

FYR MACEDONIA

Decision to Establish the National Commission for Combating Human Trafficking and Illegal Migration (2001)

Decision to establish the National Commission for Combating Human Trafficking and Illegal Migration in the Republic of Macedonia

(Official Gazette N 18, 5th March, 2001)

Article 1

In order to follow and analyze human trafficking and illegal migration and to coordinate the activities of the competent institutions in the Republic of Macedonia actively working to solving the problems in this field, the National Commission for Combating Human Trafficking and Illegal Migration in the Republic of Macedonia is established.

Article 2

The National Commission is comprised by the National Coordinator and members, nominated by the Government of the Republic of Macedonia. The National Coordinator and members of the Commission are nominated upon proposal by the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Justice, Ministry for Labor and Social Affairs, Ministry of Health, Customs under the Ministry of Finance, and Public Prosecutor's Office.

Article 3

The National Coordinator and the members of the National Commission are nominated for a period of four years and can be re-nominated.

Article 4

In implementing article 1 under this Decision, the National Commission will cooperate with the governmental and non-governmental organizations that are working on combating human trafficking, illegal migration and protection of victims.

Article 5

The Ministry of Internal Affairs will conduct the administrative work for the National Commission.

Article 6

The National Commission will submit reports of its work to the Government at least once per year.

Article 7

This decision comes into force the day after it is published in the Official Gazette of the Republic of Macedonia.

N 23-1021/2

February 27, 2001

Skopje

The President of the Republic of Macedonia

Ljupco Georgievski, s.r.

Criminal Code (relevant provisions) (1996, incl. 2002 amendments) (excerpts)

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Criminal Code of the Republic of Macedonia

Enacted 23 July 1996

Entry into force: 1 November 1996

(incl. 2002 amendments)

(Official Gazette of the Republic of Macedonia No.37/96,80/99 and 4/02);

(relevant provisions only)

Legislationline : see in particular article 418a.

GENERAL PART

(...)

Chapter 7: TAKING AWAY PROPERTY GAIN GAINED BY A CRIME

Grounds for taking away property gain Article 97

No one may retain the direct or indirect property gain gained through a crime. The benefit from item 1 shall be taken away with the court decision with which the execution of the crime was determined, under the conditions foreseen by this Code.

Manner of taking away Article 98

The money, objects of value, property and other property gain gained through the crime, shall be taken away from the offender, and if the taking away is not possible, the offender shall be bound to pay an amount of money which corresponds to the gained property gain.

The property gain gained by the crime is taken away also from persons to whom it was transferred if they did not know, but could have known and who were obliged to know that it was gained through a crime.

Objects that have been declared cultural monuments, archive or library materials and a natural rarity, as well as those to which the damaged person is personally connected, are taken away from third persons, notwithstanding that they did not know, nor could they have known, nor were they obliged to know, that they have been gained through a crime.

The goods that are taken away are returned to the damaged person, and if there is no damaged person, they become the property of the state.

If during the criminal proceeding, the damaged person is adjudged a property and legal claim, the court shall pronounce a taking away of property gain, if this exceeds the amount of the claim.

Protection of the damaged person Article 99

The damaged person who was referred to a litigation in the criminal procedure in regard to his property and legal claim, may demand that this be settled from the taken away value, if he starts a litigation within six months after the day the decision with which he was referred to a litigation comes into effect, and if within three months from the day of coming into effect of the decision with which his claim was determined, he claims the settling of the taken away value.

The damaged person who has not reported a legal and property claim in the criminal procedure, may demand the settling from the taken away value if he has started a litigation for determining his claim within a time frame of three months from the day he finds out about the sentence with which the property gain is taken away, and at the latest within two years after the decision for taking away the property gain comes into effect, and if within three months from the day the decision with which his claim was determined comes into effect, he requests the settling of the taken away value.

Taking away from a legal entity Article 100

If a legal entity gains property gain from the crime of the offender, this gain shall be taken away from it.

**Penal records
Article 106**

The penal records are maintained by the court of first instance, competent according to the birthplace.

