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JUDICIAL EFFICIENCY IN FIGHTING ORGANIZED CRIME AND CORRUPTION

REPORT FROM THE PROJECT TRIAL MONITORING OF CASES RELATED TO ORGANIZED CRIME AND CORRUPTION UNDER THE NEW CRIMINAL PROCEDURE CODE

JUDICIAL EFFICIENCY IN FIGHTING ORGANIZED CRIME AND CORRUPTION

Skopje, December 2015

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LIST OF MOST COMMONLY USED ABBREVIATIONS

GRECO Monitoring group of states against corruption of the Council of Europe

ECHR European Convention of Human Rights

EU European Union

CPC Criminal Procedure Code

CC Criminal Code

MIA Ministry of Internal Affairs

ICCPR International Covenant on Civil and Political Rights

RM Basic Public Prosecutor/Prosecution

RM Republic of Macedonia

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GRATITUDE

Respected,

The Coalition “All for Fair Trials” is presenting another analysis from the project "Trial Monitoring of Cases related to Organized Crime and Corruption under the new Criminal Procedure Code”, focused on questions that treat the issue of the fight against organized crime and corruption and the application of the new Criminal Procedure Code.

The analysis summarizes the data gathered from the monitoring of cases related to organized crime and corruption before the Department for Organized Crime and Corruption, cases of public interest and a selected sample of other corruption cases, thus achieving the aim of the project - to strengthen the independency, efficiency and objectivity of the Macedonian judiciary in the fight against corruption and organized crime and to contribute towards adequate implementation of the criminal - justice reforms with main focus on the new Criminal Procedure Code.

The responsible person for coordination of the project activities, the analysis of the received data and mainly the preparation of the analysis itself is the Executive Director - Aleksandra Bogdanovska who unreservedly deserves all positive reviews. The whole process was unselfishly supported by the professional engagement of the Project Assistant, Daniel Mitkovski, particularly in the processing of the database, so as the trial monitors who were directly involved in the trial monitoring, without whose contribution this analysis would not have been completed.

I would like to express special gratitude to the U.S. State Department-Embassy of the United States of America - Bureau for International Narcotics and Law Enforcement Affairs, whose proposals during the implementation of the project activities gave a quality input to the final product of the project as well as for their financial support necessary for implementation of the activities.

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President of the
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INTRODUCTION

The corruption continues to present a globally serious problem all over the world which derogates the institutions and the democratic values, the rule of law and the legal state. The world experts who work in the field of the fight against corruption, when referring to examples of corruption in their own states or comparatively in other states use present tense in their speeches since no one could talk about corruption in past tense. The corruption is simply unrooted problem in all modern societies.

The fight against corruption is a long lasting, permanent process since it always gets new dimension, it appears in new shapes unpredictable for those who fight it and unprepared to prevent it. Some experts compare corruption to a virus which mutates, it gets a terrifying and complex shape and it is hard to deal with it. That is why the recommendations for fighting corruption call upon substantial, simultaneous and organized activities on more levels in the state. We need an organized approach by all stakeholders i.e. state institutions, civil societies and the business community in order to jointly act against corruption and achieve sustainable solutions.

These questions were stressed in the key documents like the Urgent Reform Priorities imposed by the European Commission[1], the High level Accession Dialogue between the former Yugoslav Republic of Macedonia and the European Commission[2], the 2015 European Commission Progress Report on the Republic of Macedonia[3] and in the the Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the interception of communications revealed in Spring (also known as Report of Priebe)[4].

The Priebe recommendations remind that the Republic of Macedonia as a country with candidate status for European Union membership must respect the European values, in particularly democracy, equality and the human rights respect, as well as the rule of law[5]. Therefore, meeting the essential standards of democratic governance, ensuring transparency in the public affairs, guaranteeing media freedom and the fight against corruption are treated as the highest goals in each of the areas on which the group of experts led by Priebe was focused.

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[1] Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia, June 2015, www.ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf

[2] Fifth meeting of the High level Accession Dialogue between the former Yugoslav Republic of Macedonia and the European Commission, 18.09.2015

[3] Progress report Macedonia 2015, www.wbcrti.info/object/document/14557/attach/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

[4] The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts Group on systemic Rule of Law issues relating to the interception of communications revealed in Spring 2015, www.ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

[5] Ibid.

