of the alimony. It is not logical that the court decided that the alimony should be paid in cash, directly to the other party.

Due to all these omissions, we assess that this decision is not of satisfactory quality. The court should be at the service of the citizens, and despite the legal gaps it should find a way to facilitate the implementation of citizens' obligations arising from court decisions, and of course the current events and current way of life should be taken into consideration.

With regard to the treatment and handling of labour disputes in this appellate area, it can be concluded that these disputes have been properly treated with a small number of exceptions.

CONCLUSION

In conclusion, with regard to quality of decisions issued by basic courts and the Court of Appeal in the Shtip appellate area we could say that the rules of logic were respected in the decisions subject of analysis. The specific facts of the case in correlation with the applied provisions of the positive law produce a legal effect when decisions on the appeals are issued. The operative parts of the decisions are in line with the content of the reasoning and are consistent with it. The reasoning is coherent and the arguments of the operative part are logical, as well as the decision-making procedure when the rules of court reasoning are applied. Decisions are generally understandable without unnecessary theorizing. The paragraphs are short, clear, and the sentences are appropriately interlinked. The whole idea of the decision is transmitted from the very beginning to the end of the decision. There is a unity of paragraphs with complete argumentation. Sentences in the Macedonian standard language are grammatically correct without technical errors, perhaps even to a greater extent than in other appellate areas. In all decisions, all allegations of the parties are answered, an explanation is given as to why they are accepted or rejected, and the facts of the case in general were not copied from the decision of the first instance courts, but they were descriptively presented by the Court of Appeal itself.

1.3. QUALITY OF COURT DECISIONS AT THE NATIONAL LEVEL

From the quantitative analysis and the quality indices given to individual decisions, as explained above, the following results were obtained in the four appellate areas in the country:

- appellate area of the Court of Appeal Bitola QI - 5.00;
- appellate area of the Court of Appeal Gostivar QI- 4.91;
- appellate area of the Court of Appeals Skopje QI - 4.67; and
- appellate area of the Court of Appeal Shtip QI - 4.73;

According to the results obtained, the national **QI is 4.82**.

If we take into account the methodology of this research, as well as the randomly selected decisions for analysis from all areas of the appellate courts in North Macedonia, which can be considered as an appropriate representative sample of all court decisions, the results at national level are satisfactory.

From the published judgments, which were randomly selected from the portal of the Supreme Court, one gets the impression that the highest number of cases are deliberated in the appellate area of the Court of Appeals in Skopje (at least according to the number of published judgments). This is not a justification for the result obtained, because there are quite small and nuanced differences compared to other appellate areas. However, the workload with a large number of cases cannot be compared with the actual situation on the ground, where some judges in smaller towns per month have as many cases as a judge in Skopje in one day.

At the national level, it is already well established how a court decision should look like and what form and structure it should have and these parameters are generally respected throughout the country, in all four appellate areas.

An important element that seems to be ignored by the courts, and especially by basic courts in all appellate areas, which in a way complicates the whole procedure, is the fact that in many cases the preliminary review of the lawsuit is not carried out. This is very important step and contributes to clearing up very important procedural obstacles at the outset and provides for more economical and faster and more uniform way of resolving court disputes. If the basic courts regularly implement preliminary review of the lawsuit, the procedures would be much more expeditious because either the lawsuit will be rejected at this stage or the procedure will continue with objective and uniform

criteria in all appellate areas. This would put an end to situations when the same legal problem, or dispute is discussed and assessed differently in different courts which shall contribute to uniformity of the court practice.

Legal logic is also a very important constituent element of a court decision. In only a few decisions of all subject to analysis, the legal logic was not at a satisfactory level and a wrong subsumption is made. This was either due to the existence of a legal gap or due to inadequacy or unlawfulness of the bylaws in force when also the European legislation was disregarded. The ECHR case law should already be generally accepted and more boldly applied when such weaknesses exist in our judicial system.

I really understand the dilemmas that certain judges probably have when deciding in accordance with the bylaws in force which contain mistakes. They have the dilemma whether to adhere to the legislation or take the risk and apply the case law and issue a fair but formally unlawful decision. With regard to laws and bylaws that more or less obviously do not correspond to our legal order, the actors in the legal system should be encouraged to submit initiatives to the Constitutional Court of North Macedonia. In this way these regulations will be corrected because it is obvious that the system has already outgrown them and they contribute to decisions of poor quality or to quality decisions which are unfair to ordinary citizens.

2.

ANALYSIS OF UNIFORMITY OF COURT DECISIONS IN CIVIL CASES

The uniformity of court decisions, as one of the preconditions for legal certainty, and thus for the rule of law, is guaranteed in the Constitution of the Republic of Northern Macedonia in Article 101, which stipulates that the Supreme Court in the Republic ensures uniformity in the way the courts apply the law. It is obvious that the Constitution gives the obligation to the Supreme Court to ensure uniformed application of laws, but this constitutional norm implicitly states that the courts are also obliged to implement this, regardless of the type and instance of the court. The courts need to balance between free judicial conviction and uniform application of laws, which implies adaptation of the existing case law.

The legislator in Article 37 paragraph 2 of the Law on Courts, elaborates this constitutional norm and states that the principal positions and the principal legal opinions determined by the Supreme Court at a general session are mandatory for all councils of the Supreme Court. However, the Law on Courts does not provide for such an obligation for the lower courts and leaves room this to be interpreted more broadly: that the Supreme Court is the final instance and the courts should adapt to the standards and practice of this court if they want their court decisions to be assessed as quality ones. However, this legal norm can be seen in correlation with the previously cited constitutional norm and a conclusion can be drawn that implicitly these principal views and general legal opinions should be mandatory for the lower courts as well.

Article 66 of the Court Rules of Procedure provides for the establishment of departments for case law. Article 19 provides that the president of the court, if judicial councils and individual judges detects different actions or actions contrary to the regulations in the work of the departments, or detects that there is a deviation from the established case law of higher courts, he/she should submit a written proposal to be deliberated at a session of the department or by the specialized court unit.

According to Article 72, the data from the automated case management information system are used during the processing, and the court publish adopted important final decisions systematized by legal areas in a bulletin at least once a year.

The Department for Case Law at the Supreme Court works to ensure uniform application of the law, takes part in the preparation (drafting) of principal positions and principal legal opinions at the General Session, after lower courts indicate whether a decision is in accordance with the legal standing expressed in a previous or simultaneous decision, reviews the decisions of the Supreme Court, and monitors and studies the case law of lower courts, when decisions are submitted on certain legal issues.

As per the Court Rules of Procedure, the Supreme Court also has a Working Body for Harmonizing and Monitoring Case Law.

According to Article 75 of the Rules of Procedure, the presidents of all court departments are obliged to submit legal opinions and conclusions to the president of the court case law department or to the judge in charge of case law. The President of the Case Law Department determines the how the Department records legal opinions accepted at a session of the Department, at the joint sessions of departments or at the session of judges. The president of the Department determines the manner in which case law is recorded and published and is in constant communication with the presidents of the case law departments from other courts.

Pursuant to Article 386 of the Law on Litigation Procedure, the court to which the case is returned for retrial is bound to that case with the legal understanding on the basis of which the decision of the revision court is issued which revoked the challenged appellate judgment, i.e. which revoked the appellate and the first instance judgments. Also, the appellate court may allow a revision by specifying the scope of the legal issue that would be raised before the Supreme Court, if it deems that the decision in the dispute depends on resolving a substantive or procedural legal issue important to ensure uniform application of law and uniformity of case law.

2.1. CHARACTERISTICS OF THE SAMPLE

In order to assess the uniformity of decisions in civil cases, a sample of decisions were selected, which were as follows: 5 decisions issued by the Bitola Court of Appeals, 7 decisions of the basic courts of the Bitola appellate area or a total of 12 decisions from this area; 4 decisions issued by the Gostivar Court of Appeals, 8 decisions rendered by basic courts in the Gostivar appellate area or a total of 12 decisions from this appellate area; 7 decisions rendered by the Court of Appeals in Skopje, 13 decisions of the basic courts of the Skopje appellate area or a total of 20 decisions; 4 decisions rendered by the Court of Appeal Shtip and 4 decisions of basic courts from the Shtip appellate area or a total of 8 decisions for this area. The uniformity of total of 52 court decisions were assessed on national level. Some of these decisions were also subject to qualitative analysis as explained above, because they met the criteria for both analyses in accordance with the objectives of this project.