For persons born abroad, as well as those whose birthplace is unknown, the penal records are maintained in the court which is determined by the law.

The data from the penal records may be given to the court and to the public prosecutor's office, in connection with a criminal procedure which is carried out against the earlier condemned person, and to the responsible agencies that participate in the procedure for granting an amnesty or a pardon.

Data from the penal records may also be given upon justified request to state agencies, legal entities and physical persons, if certain legal consequences from the sentence or security measures are still in effect, or if there is a justified interest for this, based on the law.

No one has the right to demand from the citizens to submit proof of whether they have or they have not been sentenced.

Upon their request, the citizens may be given data about whether they have or have not been sentenced, only if they need this data because of realizing their rights abroad.

SPECIAL PART

(...)

**Chapter 15: CRIMES AGAINST FREEDOMS AND RIGHTS OF HUMAN BEINGS AND
CITIZENS**

**Coercion
Article 139**

1. A person, who by force or with a serious threat forces another to commit, not to commit, or to endure something, shall be punished with a fine, or with imprisonment of up to one year.
2. If the crime from item 1 is committed by an official person while performing his duty, he shall be punished with imprisonment of six months to five years.
3. Prosecution is undertaken upon a private suit.

(...)

**Kidnapping
Article 141**

1. A person that commits a kidnapping of another, with the intention to force him or someone else to commit, not to commit or to endure something, shall be punished with imprisonment of one to ten years.

2. A person that commits the crime from item 1 against a juvenile, or the person who in order to achieve the aim of the kidnapping from item 1 threatens to kill the kidnapped person, or to inflict grave body injury, shall be punished with imprisonment of at least three years.
3. The offender of the crime from items 1 and 2, who of own volition frees the kidnapped person before the demand is realized because of which he committed the kidnapping, may be acquitted from punishment.

Torture Article 142

1. A person who while performing his duty, applies force, threat or some other unallowed means or unallowed manner, with the intention of extorting a confession or some other statement from an accused, a witness, an expert or from some other person, shall be punished with imprisonment of three months to five years.
2. If the extortion of a confession or statement was followed with severe violence or if because of the extorted confession or statement especially severe consequences set in for the accused in the criminal procedure, the offender shall be punished with imprisonment of at least one year.

(...)

Violation of the right to submit a legal means

Article 153

1. A person who prevents another in using his right to defense, to submit a complaint or some other legal means, by force or by serious threat, shall be punished with a fine, or with imprisonment of up to one year.
2. If the crime from item 1 is committed by an official person by misusing his official position or authorization, he shall be punished with imprisonment of three months to three years.
3. The prosecution of the crime from item 1 is undertaken upon private suit.

Chapter 19: CRIMES AGAINST SEXUAL FREEDOM AND SEXUAL MORALITY

Rape Article 186

1. A person who by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be punished with imprisonment of one to ten years.
2. If because of the crime from item 1 a severe body injury, death or other severe consequences were caused, or the crime was perpetrated by several persons or in an especially cruel and degrading manner, the offender shall be punished with imprisonment of at least three years.
3. A person that forces another to intercourse with a serious threat that he shall disclose something about this person or about another close to this person, that would harm his honor and reputation, or which would cause some other big evil, shall be punished with imprisonment of six months to five years.

4. The person who in the cases from items 1, 2 and 3 commits only some other sexual act, shall be punished for the crime from item 1 - with imprisonment of six months to five years, for the crime from item 2 - with imprisonment of one to ten years, and for the crime from item 3 - with imprisonment of three months to three years.
5. If the crime from items 1, 3 and 4 is committed against a person with whom the offender lives in marital or permanent extra-marital community, the prosecution is undertaken upon private suit.

Statutory rape of a helpless person

Article 187

1. A person, who commits statutory rape over another, misusing the mental illness, mental disorder, helplessness, retarded mental development, or some other state because of which this person is unable to resist, shall be punished with imprisonment of three months to five years.
2. If because of the crime from item 1 a severe body injury, death or some other severe consequence was caused, or if the crime was perpetrated by several persons in an especially cruel or degrading manner, the offender shall be punished with imprisonment of at least three year.
3. The person who in the cases from items 1 and 2 commits only some other sexual act, shall be punished for the crime from item 1 - with imprisonment of three months to three years, and for the crime from item 2 - with imprisonment of one to ten years.
4. If the crime from items 1 and 3 is committed upon a person with whom the offender lives in a marital or permanent extra-marital community, the prosecution is undertaken upon private suit.