The report remarks that aside of the scandal with the interception of the communications which opened specific issues of the political crises, the corruption remains as most serious problem faced by the country. Therefore, the fight against political corruption should become a top priority of the state.

The general conclusion, not only in the area of corruption, is the considerable gap between the legislation and its application which must be urgently perceived and overcome. For implementing the recommendations of the Priebe report, the state shall require political will and determination to spot the shortcomings and to provoke changes. That is why all institutions should undertake responsibility in accordance with its competences.

As it was the case by now, the corruption found its place in the 2015 Progress Report of the European Commission on the Former Yugoslav Republic of Macedonia[6]. Although the report says that the country has a level of preparedness in the fight against corruption, it has established the necessary legal and institutional framework and it develops records for protection and prosecution, still there is no noted progress in relation to the identified unresolved problems. The corruption reserves the primacy of a broadly spread phenomenon.

As main reasons for inadequate handling of corruption are the lack of political will and the political interference in the work of the relevant bodies. Not only proactive efforts are sought by the enforcement bodies, regulatory and supervisory bodies, but also political will of all other participants, so to enable them to perform their functions completely.

That is due to the fact that corruption presents an unresolved issue whose innovative approaches for understanding and reduction do not give results that meet the expectations. The chances for the countries of the region to access the EU although remote, still secure framework and actions. The concerned parties on a local level, in particularly the civil society are those who show results in the fight against corruption. To achieve that there is a need for diagnosis and understanding of the corruption and assessment of the gaps that exist in the region as a main precondition for anti-corruption policies that are based on knowledge.

Undoubtedly, the corruption further remains a very complex phenomenon which appears as an individual shape of criminality, but also as a method for performing its most complex shapes.

The existing Criminal Code penalizes the active and passive forms of corruption in all their manifestations in the public and private sector, the active and passive influence, trough illicit enrichment up to abuse of funds for financing campaigns etc. For the perpetrators of these acts, the Criminal Code stipulates imprisonment ranging from the

[6] Progress report Macedonia 2015, www.wbcrti.info/object/document/14557/attach/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

minimum 6 months to maximum of 10 years. In practice, the most common proclaimed penalties are those ranging between three and four years, which does not necessarily, mean that the heavier ones ranging from 8 to 10 years are not imposed. That depends on the specifics of the case and the individual characteristics of the perpetrator of the criminal offense.

Pursuant to Criminal Code, a responsible body for handling most of the corruptive cases is the Basic Public Prosecution for Organized Crime and Corruption. Since 2007 this Office has special competence in terms of corruption and organized crime in the public sector, while as for cases of corruption in the private sector, act the Basic Public Prosecution (BPP) Offices throughout the country. The new Criminal Procedure Code has been in practice since 2013 and it has for its objective to strengthen the role of the Public Prosecutor in the pre-trial phase and to improve the capacity for handling the most complex cases of organized crime and corruption. Despite the numerous undertaken activities for the new system to enter into force, the capacity of the BPP service is not of such magnitude so to rapidly and efficiently handle all requests for undertaking investigations.

That is why at detecting, prosecuting and adjudicating, the investigative activities of the prosecution and the judicial monitoring by the rulings of the courts gain in value by realizing the changes in the phenomenology and the monitoring of the dynamics of its appearance. Hence, the concept of prevention must be based on scientifically verified findings of the phenomenology, etiology and the scientific verification of the means, methods, the instruments acting in terms of prevention and suppression of the crime by the bodies of the criminal prosecution. The fact that the criminal offenses like “Misuse of official position and authorization” and “Defraud” prevail in this crime, gives the impression that the other corruptive criminal offenses are rarely committed in reality or the operative capacity of the bodies for investigation provide efficient handling of only these two criminal offenses. That is why the access to victimization is based on survey where the system of corruption monitoring is applied and it gives a unique evaluation based on the received data from the trial monitoring about the progress in the fight against corruption. In such way the received data are worth for comparison of the national legislation and the institutional practice in most of the areas that make part of the fight against corruption and the international cooperation.