These decisions (as stipulated in the methodology) were decisions rendered in the period from 01.01.2017 to 31.12.2020 and one of the parties was a natural person.

The legal issues that were covered and that were eligible for observation were of various nature; issues for which the Supreme Court had issued principal legal opinions such as determining the value of the dispute, compensation, payment of employment benefits, the general legal opinion for the users of central heating that were disconnected from the system, orderliness of submissions, and especially the lawsuit as an initial submission for initiating the litigation procedure, etc.

As it was mentioned above, there was lack of cooperation by the responsible persons in all these courts when we tried to collect the decisions which were to be subject to quantitative and qualitative analysis. The analysed decisions were collected from the official web site of the Supreme Court where they have been published. All these decisions are chosen by completely random selection, provided they met the established criteria (to have case law with regard to the issue, or a legal position, sentence or opinion of the Supreme Court or an ECtHR judgment adopted by the Court upon application submitted by our citizen/s).

2.2. UNIFORMITY OF COURT DECISIONS IN THE FOUR APPELLATE AREAS

2.2.1. Uniformity of court decisions in the Bitola appellate area

By analysing uniformity of decisions rendered in this appellate area and by applying quantitative indicators, the following results were obtained: 7.5, 0, 0, 0, 0, 6, 0, 0, 0, 0 and 0;

> These quantitative indicators give an index of uniformity of 1.22 for the Bitola appellate area.

In fact, if we compare the quantitative results obtained for this criterion (uniformity) with the results obtained for the quality of court decisions, we will immediately notice a drastic difference especially because in both situations we use the same methodology.

Bellow we present examples from several decisions from this appellate area, singled out to show what is the position and case law of courts in this appellate area.

A typical example is a judgment rendered by the Bitola Court of Appeals where the plaintiffs claim to have been discriminated against and have filed a lawsuit in order to court to determine a violation of the right to equality, a violation of the right to free movement inside and outside the territory of North Macedonia, violation of honour, reputation and dignity and have requested compensation for non-pecuniary damage suffered. In passing this judgment, the Court of Appeals adopted an exceptionally high-quality judgment which received high score, and since the defendant invoked the "Schengen Border Code" when challenging the merits of the claim, the court took into consideration this regulation. However, the court also reasonably concluded that such a regulation, because it is not ratified by Republic of North Macedonia cannot be subject to analysis and application in our legal system and justifiably rejects its application. In order for this judgment to be complete and sustained with regard to all the criteria used to perform the analysis in this project, the Court of Appeals could have freely referred to the European Convention on Human Rights and ti could have drew norms so that the plaintiffs' claim be admitted.

In another judgment of the same court, the subject of the claim is compensation for non-pecuniary damage suffered due to violation of personal rights. Besides the lawsuit filed by the plaintiff and there is also a counter-claim for compensation submitted by the defendant for non-pecuniary damage for suffered mental pain because the plaintiff filed a legally unfounded lawsuit for compensation of non-pecuniary damage against him under the Law on Civil Liability for Insult and Defamation. The Court of Appeals has rendered a correct and lawful judgment deliberated on the basis of the evidence in the

case file. However we have the impression that in its reasoning it only modestly states that with regard to the facts of the case, the first instance court by applying Article 2, Article 7, 9, Article 15 and 16 of the Law on Civil Liability for Insult and Defamation, as well as the provisions of Article 6 paragraph 1 and Article 10 of the European Convention on Human Rights, found that both the plaintiff's claim and the defendant's counterclaim were unfounded and decided as it is presented in the operative part of the impugned judgment. Here, consciously or unconsciously, the application of the European Convention on Human Rights has been omitted, and if ti has been referred the judgment would have had more reliable, clearer, and more substantial reasoning, and the judgment would have been complete in the true sense of the word.

In the following example the case law was also not applied. This is a judgment of the Bitola Court of Appeals where the plaintiff requested a compensation for non-pecuniary damage claiming that the value of the dispute is 150,000.00 denars. The court was asked to determine a fair monetary compensation for non-pecuniary damage suffered by the plaintiff due to violation of his personal rights, and despite the existence of the General Legal Position of Supreme Court of 04.03.2016 with regard to damages caused by a dog bite, the court did not refer to this opinion. If the court had done so, the reasoning would have been more solid although in principle the judgment is legally correct with high quality and high score as per the methodology and the indicators.

In continuation, we single our another judgment, where the General Legal Opinion of the Supreme Court from 20.02.2018 could have been applied. This case is related to the issue with the users of central heating who do not have the status of disconnected users and do not have to pay the fixed part of the fee for heating. Here the court missed the opportunity to incorporate this principal legal opinion when rendering this decision. In this sense, there is a benchmark adopted by the European Court of Human Rights in favour of the citizens, who were obliged to pay for heating, even though they did not use it. The application to ECtHR was submitted by apartment owners who complained that they were illegally obliged to pay for central heating in the collective housing facilities (residential buildings) and claimed that their guaranteed rights to peaceful enjoyment of property are violated. The European Convention on Human Rights also refers to this. The decisions from Skopje appellate area contain some pioneering steps taken toward applying or considering the principal legal opinion of the Supreme Court of Republic of North Macedonia, and gradually the European Convention on Human Rights starts to be applied when such decisions are rendered.

In one case, the Bitola Court of Appeals had the opportunity to refer to the sentence Rev2.br.532 / 2015 adopted on 12.5.2017 and substantiate its decision. This would have been quite convenient because it treats the same legal problem as presented in the decision rendered by this court. Namely, this sentence determines that the minimum amount of compensation for annual leave as per Article 12 paragraph 4 of the Law on Labour Relations in relation to the Collective Agreement with the employer. In

accordance with Article 12 of the Law on Labour Relations, employment rights are established by the Constitution, the Law and the Collective Agreement, and cannot be revoked or limited by acts and actions of the employer. Specifically, in this legal matter, the plaintiff (among other requests in the claim) requested compensation for taking annual leave. The employer tried to avoid this obligation in some way, but with the correct application of the Law on Labour Relations, the plaintiff's claim was upheld, and with this decision the first instance judgement was also upheld. Here, to substantiate and argument better this judgement, the court could have invoked this sentence because it completely relates to this legal relation.

Further on, we assess decisions of the basic courts in the Bitola appellate area with regard to their uniformity. The first decision subject to analysis is the decision issued by the Basic Court in Krushevo.

A characteristic moment that immediately catches the eye is the value of the dispute as determined by the court. The Law on Litigation Procedure and the Law on Court Fees stipulate how a dispute value is determined, who should determine it, what is the period for this action and so on. Namely, in accordance with the Article 33 from the Law on Litigation Procedure:

> (1) If the petition does not refer to a monetary amount, yet the plaintiff has stated in the lawsuit that he agrees to receive certain monetary amount instead of realization of the claim, such amount shall be considered as value of the subject of the dispute;
>
> (2) In other cases, when the petition does not refer to a monetary amount, the value of the subject of the dispute that the plaintiff has determined in the lawsuit shall be considered relevant;
>
> (3) If in the case referred to in paragraph (2) of this Article the value of the subject of the dispute is apparently determined by the plaintiff as very high or very low, and it affects the composition of the court or the right to declare an audit, the court until the preparatory hearing is scheduled shall quickly and conveniently determine the value of the dispute. In all other cases, when the claim does not refer to a monetary amount, the value of the subject matter of the dispute shall be the amount of the fee base.

In the Section III of the Law on Court Fees titled DETERMINATION OF VALUE FOR COLLECTION OF FEES, Article 18 stipulates that:

> (1) Fees shall be paid according to the value of the claims, i.e. the subject of the dispute, provided it can be determined in accordance with the value determined by this Law.
>
> (2) For determining the value of the petition, i.e. the subject of the dispute, the provisions of the Law on Litigation Procedure on determining the value of the subject dispute shall be appropriately applied for the purpose of determining the real jurisdiction, unless otherwise determined by this Law.
>
> (3) The value of the request, i.e. the subject of the dispute for the purpose of collecting the fee (hereinafter: fee base), shall be determined according to the value of the petition, i.e. the subject of the dispute at the time of submission of the submission, i.e. the time of taking legal action.

Article 25 stipulates that (1) If the court determines, based on previously performed necessary checks, that the value of the dispute used for determining the fee base has been determined very high or very low by the party, the court latest when the preparatory hearing is scheduled quickly and appropriately shall determine the value of the dispute.

In the decision subject of analysis, the plaintiff has determined the value of this dispute about property to be 40,000 denars.

