



RECOMMENDATIONS

14th Session of Working Group 3: Justice and Fundamental Rights (Chapter 23)

Topic: "Amendments to the Criminal Code of 7 September 2023: Facing European legislation in the field of prevention and fight against corruption"

3 July 2024

1. It is recommended that the Ministry of Justice urgently set up a working group to prepare amendments to the Criminal Code in order to repeal the provisions of the September 2023 Law Amending the Criminal Code. According to experts, these amendments are not in line with the new initiatives of the European Union to prevent and combat organized crime and corruption and significantly deviate from the adopted national strategies for dealing with corruption as such.
2. When amending the Criminal Code, it is recommended to revise corruption-related offenses. Particular attention should be paid to the offense "Abuse of official position and authority" of the chapter "Offenses against official duty". In this regard, the [Draft Directive of the European Parliament and of the Council on combating corruption of 2023 should be taken into account](#), that such an offense should exist in any legislation, and the prescribed maximum imprisonment should not be less than five years.
3. The September 2023 amendments to the Criminal Code deleted paragraph 5 of Article 353 that criminalized abuse in public procurement, which prompted different interpretations. Some interpretations state that this abuse is decriminalized (which is unfounded), while others hold that the acts would be reclassified as a "general act of abuse," leading to the obsolescence of these cases. Bearing in mind that procedures are ongoing for the adoption of the new Criminal Code (published on the ENER), where abuse in public procurement is defined as a separate criminal offense, it is recommended that the new Criminal Code be adopted as a matter of urgency, thus removing these deviations from European initiatives. It is also recommended to amend Article 394 of the Criminal Code in order to prescribe higher penalty frameworks for criminal association, because with the September 2023 amendments, the penalties have been drastically reduced.
4. The provision on extended confiscation should be subject to further modification in order to fully comply with the [EU Directive \(2024/1260\) of the European Parliament and of the Council](#), which will allow the prosecution to implement it effectively. Although this provision is declaratively aligned with the relevant [EU Directive \(2014/42\) when adopting the amendments](#), its current form limits the scope of crimes for which prosecutors may seek extended confiscation.
5. The September 2023 amendments to the Criminal Code have implications of broader significance in multiple spheres (law, economics, political system, and other consequences). With the very act of adoption in many of the pending court cases, the statute of limitations of criminal prosecution has emerged, which is a legal obstacle to prosecution. However, the Criminal Code also provides for the possibility of confiscation in cases of law-based or legal impediments to prosecution, recommending that public prosecutors approach, wherever possible, the application of such provisions, i.e., initiate confiscation proceedings in case of factual or legal impediments to prosecution.





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With regard to the institution of "obsolescence of court cases" before possible amendments to the Criminal Code, a comparative approach should be applied, i.e., to analyze the laws and practices of several legal systems, in order to determine which would be the most optimal model for the Republic of North Macedonia. In addition, it is necessary to consider the existing conditions and capacities in the judiciary, as well as the experience so far in the application of this institution.



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