All the countries who face this problem have adopted certain strategic documents that contain a general approach to preventing corruption. Although there are differences among states, the implementation of these documents is generally aggravated due to insufficient resources and efforts by the highest authorities. Another problem is the preparation of strategies that embrace all possible aspects of corruption and giving priorities by changing of the approach to anticorruption, change of the focus from a petty corruption to major one and in terms of penalizing the major corruption. The key challenges of the anticorruption politics in the region is to close the gap in the implementation and to continue the monitoring of the changeable manifestations of the

corruption, at the same time to maintain the regulative stability and to avoid the frequent changes in the judiciary. Today the judiciary is effectively affected by corruption, but also all the other branches of the authority. We should not neglect the fact that the citizens do not have high esteem for the judiciary due to the lack of transparency and accountability, important factors in such assessments. Hence, it is indisputably that the capacities of the judiciary in the region in the implementation of the anti-corruption legislation, in particular in terms of the political corruption, are undermined by numerous problems with cumulative impact. Hereby I would stress the complexity of the criminal investigation of the perpetrators of this kind of criminal offenses, the insufficient capacities, the low professionalism, the huge volume of work, the lack of mechanisms etc.

The legal framework for prevention of corruption is envisaged with the Law on Prevention of Corruption. The following table presents all laws and strategic documents containing provisions on the fight against corruption in all its manifestations.

Legal framework

- Criminal Code
- Law on Prevention of Corruption from 2002 (including assets declarations)
- Law on Prevention of Conflicts of Interest from 2007
- Law on Free Access to Public Information from 2006
- Law on Lobbying 2008
- The UN Convention against Corruption 2007, and
- The conventions for criminal and civil law of the Council of Europe from 2002 and 2003

Strategic documents

- State Program for Prevention and Repression of Corruption with Action Plan from 2003
- Annex to the State Program for Prevention and Repression of Corruption - Measures for prevention and repression of corruption within the local self-government with Action Plan from 2005
- State Program for Prevention and Repression of Corruption with Action Plan from 2007
- State Program for Prevention and Reduction of Conflict of Interest with Action Plan from 2008
- State Program for Prevention and Repression of Corruption and the State Program for the Prevention and Reduction of Conflict of Interest with Action Plan 2011 -2015
- National Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest and Action Plan 2016-2019

Therefore, the general recommendation that can be sensed in the separate parts of this analysis, goes to the bodies of investigation and the judges who must use the best international practices, in particular the procedures for sanctioning and the mechanisms for accountability on a national and cross border level.

Mirjana Ivanova Bojadzieva, PhD
President of the
Coalition "All for Fair Trials"

FOR THE COALITION "ALL FOR FAIR TRIALS"

The Coalition of civil associations "All for Fair Trials"-Skopje represents an organization of 14 civil organizations from the territory of the whole Republic of Macedonia, hereby including:

The First Children Embassy in the World Megjashi-Skopje, the Civil Association MOST-Skopje, the Youth Educational Forum MOF-Skopje, the Youth Cultural Center MKC-Bitola, the Association for Democratic Initiative ADI-Gostivar, the Council for Prevention of Juvenile Delinquency SPPMD-Kavadarci, Association for counseling, treatment, reintegration and re-socialization Choise-Strumica, Association for Roma rights ZPR-Shtip, Association for children rights ZPD-Skopje, Civil informative center GIC SPEKTAR-Shtip, Humanitarian charity association of Roma HDZR Mesechina-Gostivar, Association of Tikvesh Roma ZTR-Kavadarci, Roma educative center REC Ambrela-Skopje and Civil Association MULTIKULTURA-Tetovo.

Mission

Monitoring the respect of human rights and freedoms, particularly the implementation of the international standards for fair trial through various forms of acting and the intent to increase the level of their implementation by initiating institutional and legal reforms, recovering citizens' trust in the judiciary and in the other institutions of the system.

Vision

Powerful and stable organization, a driving force and partner to the institutions of the system, elevating the Republic of Macedonia as a country where the human rights and freedoms will be fully respected, with special emphasis on the fair trial standards as an elementary condition for its integration in the European Union.

Goals of the Coalition

- to increase the respect towards fair trial standards before the national courts;
- to set up a public confidence in the legal system and the judiciary in general;
- to identify the inherited problems in the judicial system and to specify the need for legal and institutional reform;
- to acquaint the public with the standards for fair trial and to strengthen citizens' trust in the functioning of the legal system;
- to reduce the risks for improper treatment of the parties in the dispute by the judges and the other participants in the procedures.