This legal issue is very important, because our courts have diametrically opposed views on this issue. Due to different interpretation of the provisions of the Law on Litigation Procedure and the provisions of the Law on Court Fees and various opinions, we see situations when in disputes for determining the right of ownership (property dispute) the Basic Court in Krushevo conducts a procedure with a dispute value of 40,000. denars, while another court for the same procedure determines the value of the dispute at 10 million denars.

Due to this, the Department for Civil Cases at the Supreme Court of the Republic of Macedonia, deliberating legal issues related to uniform application of the Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 79/05, 110/08, 83/09, 116/10) on the session held on 23.02.20165 adopted several legal opinions. Among them is the opinion stating that the court may ex officio determine the value of the subject matter of the dispute which is relevant for determining the composition of the court, the right to requesting revision and in other cases stipulated in the Law on Litigation Procedure. This should be done not later than when scheduling a preparatory hearing and in disputes related to non-monetary claims, the relevant value is the one appointed by the plaintiff in the lawsuit and for which a court fee was paid, provided

the determination of the value of the dispute is not regulated in any other manner with the Law on Litigation Procedure. Precisely because of this legal issue and in order to encourage uniform application of the law and uniformity of case law in relation to the application of the Law on Litigation Procedure, the Supreme Court of the Republic of North Macedonia has adopted these legal opinions, so that there is no disagreement in the application of these provisions. On the other hand, such actions taken by the first instance court when it is obvious that the value of the dispute as set by the plaintiff is too low is on the verge of contradiction with Article 3 paragraph 3 of the Law on Litigation Procedure. The court unlawfully allowed the parties to dispose, not with their petition but with the amount of the court fees to be paid, which is to the detriment of the budget of the Republic of North Macedonia. Among other things, the court, as the "master of the dispute", should ex officio take care of the uniform application of the laws and of the uniformity of court decisions on this issue as well. Due to these facts, this judgment has received a quantitative score of 0 for the application of general legal opinions issued by the Supreme Court.

A judgment rendered in 2019 by the Basic Court in Bitola, invokes a decision of the Constitutional Court of the Republic of North Macedonia U.no.94 / 2019 of 12 May 2020, published in the Official Gazette of RNM no.136 of 27 May 2010. By this decision Article 18 paragraph 2 of the Law on Enforcement is repealed. This article stipulated that the enforcement agents should calculate interest on the costs generated in the court procedure written in the judgment. The interest shall be calculated from the adoption of the final document (the judgement). The court repealed this Article clarifying that enforcement agents cannot calculate interest on costs if it is not explicitly stated in the final judgment. This reference to the decision, which serves as a benchmark, does not refer to the main issue that is the subject of this dispute, but is a positive example by the first instance court paying attention to case law and decisions that can be invoked for uniform application of the law.

For those reasons, the plaintiff in the request for reimbursement of costs also stated a claim for the interest. Considering that the request for reimbursement of procedural costs is also a monetary claim, the court considered that the plaintiff is entitled to legal interest in accordance with Article 266 of the Law on Litigation Procedure if there is a delay in payment. For the same reasons, the court obliged the defendant to pay the plaintiff procedural costs in the total amount of 64,926.00 denars, within 8 days after receiving the judgment, and if he does not do so within this deadline, he is obliged to pay legal penalty interest in the amount of the reference interest rate of the National Bank of Republic of North Macedonia which was valid on the last day of the semester preceding the current semester, increased by 8 percentage points to this amount until the final payment.

The next judgment subject of analysis with regard to its uniformity is the 2020 judgment passed by the Ohrid Basic Court which deals with the issue of compensation for material and non-pecuniary damage due to suffered physical pain, fear suffered, as well as mental pain as well as reduced life activity caused by a dog bite. The Supreme Court of RNM on 04.03.2016 has adopted a principal legal opinion on this legal issue, which should be used if the courts have a dilemma regarding the passive legal standing of the defendants.

Due to the fact that in practice there were dilemmas regarding who has the right to have passive legal standing in such disputes, the Supreme Court of the Republic of North Macedonia has adopted this principal legal opinion. However, the Ohrid Basic Court when rendering the decision did not invoke this legal opinion at all, probably because it was not mentioned by the defendant.

Further on, there is another decision in which it is not clear in what way the value of the dispute should be determined, specifically when the dispute is related to property. With regard to this, the Department for Civil Cases at the Supreme Court of the Republic of North Macedonia, deliberating legal issues related to uniform application of the Law on Litigation Procedure (Official Gazette of the Republic of Macedonia no. 79/05, 110/08, 83/09, 116/10) on the session held on 23.02.20165 adopted several legal opinions among which is the opinion that the court may ex officio determine the value of the subject matter of the dispute. This value is relevant for determining the composition of the court, the right to requesting revision and in other cases stipulated in the Law on Litigation Procedure. Precisely because of the importance of this legal issue related to the application of the Law on Litigation Procedure, the Supreme Court of the Republic of North Macedonia adopted these legal opinions. If the we analyse the judgment it can be seen that it is a matter of determining the right of ownership over a construction land, land under the building, as well as of the building located on that land. This means that in this lawsuit the subject of the dispute are several real estates which were assessed by the plaintiff to be in the value of 200,000 denars and we do not agree with this amount.

Here we could repeat the remarks given above and state that basically the value determined is too low, and even more so because according to the second principal opinion stated above with regard to disputes related to non-monetary claims, the value stated by the plaintiff in the lawsuit is the one according to which the court fees are calculated and paid, provided this is not regulated differently by the Law on Litigation Procedure. In this case it is clear and indisputable that the Law on Litigation Procedure stipulates how to determine the value of the dispute in a different way, and moreover in the Law on Litigation Procedure there are provisions stipulating that if there are several claims, the value of the subject of the dispute is determined as the sum of the values of each claim separately. Therefore, this court decision is not in line neither with the principal legal opinion of the Supreme Court, nor with the Law on Litigation Procedure.

A decision made in 2020 by the Basic Court in Struga is related to a legal issue that has been deliberated by the Supreme Court. The Supreme Court on 11.09.2015 adopted a conclusion with regard to the same legal issue. However, after considering the decisions of the Supreme Court of the Republic of Macedonia Rev2 no. 69/2014 of 04.02.2015 and Rev2 no. 484/2014 of 19.02.2015, we could say that there is a deviation from the case law stipulated in the decision of the Supreme Court of the Republic of Macedonia Rev2. no.484/14. This judgement treats exactly such a legal problem. Namely, here we point out the difference in the application of Article 203 of the Law on Property and other real rights in the court practice.

The Supreme Court of the Republic of Macedonia with judgment Rev2 no. 484/2014 from 19.02.2015 adopted the request for revision submitted by the plaintiff and reversed the judgment of the Gostivar Court of Appeal. With this the appeal of the defendant was rejected as unfounded, and the judgement of the first instance court was confirmed. According to the reasoning of the judgment, the Supreme Court of the Republic of Macedonia, when applying the substantive law, referred to Article 203 paragraph 1 of the Law on Property and Other Real Rights, according to which the owner of the service item is entitled to compensation for the established servitude. Thereby, the judgment of the Supreme Court states that "... in the present case the plaintiff as the owner of the service item requests payment of compensation for the established right of servitude of the real estate in question, given that the right of servitude is an absolute real right which does not become time-barred, and the conclusion of the first instance court that there is no prescriptive period over the plaintiff's claim is correct ... ". However, the Supreme Court of the Republic of Macedonia, by judgment Rev2 No. 69/2014 of 04.02.2015, rejected the plaintiff's request for revision as unfounded. In addition, the judgment of the Supreme Court states that "... the plaintiff's claim is monetary, i.e. he requests compensation for established servitude. No other article in the Law on Property and Other Real Rights regulates the prescriptive period of this right, so in this case, according to the Supreme Court of the Republic of Macedonia, the general provisions on the prescriptive period provided by the Law on Obligations apply...". Hence, by applying Article 360 of the Law on Obligations, the Supreme Court concludes that the lower court correctly accepted that the plaintiff's claim is time-barred because the lawsuit was filed after the expiration of the general period of 5 years, given that the plaintiff acquired the property by inheritance from his father with already established servitude, and from the moment when he exercised the user right (1983), until the filing of the lawsuit (23.05.2011) a period of more than 30 years has passed. In the current case law of the Supreme Court of the Republic of Macedonia in a similar factual and legal situation, the Court expressed a view that the claim for compensation for communal technical or industrial servitude is a monetary claim, which according to the general provisions of the Law on Obligations expires within a period of 5 years. (Judgment of the Supreme Court of the Republic of Macedonia Rev. no. 489/2009 from 02.07.2009). Having this in mind, the court in making this decision would have one more argument for rejecting the plaintiff's claim, because it is an almost identical legal situation.

