



Институт за човекови права



FIFTH MONITORING REPORT FOR THE STATE ATTORNEY'S PERFORMANCE

**(Short summary of detected challenges and
problems with which the State Attorney's Office is
facing)**

(Period: July - December 2020)

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Project "Together for combating corruption" is being implemented by SCOOP as a lead organization together with Institute for Human Rights (IHR) and MEDIUM as partners with an aim to improve the capacities of the SCOs in achieving their role as "watchdogs" or controller of the work of state institutions with a purpose to prevent any risks of corruption and abuse of state duty.

Within the framework of this third year of project implementation, IHR is continuously monitoring the work of the State Attorney's Office (SAO) performance. In the period between July-December 2020, the project team monitored approximately 50 court hearings where the emphasis has been put on the property cases along with trade, labour and cases of small claim. Having in mind the situation with the coronavirus, the court hearings have been delayed only when there were positive persons on COVID-19 on the side of the plaintiff or the sued.

Furthermore, IHR followed investigations initiated by the Primary Prosecution in Skopje where several state attorneys were suspected in abuse of state powers and officials by giving opinion for land alienation which is contrary to the law provisions. In the past six months, the IHR project team detected some problems and challenges with which the SAO is facing and some of them have been noted in the previous monitoring reports.

- Conducted monitoring by IHR has shown that the SAO has not improved the visibility of the institution. It is obvious that the public is often confused by the State Attorney's Office and the Ombudsman and think that it is the same institution. This means that the visibility of the SAO must be increased thus will allow the people to get familiar with the work of the institution and the competences.
- There is a need for greater transparency and accountability by SAO because they need to publish on their website the positive and/or negative opinions for land alienation in state property or to express concern/interest in some important cases that tackled the public interest. It is extremely hard to detect any corruptive practices if the public or journalists do not have easy access to these information's on the official website of SAO. This have been noted in the previous monitoring reports, but the situation is not changed. In July 2020 a system for electronic monitoring of all cases submitted for land privatization in state property has been introduced. On this manner the cases from 2018. 2019 and 2020 (in total 11.500 cases) can be monitored electronically in which phase they are on the website of the Ministry of finance <https://privatizacija.finance.gov.mk/>. Similar system as the one used for privatization cases can be created for the given positive or negative opinions for land alienation in state property.
- SAO is facing with lack of human resources. This was noted in the report from the State Audit Office where it is stated that the SAO is working only with 62% of its capacities. The Government has adopted an information in August last year for new employments, but due to parliamentary elections, the Government in November 2020 brought a decision for appointment of new 19 state attorneys for the area of Skopje, Kumanovo, Ohrid, Strumica, Gevgelija,

Veles, Shtip, Kavadarci, Bitola, Prilep, Kocani, Tetovo, Gostivar, Struga and Kicevo. Moreover on 27 October 2020, the Government brought a decision for new vacancy for appointment of one state attorney for the area of Veles and on 17 November 2020 the Government adopted a decision for new vacancy for appointment of one state attorney for the area of Tetovo. It is expected that with these new appointments the effectiveness of the SAO will be increased especially in representing the Republic and the state bodies in civil, criminal and administrative proceedings.

- There is a need for electronic regulation and monitoring of cases in the State Attorney's Office, with introducing a system which is similar to the ACGMIS system that functions in the courts. In this way, there would be detailed statistics and it will be possible to make an insight into the cases, in order to find in what stage currently the case is, and also the system could record all the actions that are undertaken by the SAO in litigation and administrative proceedings. SAO has requested money for acquiring this system with the budget for 2020 year, but they were not approved. In the draft version of the Budget for 2021 which was sent to the Assembly in November 2020, there are no costs provided for acquiring of the system.
- Administrative and the Higher Administrative Court still have denationalization cases which last for many years, although in the Administrative Court for the last six months were resolved 392 cases and in the Higher Administrative Court 69 cases.
- Only the State attorney for the area of Veles has concluded two out-of-court settlements in property cases which indicates that this instrument is not being used at all. Due to this reason, it should be considered for an option in those cases where there is clear evidence which can support the plaintiff's claim in eventual court procedure, these cases to be solved with an out-of-court settlement. On this way, funds will be saved in the budget and the state bodies will respect and apply the principle of economy of the procedure. Contrary, the state budget will be loaded with unnecessary litigation costs on behalf of representation.
- According to the Law on State Attorney's Office, in Article 6 it is prescribed that the SAO may delegate some of its competences in representation in litigation cases to the employees in the state bodies who have passed the Bar exam. With general power of attorney several state bodies are representing themselves such as: Ministry for interior, Ministry for defense, Ministry of justice – KPD Idrizovo (prison), Ministry of Finance and Custom Office. However, the SAO is monitoring these cases because all the correspondence from the court goes through the State Attorney's Office. From the monitoring which is being conducted by the IHR project team, it was noticed that in the labour cases, especially in those against the Ministry of Interior for extra worked hours and other labour compensations, the out-of-court settlement can be concluded in those cases where there are clear evidence that can support the plaintiff's claim.
- The State Attorney's Office does not have information regarding the costs for representation when the other party will win the case, nor the exact number of costs when the other party will lose the case i.e. how much money will be transferred in the State Budget for representation costs by the State Attorney's Office. It is not enough that the Ministry of Finance and the Public Revenue Office have these information's, also the State Attorney should have its own system for tracking these costs, after all is acting as a lawyer of the State.