1. SUBJECT, OBJECTIVES AND METHODOLOGY OF THE RESEARCH

1.1. SUBJECT OF THE RESEARCH

Corruption is one of the most prevalent forms of crime, leaving serious and profound consequences that lead to erosion of the overall economic, political and social system.[7] The corruption simultaneously violates the human rights and values, and undermines the human dignity. The corruption is not only present within the borders of one country but globally, its devastating effects are particularly enormous for the countries in transition and the developing countries. The need for undertaking concrete measures that will tackle this problem is more than necessary.

The fight against corruption and organized crime gets its high position among the priorities of the countries and it is on the agendas of many international and regional organizations, including the United Nations and the Council of Europe, who have adopted numerous declarations and conventions for prevention and fight of the corruption as a separate crime and a complex social phenomenon. Besides representing a worldwide priority, for us the corruption is on the fifth place on the list of priorities.

Within the Basic Public Prosecution Office there is a specialized Public Prosecutor's Office for Organized Crime and Corruption. It has the jurisdiction to act upon criminal offenses committed by a structured group of three or more persons, existing for a certain period of time and acting in order to perform one or more criminal offenses with the intention to directly or indirectly obtain financial or other benefits for which a sentence of at least four years is stipulated. The basic element in defining organized crime is to be committed by a group and the group should deliberately perform criminal acts for the purpose of acquiring certain benefit. In the definition for organized crime there are criminal offenses committed by structured group or criminal organization, as for example, "Abuse of official position and authorization", "Taking bribe" of considerable value, "Accepting a reward for unlawful influence", "Unauthorized production and release for trade of narcotics, psychotropic substances and precursors", "Money laundering and other income from crimes", "Terrorist threats to the constitutional order and security", "Giving bribe of considerable value", "Illegal influence on witnesses", "Criminal association", "Terrorist organization", "Terrorism", "Human trafficking", "Trafficking of migrants" and other crimes against humanity and international law of the CC, regardless of the number of perpetrators.

There are several forms of organized crime depending on who is conducting it and in which area. In this regard the offenses are grouped in organized forms of drug trafficking, organized forms of human trafficking, organized economic-financial crime. The organized economic-financial crime is directly linked to corruptive activities, and according

[7] Milenkovikj Temelkovska Tanja, Court Efficiency in Human Rights Protection in the Corruption related Cases, Skopje 2011

to the analysis on the need for trial monitoring of cases related to corruption, corruption is defined as misuse of the personal or somebody else's position or function in order to gain a profit, obtain an advantage or profit for him / her by the others.[8]

The Coalition "All for Fair Trials" eight consecutive years in a row implements a project based on the monitoring of court cases related to organized crime and corruption. The need for monitoring of criminal offenses from organized crime and corruption date back to 2007, when the pilot phase of the project "Assessment of the need to developing a program for monitoring corruption-related court procedures in the Republic of Macedonia" was implemented and as a result, in 2008 the project for monitoring cases of organized crime and corruption begun.

This pilot project defined the criminal offenses related to corruption in terms of legislation and case law. The final definition located 24 crimes that are directly correlated to corruption, those are *Bribery at elections and voting, Fraud, Defrauding buyers, Unauthorized acceptance of gifts, Purposeful creation of bankruptcy, Causing bankruptcy by unscrupulous operation, Abuse of bankruptcy procedure, Damage or privilege of the creditors, Money laundering and other income from crimes, Securities and shares fraud, Disclosing and unauthorized acquisition of a business secret, Abuse of official position and authorization, Embezzlement in the service, Defraud in the service, Use of resources for personal benefit while in service, Taking bribe, Giving bribe, Accepting a reward for unlawful influence, Unlawful obtaining and covering property, Disclosing an official secret, Abuse of state, official or military secret, Falsifying an official document, Unlawful collection and payment, and Illegal influence on witnesses.*

During the eight years of trial monitoring of cases of organized crime and corruption by the Coalition, the process of judicial reform in the country also took place. This process resulted in the biggest judicial reform of the Macedonian legislation, the new Criminal Procedure Code (CPC). Namely, the new CPC introduced more changes that will be separately considered further on. As the biggest key change is the abandonment of the inquisition model and application of the accusatory one.