As it can be noticed from the decisions analysed from this appellate area and from the low degree of uniformity shown with the quantitative assessment of each individual decision, it can be concluded that in this appellate area efforts are made for more serious application of case law as a source of law. However, this trend should be supported by the competent actors in the judiciary as well as by higher courts. Decisions that contain a reference to any appropriate case law should be valued as decisions of higher quality.

2.2.2. Uniformity of court decisions in the Gostivar appellate area

By analysing the decisions rendered in this appellate area and by applying quantitative indicators, the following results were obtained: 0.0, 0, 0, 0, 0, 0, 0, 0, 0, 0 and 0;

> Such indicators of the analysed court decisions indicate that the judgments rendered in the Gostivar appellate area are not at all in line with the case law, i.e. they do not refer to the case law although they treat legal issues for which there were previous cases.

BAn example of lack of uniformity with the case law is the decision of the Gostivar Court of Appeals where the subject of the dispute is compensation for non-pecuniary damage suffered due to physical pain, fear, mental pain and reduced life activity with penalty interest calculated on the total amount in accordance with the regulations in force, as well as for the material damage with interest calculated from the day of filing the lawsuit, and for the total amount of non-material damage from the day of the judgment. On this legal issue, the Supreme Court of the Republic of North Macedonia has adopted a principal legal opinion of 04.03.2016 which was mentioned above in the analysis of other court decisions. If the first instance court referred to it in its judgment it would have contributed to greater uniformity and application of case law as a source of law.

During the analysis we have analysed the uniformity of a decision made in 2018 by the Gostivar Court of Appeal, related to a dispute for compensation for expropriated land. For this legal issue a legal opinion has been adopted by the Department for Civil Cases at the Supreme Court of the Republic of Macedonia, discussing the legal issues of interest for uniform application of the law and uniformity of case law, at a session held on 26.02.2016. According to this legal opinion the compensation for expropriated real estate in the procedure before the court depends on the market value in accordance with the type and character of the real estate at the time of expropriation, based on the data from the Real Estate Cadastre, regardless of the needs and purposes for which the real estate is expropriated. In making this decision, the court has fully complied with all the rules and regulations of the Law on Non-contentious Procedure, the Law on Expropriation and the decision is fully correct and lawful. However, given that this legal opinion is more recent, it could have significantly contributed to greater uniformity in the application of laws.

In a decision issued by the same court in 2020 upon the appeal of the defendant (a unit of local self-government) the subject of the dispute was the compensation for damage caused by stray dogs. In order to ensure uniformity of court practice, for this specific issue the Supreme Court of the Republic of North Macedonia has adopted a principal legal opinion at a session held on 04.03.2016.

In this case, too, the reference to this opinion would have contributed to the uniformity of decisions made on this specific issue.

The situation is similar in the next decision issued in 2018 that was subject of analysis in terms of uniformity. The situation was almost identical, i.e. there is a legal issue for which the court did not use the stated legal opinion of the Supreme Court in its reasoning.

When analysing the uniformity of a court decision issued by the Basic Court Gostivar in 2017, it can be concluded that the procedure was completed with a decision by which the lawsuit filed by the plaintiff was rejected as untidy. During the preliminary examination of the lawsuit according to Article 266 of the Law on Litigation Procedure, when inspecting the lawsuit and the attached evidence, the court found that it does not contain everything necessary for the court to act on it, because the plaintiff did not submit proof of personal identification (a photocopy of a valid ID card) since the lawsuit contained a photocopy of an invalid ID card that expired on 12.01.2006. Considering that the lawsuit did not contain everything that was prescribed in Article 98 paragraph 3 of the Law on Litigation Procedure, and in accordance with Article 101 paragraph 1 of the same Law (this article reads as follows: the court shall reject all submissions submitted by a proxy, which are incomprehensible or do not contain everything listed in Article 98 paragraphs (3), (4), (5) and (8) of this Law or are not submitted in a sufficient number of copies when they are submitted in written form).

Related to this is the sentence passed by the Supreme Court of Republic of North Macedonia, an important decision of the Supreme Court Rev3. no. 20/2014. In it this court in accordance with Article 98 paragraph 3 of the Law on Litigation Procedure considers that the submissions must be understandable and must contain everything that is necessary to be able to act on them. In particular, they should contain: designation of the competent court, name and surname evidenced by proof of personal identification, address i.e. residence of the parties, company and seat of the legal entity registered in the Central Registry of the Republic of North Macedonia or in other registers and evidence from the relevant register, names of their legal representatives and proxies, if any, the subject of the dispute, the value of the dispute, the content of the statement and the signature of the applicant, or electronic signature, e-mail address and telephone numbers.

Pursuant to Article 101 paragraph 1 of the same law, the submissions submitted by a proxy, which are incomprehensible or do not contain the data stipulated in Article 98

paragraphs (3), (4), (5) and (8) of this Law or are not submitted in a sufficient number of copies when they have been submitted in writing, will be rejected by the court.

Having in mind the cited legal provisions, as well as the fact that the lawsuit in question was filed by the plaintiff through a proxy - attorney and it did not contain written data on the company and the registered office of the legal entity registered in the Central Registry of the Republic of North Macedonia, supported by evidence from the relevant registry, shows that the lower court correctly concluded that the lawsuit does not contain all the necessary data provided for in Article 98 paragraph 3 of the Law on Litigation Procedure, due to which it was rejected in accordance with Article 101 paragraph 1 of the same law.

This sentence applies to legal entities, but the same provisions apply to natural persons who are plaintiffs in a dispute, and the lawsuit is filed through a proxy attorney.

All these remarks and comments also apply to the decision issued by the same court in 2017, because it is a completely identical legal situation. According to the Law on Litigation Procedure, the submissions submitted by a proxy, which are incomprehensible or do not contain the data stipulated in Article 98 paragraphs (3), (4), (5) and (8) of this Law or are not submitted in a sufficient number of copies when they are submitted in written form, will be rejected by the court. In practice, courts often skip the stage of preliminary review of the lawsuit, which is particularly important for proper conduct of the court proceedings. Namely, if the court skips this phase, a preparatory hearing or the main hearing is usually scheduled during which the formal shortcomings that are subject of objections by the defendant are rejected as unfounded, so when the defendant has to engage in a substantive deliberation of the lawsuit it is then too late for such objections. The same happens with the proper determination of the value of the dispute, which is the issue in some of the decisions analysed above, and due to these and similar issues the preliminary review of the lawsuit is especially important.

In one of the decisions adopted by the Basic Court Gostivar in 2019, the subject of the dispute is the determination of the right to property. If we compare this decision with the decisions related to the same legal issue discussed above we can see a difference in determining the value of the dispute. With regard to this issue, the Supreme Court adopted legal opinions of 23.02.2015, containing the courts views on different situations related to determining the value of the dispute. In principle, it is not disputed that the defendants admitted that agreement is fully executed in accordance with Art. 65 of the Law on Obligations. However, because the law should be uniformly applied on the entire territory of North Macedonia, it would have been right if the court, during the preliminary review of the lawsuit, among other actions, had correctly determined the value of this dispute.

A decision adopted in 2019 by the Basic Court Gostivar rejects the plaintiff's lawsuit as untidy because the court in the phase of preliminary review of the lawsuit, found that the plaintiff's lawsuit that was filed through a proxy is incomplete, because the place of residence of the plaintiff was not included in the lawsuit and there was no proof submitted on the personal identification number of the plaintiff and there was no copy of the identity card or passport of the plaintiff. In the lawsuit, the information about the seat of the first defendant O.G. on boulevard B.G. number ... represented by an authorized person Mayor A. T. from G. and J. P. K. C.O.G.,. was not supported by evidence, there was no current status submitted for the company as registered in the Central Registry of the Republic of Macedonia or in other register. This should have been supported by evidence from the relevant register. For the second defendant J. P. K. C.O.G. the registered office was not entered, the unique identification number of the company as a legal entity was not stated, there was no proof of the current status of the company as registered in the Central Registry of the Republic of Macedonia or other register and there was no evidence submitted as a proof of such registration of the legal entity. In the case file, the evidence attached to the lawsuit was not submitted in a sufficient number of copies. All this is in accordance with the provisions of the Law on Litigation Procedure but it seems that this practice began to be applied after the Supreme Court of North Macedonia adopted the above mentioned legal opinion.