Sexual attack upon a child

Article 188

1. A person who commits statutory rape or some other sexual act upon a child shall be punished with imprisonment of six months to five years.
2. For the rape of a child or for some other sexual act upon a child, by misusing his mental illness, mental disorder, helplessness, retarded mental development or some other state, because of which the child is incapable of resistance, the offender shall be punished with imprisonment of at least three years.
3. If the crime from items 1 and 2 is committed by a teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person, by misusing his position, he shall be punished with imprisonment of at least five years.
4. If because of the crimes from items 1 and 2 a severe body injury, death or some other severe consequences were caused, or the crime was perpetrated by several persons, or in an especially cruel and degrading manner, the offender shall be punished with imprisonment of at least five years.

Statutory rape with misuse of position

Article 189

(1) A person who by misusing his position induces another, who is subordinated or dependent in relation to him, to intercourse or to some other sexual act shall be punished with imprisonment of three months to three years.

(2) A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual act upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished with imprisonment of one to five years.

(...)

Mediation in conducting prostitution

Article 191

1. A person who recruits, instigates, stimulates or entices another to prostitution, or a person who in any kind of way participates in handing over another to someone for performing prostitution, shall be punished with imprisonment of six months to five years.
2. A person who because of profit enables another to use sexual services shall be punished with a fine, or with imprisonment of up to one year.
3. A person who because of profit, by using force or by serious threat to use force, forces or by deceit induces another to give sexual services, shall be punished with imprisonment of six months to five years.
4. If the crime from items 1, 2 and 3 is committed with a juvenile, the offender shall be punished with imprisonment of six months to five years.
5. If the crime from items 1, 2 and 3 is committed with a child, the offender shall be punished with imprisonment of one to five years.
6. A person who organizes the crimes from items 1 to 5 shall be punished with imprisonment of one to ten years.

Procuring and enabling sexual acts

Article 192

1. A person who procures a juvenile to sexual acts shall be punished with imprisonment of three months to five years.
2. A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment of three months to three years.

Showing pornographic materials to a child

Article 193

(1) A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic content to a child, or shows him a

pornographic performance, shall be punished with a fine, or with imprisonment of up to one year.

(2) If the crime was performed through the public media, the offender shall be punished with a fine, or with imprisonment of up to three years.

(3) The punishment from item 2 shall be applied to a person who abuses a juvenile in the production of audio-visual pictures or other objects with a pornographic content or for pornographic presentations.

(4) The objects from items 1, 2 and 3 shall be confiscated.

(...)

Chapter 34 : Crimes against Humanity and International Law

Article 418/a (Law for Changes and Amendments to the Criminal Law enforced in 01/2002 (Official Gazette No.4.2002))

A person who by means of serious threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of self power or of a position of other person's vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person recruits, transports, transfers, buys, sells, harbours or receipts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, forced labour or servitude, slavery or practices similar to slavery or removal of organs, shall be punished with imprisonment of at least 4 years.

A person who recruits, transports, transfers, buys, sells, harbours or receipts children or juveniles for the purpose of exploitation as referred in paragraph 1, shall be punished with imprisonment of at least 5 years.

A person, who organizes the crimes referred in paragraphs 1 and 2, shall be punished with imprisonment of at least 5 years.

A person who withholds or destroys other person's identity card, passport or other identification document for the purpose of committing the crimes referred in paragraphs 1 and 2, shall be punished with imprisonment of 6 months to 5 years.

A person, who uses or procures the sexual services of a person with the knowledge that that person is a victim of trafficking in human beings, shall be punished with imprisonment of 6 months to 5 years.

If the crime referred to in paragraph 5 is committed against a child or a juvenile, the offender shall be punished with imprisonment of at least 4 years.

(...)