Due to the still present need for trial monitoring of cases of organized crime and corruption, as well as the country's fight against organized crime and corruption, during 2015, the Coalition "All for Fair Trials" implemented a project for monitoring of these cases. The process of monitoring was carried out in a way that the emphasis were on the manner of conducting the criminal proceeding, i.e. the length of the procedure, the reasons for canceling the same, the right to defense during the procedures, and other parameters that determine the court efficiency in the fight against organized crime and corruption, the application of the standards for fair trial and the new provisions of the CPC.

[8] Analysis of the Need for monitoring court cases in the area of corruption, prof. Ljupcho Arnaudovski PhD, Slagjana Taseva, PhD and Suzana Saliu, Coalition “All for Fair Trials”, Skopje 2007.

1.2. OBJECTIVES OF THE RESEARCH

The main objective of the project and the analysis itself is to strengthen the independence, effectiveness and impartiality of the country's judiciary in the fight against corruption and organized crime and to contribute to proper implementation of the criminal - justice reforms with main focus on the new CPC.

The monitored cases included *Child prostitution, Unauthorized production and release for trade of narcotics, psychotropic substances and precursors, Burglary, Fraud, Fraud in receiving credit or some other benefit, Extortion, Usury, Covering up, Appropriation of goods under temporary protection or cultural heritage or natural rarities, Alienation of cultural heritage of significant importance in state ownership, Money laundering and other income from crimes, Smuggling, Endangering traffic safety, Violence against representatives of the highest state authorities, Espionage, buse of official position and authorization, Taking bribe, Giving bribe, Falsifying an official document, Illegal influence on witnesses, Counterfeiting a document, Participation in a crowd, which prevents an official person to perform an official action, Criminal association, Unauthorized manufacture, possession, mediation and trade in weapons or explosive materials, Human trafficking, Trafficking of migrants, Organizing a group and instigating performance of crimes of human trafficking, trafficking in juveniles and migrants and Trafficking a child.*

The Coalition initially started to monitor cases before the Department for Organized Crime and Corruption in accordance with the objective of the project. Since this part functioned in its best possible way i.e. as per the new CPC all cases were monitored before the Department, we decided to expand the monitoring over cases of relevance to the public, and other corrupt acts with aim to strengthen the findings of this analysis. The monitoring of the problems with the corruption and organized crime, and the need to ensure judicial independence were highlighted in several reports of GRECO for the Republic of Macedonia[9]. In this regard goes the 2015 Progress Report on the Republic of Macedonia which states certain level of readiness. The legislative and institutional achievements were, however, overshadowed due to lack of political will and political interference in the work of the authorities, especially in the high-level cases. There is still a need to record the efficient prosecution, especially the high-level corruption. However, in the last year no progress of the identified problems has been made and the corruption continues to be widespread.[10]

[9] Fourth circle of evaluation – Prevention of Corruption among the Members of the Parliament, the Judges and the Prosecutors, www.pravda.gov.mk/documents/Izvestaj%20na%20GRECO%20za%20eval%20na%20RM_Cetvrt%20krug_mk.pdf

[10] Progress Report Macedonia 2015, www.wbcrti.info/object/document/14557/attach/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

1.3. METHODOLOGY OF THE RESEARCH

As it was outlined in the Progress Report on the Republic of Macedonia there is a need for proactive, better coordinated and more efficient law enforcement for the purpose of ensuring that the cases of corruption, including those at high level, are properly investigated, prosecuted and sentenced, including seizure and confiscation of assets. There is a need for continuous record of concrete results in this area. Improvements are needed in data collection and the accessibility to improve the transparency and to support the monitoring of the implementation of the anti - corruption policies.[11]

In respect to all previous recommendations and in particular the most recent Progress Report on the Republic of Macedonia, there is still much to be done in terms of capacity building and raising awareness. The relevant bodies for fighting corruption should be proactive and should focus on the systemic problems. The public confidence in the effectiveness and the independence of the judiciary should be improved in order to encourage citizens to resist and detect corruption, while as the greater independence of the judiciary and the freedom of the media would strengthen the anti - corruption efforts.