A decision of the Basic Court Kichevo from 2020 which was adopted upon a lawsuit submitted by an employee with regard to payment of vacation benefit refers to a legal issue that has been discussed by the Department of Civil Cases of the Supreme Court of the Republic of Macedonia, when it discussed the legal issues related to the right to subsistence allowance and annual leave benefit after the entry into force of

The Law on Labour Relations (Official Gazette of the Republic of Macedonia no. 62/05). This legal opinion of the Supreme Court was adopted at the session held on 25.05.2010. The opinion states that "After the entry into force of the Law on Labour Relations (" Official Gazette of RM No. 62/05), there is no basis for payment of vacation benefits, if it is not provided for in the collective agreement. This is a very short and clear conclusion, and if the court referred to this and determined that the defendant has not signed an individual collective agreement with the founder - Municipality Makedonski Brod and with the representative union under the employer, it would have been much simpler and easier to provide reasoning for such a decision, and the judgment would have been much easier to examine in terms of substantial violations of Art. 343 paragraph 2, point 14 of the Law on Litigation Procedure.

The analysis of the next decision of the Basic Court Kichevo made in 2020 is identical to the above analysis of decisions related to compensation for damage caused by dog bites. In order to ensure uniformity of court practice, at a session held on 04.03.2016 the Supreme Court adopted a general legal opinion which was not used as a benchmark by the court when issuing the said decision. Similar to this is another decision with code

20G060 adopted by the same court, where the defendants are the municipality and the Public Enterprise responsible for the stray dogs in the municipality. The court did not apply this general legal opinion and did not use the opportunity to issue uniform court decision.

A feature of this appellate area is that there is no reference to case law at all. In the introduction of this analysis it was mentioned that when collecting decisions for analysis there was no cooperation provided by the authorities and that these decisions were taken from the web site of the Supreme Court. Due to this the situation in practice may not be completely as we assess in this analysis, but in any case it is very much necessary to make efforts for improving uniformity in this area of appeal.

2.2.3. Uniformity of court decisions in the Skopje appellate area

By analysing the uniformity and by applying quantitative indicators to decisions rendered in this appellate area, the following results were obtained: 0, 0, 0, 6, 0, 0, 0, 6, 0, 7.5, 0, 7.5, 0, 7.5, 7.5, 4.6, 0, 0, 0 and 7.5.

By analysing these quantitative data, we could assess that the index of uniformity of the decisions in this area of appeal is **2,8**.

ПWhen adopting a decision in 2017, the Skopje Court of Appeals did not refer to the legal opinion of the Supreme Court of 28.10.2013, where it is clearly determined how the compensation for unauthorized use of electricity is calculated, although the defendant claims that the electricity meter was disconnected and inactive. If the meter was really disconnected and inactive, it means that the defendant manipulated it, and in that case, the mentioned general legal opinion of the Supreme Court should have been applied. This is exactly what happened in the specific case, i.e. the plaintiff disconnected the defendant after concluding that the meter that was disconnected - switched off by the defendant still registers electricity consumption that could not have happened if it was really switched off and inactive. The conclusion is that there was some degree of manipulation by the defendant, and having this in mind the lawsuit amount set by the plaintiff was too low.

The analysis of another judgment related to labour law passed by the Skopje Court of Appeals shows that several facts are important for the adoption of such a decision that upholds the plaintiff's appeal. Firstly, on what date was the lawsuit filed, secondly, does the filing of the lawsuit to a court that has no local jurisdiction affect the prescriptive period and thirdly, what kind of claim is the dispute about? Is it a violation of employment rights that can occur in various forms: non-payment of salary or its reduction; overtime work; shortening of annual leave; reassignment to another job; illegal suspension; illegal

termination of employment and etc. The prescriptive time barring period for the employee's monetary claims that are raised in a lawsuit against the employer, due to violation of employment rights and due to injury at work, is assessed according to a special prescriptive period for claims for damages set out in the Law on Obligations. This is the essence of this legal opinion of the Supreme Court. Since this opinion refers to Article 377 of the Law on Obligations, the representation is terminated by filing a lawsuit and with any other action of the creditor taken against the debtor before a court or other competent body for the purpose of determining, securing or realizing the claim. This unequivocally establishes that the plaintiff filed the lawsuit one day before the expiration of the legal time-barring period.

The judgment of the Skopje Court of Appeals passed in 2018 addresses the problem with the users disconnected from the heating system of the plaintiff - distributor of heat. This judgment was passed on April 26, 2018, at a time when the legal opinion of the Supreme Court of February 20, 2018, was already adopted two months before. The opinion states that the residents who were never connected to the heating system, did not sign a contract for supply of thermal energy and have not been installed an internal installation by the heat supplier, do not have the status of disconnected passive consumers and thus do not have the obligation to pay a fee for the nominal power (fixed part of the fee paid for heat supply). From the evidence presented in the judgement, it is clear that the defendant has not signed a supply contract, has no internal equipment installed by the plaintiff for use of heating energy, and moreover she submitted an expert finding and opinion that there is no conduction of heat. On the other hand the plaintiff did not submit proof that they had ever entered into an agreement with the defendant, so the plaintiff's rules do not apply to her.

The judgment adopted by this court in 2018 is an excellent example of how the courts should apply the principal position of the Supreme Court of 28.10.2013 which easily resolves dilemmas regarding legal issues that are interpreted differently in different regulations. In the legal opinion on the amount of compensation for damages in terms of Article 178 paragraph 2 of the Law on Obligations, the Supreme Court considers that it should be determined according to the prices valid at the time when the court decision was adopted, unless otherwise provided by law. In case of unauthorized use of electricity, the amount of the fee that the user is obliged to pay is calculated in accordance with the Grid Code for distribution of electricity, which is adopted on the basis of Article 77 of the Law on Energy, after previously obtaining approval from the Regulatory Energy Commission of the Republic of Macedonia. In a situation like this, the amount of compensation is determined subject to Article 178 paragraph 2 of the Law on Obligations when the law determines something else, so the plaintiff is entitled to compensation for ordinary damage and compensation for profit lost.

The following judgment passed by the same court in 2019 addresses the same issue as the judgment above and treats the same problem of passive heat consumers. This two

decisions are similar in the sense that neither of them refers to the principal legal opinion of February 2018 issued by the Supreme Court of the Republic of North Macedonia. We have to ask the question how it is possible for the same legal problem and with the same legal basis where natural persons are defendants in a lawsuit the courts to adopt two different decisions. And precisely because of this lack of uniformity in the practice of the courts regarding this type of disputes, the Supreme Court has adopted the legal opinion stated above. All these dilemmas could be resolved by simply following the principal legal positions, opinions and conclusions of the Supreme Court, although they are not mandatory. This will also show that lower courts have respect for the Supreme Court of the Republic of North Macedonia, as it should be.

Furthermore, in the next decision issued in 2019, the Court of Appeals decided on the appeals of the first and the second defendant, who in the appeal refer to the lack of passive legal standing, something that was explicitly elaborated by the Supreme Court in its opinion of 04.03.2016. The court considers that in such cases "jointly and severally liable for compensation of damage caused by a stray dog bite is the municipality, i.e. the City of Skopje and the Public Utility Company or other legal entity, which is entrusted with the gathering stray and unregistered dogs. The decision of the Court of Appeals is correct and lawful, because it has made a completely correct subsumption and applies all relevant regulations in the relevant judgment. The conclusion remains that with such proper application of substantive law in some cases there is no need to refer to the principal opinion of the Supreme Court. Still the reference to the principal opinion simplifies matters, because the explanation of the legal opinion of the Supreme Court contains all regulations that the court has applied in making this decision. On the other hand, it also contributes for something else which is beneficial and that is the uniformity of decisions which leads to having the same or similar judgments for the same or similar legal relations and issues. Of course, the amount of compensation is determined differently in each individual case in accordance with the damages suffered as determined by the expert opinion and the opinion of the relevant professional. Since the court did not invoke the principal opinion, this decision was given a score of zero for uniformity.

The decision of the Skopje Court of Appeals issued in 2019, which reasonably overturned the decision of the first instance court and send it back for reconsideration is related to the legal opinion of the Supreme Court of 04.03.2016 which was already mentioned above. However here the first instance judgment is abolished due to lack of causal connection between the damage caused and the person responsible for causing it, because it has not been determined with certainty whether the dog was a stray dog in which case the first and second defendants would be liable. However, if the dog has an owner the defendants could not be considered liable for the damage caused by the dog.