The main goal of the research is by using the obtained data from the trial monitoring, to influence over the strengthening of the independence, efficiency and fairness of the judiciary in the fight against organized crime and corruption, and to contribute to proper implementation of the judicial reform, according to the strategic documents of the Republic of Macedonia for EU integration. Namely, starting with the damaging effects of the corruption and organized crime, the research would give a picture about the course of the procedures for this type of crime, will present a detailed analysis about the stages of the procedure, determining the court efficiency with the new legislative solutions of the criminal procedure in practice, the level of respect for the right to fair trial will be assessed, aiming at increasing the citizens' confidence in the judiciary. In this sense, one of the objectives of the research was the application of the novelties of the CPC in terms of greater efficiency, but also protection of the rights of the defendants.

Each research relies on the usage of certain methods that actually represent the way a specific research subject is approached. The methods that are used by the Coalition are the trial monitoring and the tool-questionnaire, prepared by experts in the field, and upgraded every year. The monitoring as a method allows direct observation by the trial monitors, or direct observation of the subject of the research. In this respect the identified cases related to organized crime and corruption before the Department for Organized Crime and Corruption conducted under the new CPC were monitored by 4 trial monitors, a team of 2 most experienced trial monitors and 2 prominent lawyers in this field. In this way the trial monitoring was reinforced by the perception and the ability of the foremost trial monitors of the Coalition and lawyers who directly monitored the court cases.

[11] Ibid.

The second method, the completion of questionnaire, was prepared in advance in a form of 75 questions that along with the answers were submitted to the Project Coordinator and were inserted into the database of the Coalition. This activity was of crucial importance since the obtained data are in fact data that provide a fair and transparent picture on the monitored cases. By analyzing the questionnaires and their subsequent processing and the presentation of the research results in final publication, the report gains a new value, supported by new and relevant information on the status of the court cases in the area of organized crime and corruption.

The questionnaires were completed during the immediate presence at the court procedures, and in this section it should be noted that in the narrative part of the answers of the questions there were remarks by the trial monitors that were not taken into consideration by the working group and/or remarks which are descriptive only. Only a small part of the questions are posed in a negative context which may confuse the trial monitor and give a misleading picture. There is also a question which contains two conflicting issues with a possibility for "yes" or "no" answer. As a recommendation for the methods of the research is the correction of the part regarding the questions, and the possibility for more open questions that would be explained in detail by the trial monitors. That would provide for greater observance of the operation, with a possibility for a comment on every question or an explanation of the answer which would confirm the impression of the trial monitor on whether certain procedural actions are taken or not.

Furthermore, the lack of some answers is a result of inclusion in the later stage of the trial procedures, but also due to the short time period for trial monitoring that cannot cover the ultimate outcome of the cases, i.e. to have data on the adopted judgments and the penal policy for criminal acts of organized crime and corruption. We tried to have only few trial monitoring that refer to previously started cases, as we could prepare an analysis that answers the whole judicial process, from the beginning of the procedure until the adoption of the judgment.