One judgment of the Basic Court Skopje issued in 2017 is a real example of the benefits incurred when following the principal legal opinions and the case law of the Supreme Court. It is also an example of uniformity but also of the efforts made by the first in-

stance court to improve its work and achieve better administration of justice. In this sense, the legal opinion of the Department of Civil Cases at the Supreme Court of the Republic of Macedonia of 23.02.2015 was correctly applied. In accordance with this opinion, the court, upon receiving the appeal, acted and deliberated only the facts in the refuted part of the first instance judgment. However with regard to the petition referring to the decision allowing enforcement, the court decided on the merits within the decision imposing a payment order and did not accept to decide on the specified claim arising from the request for calculating legal penalty interest as of 30.06.2010, but from 30.11.2010. It was reasoned that given the relevant lawsuit, the legal penalty interest is also claimed for a period that is not covered by the allowed payment order.

Follows the analysis of uniformity of a judgment in which the Basic Court Skopje 2 - Skopje obliges the defendant to pay the fixed part of the compensation for nominal power, something that was also commented on above, but in a completely different context. The principal legal opinion of the Supreme Court was adopted on 20.02.2018, which means that it was adopted later than this judgment was issued. So it could not have been applied in this specific case. However, maybe the first instance court could have directly invoked the European Convention on Human Rights.

Republic of North Macedonia has ratified the ECHR. This means that it should be applied directly, i.e. the countries that have signed the convention should provide conditions for its unobstructed application.

When administering justice, the court should have a sense for the domestic legal system and legal order and should seek and find the basic principles in more general documents such as in the Constitution. The Constitution is the basis for other regulations that further elaborate into greater detail the constitutional principles. Starting with such a thought, the fundamental values of the Constitution are defined in Article 8, which contains the fundamental freedoms and rights of people and citizens as recognized by international law and established by the Constitution. Those freedoms, and in this case rights as well, are regulated in Article 30, which guarantees the right of ownership and the right of inheritance.

Ownership creates rights and obligations and should serve for the benefit of the individual and of the community and no one can be deprived of or have the right to ownership restricted. This is also valid for the rights arising from this fundamental right, except when the public interest is at stake as determined by law. We could ask how the court measured to what extent the individual's right to property should be restricted at the expense of the public interest and what is the public interest in this specific case. Is the profit of a private legal entity a public interest and should it be placed before the right to private property? Here it is obvious that the court has neglected the basic and fundamental values of the Constitution of the Republic of North Macedonia and the European Convention on Human Rights. This is also confirmed with the judgment of

the ECtHR Strezovski v. the Republic of North Macedonia, and in addition to this is the LEGAL OPINION of Supreme Court of the Republic of North Macedonia of 07.10.2019 where the Supreme Court stated that a court decision cannot be based on a regulation that does not exist in the legal order of Republic of North Macedonia.

The persistence of the plaintiff in these disputes does not end here. However, the court by adopting new rules tries to circumvent the judgment Strezovski against the Republic of North Macedonia, all the principal legal positions and opinions of the Supreme Court of the Republic of North Macedonia, as well as the decisions of the Constitutional Court of Republic of North Macedonia, thus imposing impossible obligations on "passive consumers". Basically they need to take to get rid of liabilities for services that they have neither requested nor have signed an agreement with regard to this nor they are using such services. Therefore, this decision lacks sense and does not protect the right to peacefully enjoying the right to property.

The next judgment passed in 2018 is about the same issue and by applying, i.e. invoking the principal legal opinion of the Supreme Court of the Republic of North Macedonia, the court correctly decided completely opposite to the previous decision adopted by the same court. This confirms the disagreement and the lack of uniformity of the court decisions on this legal issue.

One of the judgments passed by the Basic Civil Court Skopje in 2018 refers to the awarded non-pecuniary damage caused by being bitten by a stray dog. This issue was already deliberated in the legal opinion of the Department of Civil Cases of the Supreme Court of the Republic of North Macedonia of 04.03.2016. It is obvious from the reasoning that during the procedure the defendants were debating among themselves and with the court over the passive legal standing. The first instance court missed the opportunity to apply the legal opinion for such cases and properly explain its correct position.

In this case, the decision of the first instance court is lawful and correct, but the awarded compensation of 185,000 denars seems too high if compared to all other decisions issued in this area and in other appellate areas. In principle, the amount of compensation should be decided freely by the judge, but still the awarded amount should be within some logical and normal limits.

This part of the decision is contrary to the principal opinion of the Supreme Court of the Republic of North Macedonia addressing the costs for publication of the judgment, but this legal opinion was adopted on 07.10.2019 and that is why there should be no remarks, but with direct application of Article 6, paragraph 1 of the ECHR the judgment should be published.

The next judgment subject to analysis was adopted in 2019 and it treats the same issue as the previous one. However, here the court rendered a completely lawful, correct,

quality and uniform judgment. Besides this, the compensation for damages was also properly and correctly determined, although as it was already set the court is free to set the compensation as it may seem necessary. In this case, the compensation was 110,000 denars.

The next judgment in this analysis refers to the same legal issue. It is evident that the verdict is correct, lawful, but it lacks uniformity with regard to invoking the general legal opinion stated above. In this particular dispute there are three defendants, and the plaintiff has withdrawn the claim for one of the defendants during the proceedings. Precisely because the plaintiff determined which is the public enterprise that the first defendant had an agreement with, he withdrew the claim against the third defendant during the procedure. With regard to the amount of the lawsuit withheld, in his case an amount of 65,000,000 denars was awarded as a compensation for non-material damages suffered. If we compare this amount with the above judgments and the amount of compensation awarded, we can see that the amount is different, although each case is a separate one, and there might be different types of injury, intensity of pain, fear and reduced life activity.

In another judgment passed in 2019, the first instance court decided on an issue for which the Supreme Court of the Republic of North Macedonia has issued a principal legal opinion of 04.03.2016. This decision is fully correct, lawful and it refers to the legal opinion of the Supreme Court of the Republic of North Macedonia, and it concisely, concretely and clearly states this. The awarded compensation amounts to 75,000 denars, which is comparable to the compensation awarded in the previous judgment.

The next judgment takes into consideration the opinion of the Supreme Court of the Republic of North Macedonia of 20.02.2018 and it is uniform with the case law. The first instance court in its judgment from 2020 has rendered a correct and legal judgment in line with the general legal rules and the principal opinion of the Supreme Court mentioned above. The judgement also invokes this opinion.

These same features are present in a judgment issued by the Basic Court Skopje in 2020. In most of the presented and analysed judgments we can see that trial judges develop uniformity and legal understanding, and especially in this last judgment where the court, in addition to invoking the principal legal opinion, also referred to the judgment of the European Court of Human Rights. This is a step forward in the development of uniformity of decisions and should be an example to be followed by other legal actors.

In addition, there is another judgment passed in 2020, in which the subject of the dispute is compensation for non-pecuniary damage caused by a bite of a stray dog. In this judgment the court determined compensation in the amount of 85,000 denars. After considering the allegations of the parties and the facts of the case, the first instance court correctly concluded that the passive legal standing of the defendants in this case

is an issue. Although the principal legal opinion of the Supreme Court of the Republic of North Macedonia is the simplest solution which provides reasoning for such cases, the court did not apply it when passing this judgement so in this sense this judgment lacks uniformity. The amount awarded for compensation is one of the largest amounts awarded in such cases.

The following judgment from 2020 is about the same issue and just as in the previous judgment, the court did not refer to the principal opinion of the Supreme Court of the Republic of North Macedonia. The compensation that was awarded for non-pecuniary losses in this dispute is 100,000 denars. Because of this we consider that this judgment lacks uniformity in several aspects: it does not invoke the principal legal opinion of Supreme Court of the Republic of North Macedonia, nor it follows the general amount awarded as compensation for non-pecuniary losses.

With regard to lack of uniformity, similar is the situation with the next judgment from 2017 which is especially interesting. In it, the Basic Court Skopje raises and analyses the degree of liability of the two defendants in this dispute, and it awards a compensation amounting to 130,000 denars. This is one of the higher amounts awarded in the judgments that were subject of analysis. With regard to the situation mentioned above, the court considered that in resolving the mutual rights and obligations between the City of S. and the PE K H S it should be cleared if the PE K H S acted contrary to the Program and the agreement with the City or the City has not fully fulfilled its obligations under the Law which should be undertaken in order to protect citizens from stray dogs. This means that the question of liability can only be cleared between the City and the PE. However, with regard to third parties, such as the plaintiff, both the City and the PE have joint and several liability to compensate the damage, because the plaintiff suffered damage due to the fact that the two defendants did not take action. Which one and what actions were not taken is a matter that they can clear up between themselves in accordance with the agreement they signed. In the opinion of this court, the defendants unjustifiably object with regard to their passive legal standing about the damage caused to third parties, because what share of the compensation each of them will pay can be decided in an additional dispute regarding the joint and several liability. In such a dispute they can clear whose default caused the incident and which of them and to what extent is liable within the joint and several liability for the damage caused to a third party.

The analysis and the reasoning presented by this court in its judgment is very constructive and it contributes to making a decision with regard to the passive legal standing of the defendants in this dispute. The judgments analysed so far repeat the same things with regard to the passive legal standing, the amount of compensation, the duration of pain suffered, reduced life activity, fear experienced, etc.

Still, a distinction can be made between the liability of the City of Skopje and the Public Enterprise. With regard to the City of Skopje its liability is objective, because it has con-

tracted a third party to perform certain obligations within its legally defined obligations, while the public enterprise (utility company) its liability is more subjective. This means that for each specific case the circumstances under which the damage occurred should be investigated, whether the stray dog was subjected to some treatment or not, whether all necessary actions were taken by the Public Enterprise, because the responsibility of the city Skopje arises from the law. This all shall be taken into consideration if they, after this dispute is settled, possibly initiate a new one to determine their individual level of liability.

The verdict passed in 2020 by the Basic Civil Court Skopje is an example where the court properly applied the substantive law and applied the principal legal opinion of the Supreme Court of the Republic of North Macedonia adopted on the General Session held on 01.03.2012. This opinion states that the contract for remuneration for legal services concluded between a lawyer - attorney and a client is null and void if the amount of remuneration for the lawyer is determined as a percentage from the compensation awarded in the final judgment rendered by the court.

However, the court rightly considered that this legal opinion is not applicable in this specific case, because, in the contract concluded between the plaintiff and the defendant subject to this dispute, the reward for the attorney is a fixed amount, and it does not depend on the amount awarded by the court, because the amount of the reward is not a percentage of the compensation awarded.

The general conclusion from this part of the analysis is that the uniformity of decisions is not at a satisfactory level in this appellate area. However, it can be said that if the decisions are analysed from a chronological point of view, there is some progress, which is to be welcomed. It is evident that there are differences in the quality and uniformity of court decisions, but quality improves from year to year. Besides this the courts more and more refer to the principal legal opinions and views of the Supreme Court, as well as to the European case law.

2.2.4. Uniformity of court decisions in the Shtip appellate area

By performing uniformity analysis of the decisions rendered in this appellate area and by applying quantitative indicators, we obtained the following results: 0, 0, 0, 0, 0, 6, 2 and 0.

The average index of uniformity for all decisions subject to analysis from the Shtio appellate area is 1.

The judgement passed by the Shtip Court of Appeal in 2017 refers to expropriated property of natural persons. The judgement upholds the appeal of the former owners and an explanation is given in the reasoning that the value of the expropriated property was not assessed properly and it has not been done in accordance with the legal provisions. In the comment to the Legal Opinion of the Supreme Court of the Republic of North Macedonia adopted on 26.02.2016 there is a reference to the fact that the valuation of the market value of a property, according to the Law on Valuation, is performed in accordance with the methodology, rules and valuation standards contained in European Valuation Standards - TEGOVA and International Valuation Standards - IVSC. The valuation is subject to other laws governing the valuation of various forms of property and regulations based on them. It is not completely clear if the valuation was made according to the market value of the expropriated property since the type of land plays an important role in determining the value of the expropriated property. However, the court could have invoked this legal opinion at least to substantiate its judgment.

The next judgment of the Basic Court in Shtip passed in 2019 refers to the same legal problem, which is a fair compensation for expropriated real estate. In this judgment the invocation of this legal opinion of the Supreme Court is even more necessary, because the type of the expropriated land is the issue in the dispute which is also the subject of the principal legal opinion of the Supreme Court of the Republic of North Macedonia of 26.02.2016. It contains specific guidelines on how to act in such cases and how to determine the value of the property. It stipulates that in order to determine the value in accordance with the law essential indicators that should be considered are the cadastral culture and class of that land, and a comparison with other similar property.

The same legal issue is treated by the court in its next decision from 2019, where the appeal of the proposer of expropriation was not upheld and an appropriate reasoning was provided. However, again the court did not refer to the principal legal opinion of the Supreme Court of the Republic of North Macedonia, so the decision with regard to this criterion does not have quantitative attributes at all. This practice of the Court of Appeals continues in 2020 with the adoption of another judgment because of which it can be concluded that there is practically no progress with regard to uniformity.

The analysis continues with the judgment of the Basic Court Shtip from 2017, where the subject of the dispute is a claim for compensation of damages that the insurance company has paid to the damaged party. According to the legal opinion of the Supreme Court of the Republic of North Macedonia of 28.04.2014 "The uninsured vehicle which was used to cause the traffic accident by itself does not present a basis for paying compensation by the Insurance Company. Instead the driver or the owner of the vehicle should have contributed to the damage, in which case this would serve as a basis for paying the compensation claim." Since the evidence show that the owner of the vehicle did not contribute at all to the occurrence of the damage the court correctly rejected the compensation claim as unsubstantiated and the plaintiff was charged with the

procedural costs. This judgment was not evaluated at all with regard to uniformity, because the Basic Court did not refer at all to the principal legal opinion.

The next judgment of the Basic Court Shtip from 2017 refers to the Universal Declaration on Human Rights as well as to Article 2 paragraph 2 of the Law on Civil Liability for Insult and Defamation. They stipulate that the restrictions on the freedom of expression and information shall be legally regulated by setting strict conditions for civil liability for insult and defamation, in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10) and the case law of the European Court of Human Rights. According to Article 10 of the European Convention for the Protection of Human Rights, everyone has the right to freedom of expression, which also includes freedom of thought and freedom to receive and transfer information and ideas without interference by the public authorities, regardless of frontiers. According to paragraph 2 of the same article of the Convention, the exercise of these freedoms is not absolute because there are obligations and responsibilities, so under certain conditions these rights can be limited and sanctioned if this is provided for in a law or when in a democratic society it is determined that the exercise of freedom of expression violates the reputation or rights of others.

The decision of the Basic Court Shtip from 2019 treats the same problem as the previous decision, so it refers to the ECHR and it states the following "According to Article 3 of the Law on Civil Liability for Insult and Defamation: If the court by applying the provisions of this Law may not resolve a particular issue and determine the liability for insult or defamation, or it considers that there is a legal gap or conflict between the provisions of this Law and the European Convention for the Protection of Fundamental Human Rights, will apply the provisions of the European Convention for the Protection of Fundamental Rights and the views of the European Court of Human Rights contained in its judgments following the principle of its supremacy over domestic law. According to Article 10, paraphgraphs 1 and 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, every citizen has the right to freedom of expression. Having regard to the established fact that the defendant is a journalist by profession, the court considers that when reporting on issues of public interest, i.e. publishes posts related to politicians and their statements on broader issues for which there is a legitimate public interest they can use strong language when reporting and expressing their views even to the point of exaggeration and provocation.

The next judgement passed in 2020 by the Basic Court Shtip is the last one that was subject to analysis with regard to uniformity of judgments in this appellate area. Namely, this judgment refers a lawsuit submitted by the plaintiff claiming that his property has been violated by the defendant. The Basic Court, among other things, could have referred to the ECHR, namely Articles 8 and Article 17 as well as to Article 1 of Protocol 1, because these values are guaranteed by national laws, but also by the European Convention on Human Rights.

If we analyse the decisions that show uniformity with the case law in this appellate area, it can be noticed that some decisions show a certain degree of uniformity, but mainly those which by the nature of things, i.e. by the legal regulations in force, have to refer to the application of the ECHR. Due to this we have the impression that in this appellate area the decisions show uniformity only if the provisions of the domestic law explicitly refers to the ECHR.

2.3. UNIFORMITY OF DECISIONS AT THE NATIONAL LEVEL

At the national level, after doing the calculations and comparisons, we have obtained a uniformity index of 1.25. However, this is still a low index of uniformity at the national level, which means that the courts still do not refer sufficiently to national case law, and much less to the case law of the European Court of Human Rights or an international document or important benchmarking decision. In general, the use of case law in our courts ranges from "presenting" the submitted case law as "evidence" being part of evidence presented, up to a studious, quality and precisely elaborated reference which, unfortunately, cannot be found in many of the decisions analysed. A limiting factor for this analysis is that the courts did not cooperate and did not provide quality court decisions which could have been subject to analysis, but on the other hand this analysis was focused on a number of decisions that were randomly chosen so it really reflects the actual situation on the ground.

FINDINGS AND RECOMMENDATIONS

The quality index of court decisions at the national level is **4.82**.

If we take into account the methodology of this research, as well as the decisions subject to analysis randomly selected from all appellate areas in North Macedonia, we believe that we have covered an appropriate representative sample of all court decisions in the country, so the results at national level are satisfactory.

In principle, all decisions have a complete and correct subsumption with an extensive postulate and principles applied by deduction of a small postulate with a logical conclusion containing all the necessary elements. The explanations of the background of the case are mostly concise and clear and refer to the necessary actions undertaken by the court. It can be seen that in some decisions, the issue is introduced in the first part.

There is a clear description of the facts and circumstances that explain the substance of the case, and material facts and applicable legal principles are explained in separate paragraphs.

The analysis shows that most of the decisions contain only facts, which are important for the reasoning. While, in some of them the irrelevant facts are also presented which unnecessarily burdens the decision.

Generally, for most of the decisions we could say that the legal norms relevant for each issue are properly explained by referring and explaining the substantive law.

In specific cases certain general rules are applied through deductive logic. Inductive logic is used correctly, which in most decisions can be applied to an indefinite number of cases. Relevant regulations regarding each specific dispute are cited correctly.

The in-depth analysis shows that the facts of the case in the decisions of the Basic Courts at national level correspond to what is required by the substantive law. With regard to this, they produce the legal consequences contained in the judgment. Only evidence that support the reasoning of the decisions is presented in the decision itself.

The analysis showed that each piece of evidence is correctly valued separately and all evidence is valued together as one piece of evidence.

With regard to the quality of evidence, they are mostly authentic, credible and consistent, and the irrelevant facts are rarely stated.

Most of the decisions also present the arguments of the party that lost this dispute and compare them with the arguments of the party that won the dispute, putting them in correlation with the facts of the case and the application of substantive law.

The reasonings in the court decisions are concise without unnecessary details. In most of the decisions the minutes of the hearings are not copied. Evidence is fully explained, not just copied from the minutes, while the parties' allegations are sublimated and rarely copied from the minutes. Decisions about costs are explained in detail.

In general, all judgments are understandable, with short paragraphs, good connection of thoughts, each paragraph deals with one topic or question, and the paragraphs in principle are coherent in their structure, explaining one opinion or a problem from the beginning to the end of the paragraph.

The judgments have correct grammatical wording and sentences with almost proper use of Macedonian standard language, with visible interventions from the local dialects and with relatively small number of technical errors.

The qualitative analysis shows that at national level it is already clear what should be the form and the structure of the court decisions, and these parameters are generally respected throughout the country, in all appellate areas.

An important element that seems to be ignored by the courts, and especially by the basic courts in all areas, is the fact that in many cases the phase of pre-trial review of the lawsuit is ignored. This phase is very important and contributes to clearing procedural obstacles from the very beginning and solving the dispute in a more cost-efficient and faster manner. If the basic courts regularly carry put preliminary review of the lawsuit, the procedures would be much more expeditious because either the lawsuit will be rejected at this stage or the procedure will continue with objective and uniform criteria in all appellate areas. This would put an end to the situation when the same legal problem or dispute is differently valued and assessed in different courts, which contributes to lack of uniformity in the courts practice.

Legal logic is also a very important constituent element of court decisions. Only in few decisions from those analysed, the legal logic was not at a satisfactory level.

RECOMMENDATIONS

The recommendations which are based on the result of the analysis are as follows:

The activities of the case law departments in the courts should be strengthened.

They need to cooperate more with the trial judges in the courts.

These departments in the courts in the same appellate area need to cooperate more between themselves, and cooperation between such departments in different courts of appeal should be mandatory.

For certain legal issues, for which there are noticeable differences, efforts for harmonization and mutual coordination should be made.

Continuous training of judges is very much necessary and it shall contribute to higher level of uniformity.

It is necessary to properly implement the phase of preliminary review of the lawsuit in line with the principal legal opinions of the Supreme Court of the Republic of North Macedonia.

The courts need to overcome the state of disagreement as to the mandatory elements that the lawsuit should contain.

The practice of detecting legal problems that the courts face and the areas in which there are differences of opinion should continue.

Joint meetings should be held between the Supreme Court and the appellate courts so that they can take common positions on certain legal issues in order to achieve higher level of uniformity in decision-making.

This practice should be followed by each Court of Appeals in its appellate area, i.e. they should convey their conclusions and views to the basic courts and they should take care of their implementation in the daily decision-making of the basic courts.

In order to follow the guidelines and positions taken by appellate courts at their meetings, the conclusions of these meetings should be made more transparent and available, which will facilitate the application of case law.

ANNEX

APPENDIX 1-a: FORM FOR ANALYSING QUALITY OF COURT DECISIONS

Court decision no. _____

Code _____

ANALYSIS OF A BASIC COURT DECISION

No. of the indicator.	Indicator	Grade	Coefficient	The value of indicator	Note
1	Structure of the court decision		1		
2	Statement of the decision		2		
3	Coherence		2		
4	Legal syllogism in case of subsumption/ legal logic		3		
5	Explanation of the background of the issue		2		
6	Presentation of the case / issue		2		
7	Presentation and application of relevant laws and bylaws and legal principles		2		
8	Facts of the case and evidentiary procedure		1		
9	Deliberating and evaluating opposing arguments		2		
10	Clarity and consistency of the reasoning		1		
11	Linguistic and grammatical correctness of the text of the court decision		1		

Total: _____

QI = _____

Assessment / General remark;

APPENDIX 1-b: COURT DECISION QUALITY ANALYSIS FORM

Court decision no. _____

Code _____

QUALITY OF THE APPELLATE COURT DECISION

No. of the indicator.	Indicator	Grade	Coefficient	The value of indicator	Note
4	Legal syllogism in case of subsumption/legal logic		3		
10	Clarity and consistency of the reasoning		1		
11	Linguistic and grammatical correctness of the text of the court decision		1		
12	Clear instructions issued to the basic court when returning the decision for reconsideration		2		
13	The reasons for revoking or reversing the decision of the first instance court are clearly stated.		2		
14	If the appellate court changes the scope or the amount of the sanction, the reasons for this change are clearly stated in the reasoning and the differences in the assessment with the basic court are explained.		2		
15	The complaint allegations are answered.		2		
16	The facts of the case are not copied from the decision of the first instance court.		1		

17	When reversing the decision of the first instance court, the appellate court decision has all the characteristics necessary to determine the facts of the case, analysis of evidence, citations of substantive law and reasoning, equally needed in the first instance court decision.		2		
18	The appellate court decisions rebuffing the appeal, contain a reasoning only for complaint allegations, previously not stated and which are not answered in the first instance court decision.		2		
19	The Court of Appeals pays attention to the time barring period of the case when the first instance court is to decide.		2		

Total: _____

QI= _____

Assessment / General remark;

APPENDIX 2: FORM FOR ANALYSING THE UNIFORMITY OF COURT DECISIONS

Court decision number: _____

Reference number of case law / benchmark: _____

Code: _____

No. of the indicator.	Indicator	Grade	Coefficient	The value of indicator	Note
1	The court decision contains reference Macedonian case law - benchmark or ECHR case law			3 / -3 (to choose)	ANALYSIS OF THE QUALITY AND UNIFORMITY OF COURT DECISIONS IN CIVIL CASES
2	Legal logic		3		
3	Compliance of the case law with the article of the law / bylaw / international agreement referred to in the decision.		2		
4	Invoking the so-called leading case, that is, the case which is the first case initiated by the Supreme Court to reach a legal opinion or decision		2		
5	For the same or similar violation of the law there is a similar or same sanction		2		
6	The chosen case should be applicable in the relevant aspect to the relevant article or relevant matter		2		
7	Relevance of the case cited		2		
8	Relevant parts cited		1		
9	Appropriate techniques for citing decisions and judgments of the European Court of Human Rights		1		

Total: _____

UI = _____

Assessment / General remark: _____