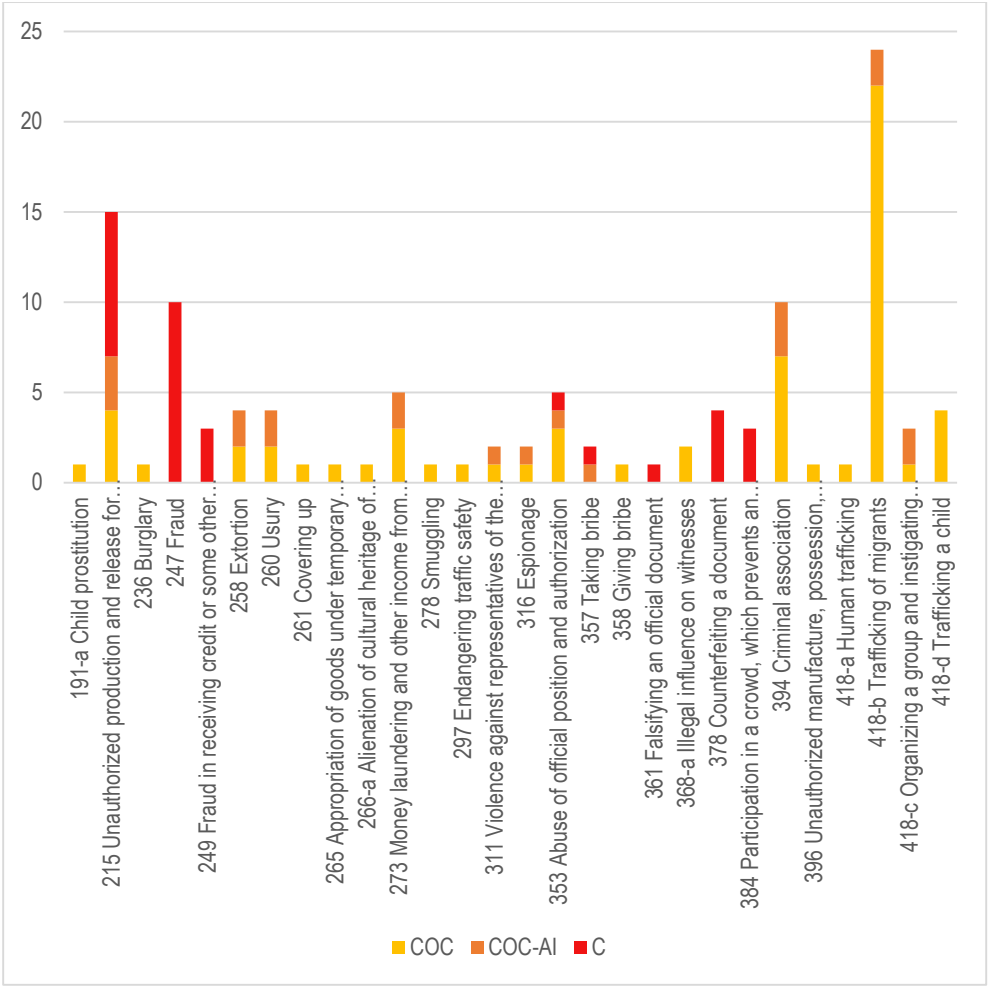
2. ANALYSIS OF THE RESULTS FROM THE MONITORING OF CASES OF ORGANIZED CRIME AND CORRUPTION

2.1. GENERAL INFORMATION

The analyzed data refer to a period of 7 months, when 86 cases with 215 hearings in the Basic Court Skopje 1 were monitored. The initial idea of the project was to monitor only cases before the Department for Organized Crime and Corruption, but due to the possibility of extending the database, the monitoring was spread over cases handled by the Criminal Council who assesses indictments and corruption cases from organized crime and corruption that are not handled by the Department for Organized Crime and Corruption, as well as to cases of importance to the broader public in accordance with the current situation in the country.

According to the database, the monitoring included a total of 44 cases handled by the Department for Organized Crime and Corruption (under the new CPC during the monitoring process), 10 cases for assessment of the indictment, 3 cases of importance to the public that refer to the protests of May 5, 2015 and a selected sample of 29 corruption cases. From the general data one can conclude that most of the criminal offenses are related to "Human trafficking and smuggling" (Article 418-a, 418-b, 418-c and 418-d of the Criminal Code), or from the total number of monitored cases, these offenses appear in 32 procedures. A large percentage of cases before the Department for Organized Crime and Corruption refer to the "Trafficking of migrants or child", in 24 out of 44 cases. The other criminal offenses that occur in most of the cases are as follows: 15 cases of "Unauthorized production and release for trade of narcotics, psychotropic substances and precursors", 10 cases of "Fraud" and "Criminal association", and a smaller number of other offenses that make part of the criminal offenses in the field of organized crime and corruption. The number of defendants in cases before the Department of Organized Crime and Corruption was 115 persons, but in 4 cases this information was not obtained. The number of defendants in cases of assessment of the indictment is 34 persons, in all other cases that number is 65 persons. The total number of defendants in all monitored cases was 214 persons.

In one hand the focus of the monitoring was on organized crime and corruption, but on the other hand, it was on the application of the new CPC. The close link between the offenses of organized crime and corruption very specifically reflects the situation of one society and the judicial mechanisms in response to that situation. In addition, the judicial reform of the CPC also points to the legal efforts for better and more efficient suppression of the crime.



Criminal offenses

Since this year the objective of the monitoring was to monitor cases that are handled by the Department for Organized Crime and Corruption, and within this project we managed to monitor all the cases conducted as per the new CPC, alarming is the fact that most of these cases refer to the criminal offenses of "Trafficking of migrants" as a separate offense from the large group of offenses related to human trafficking.

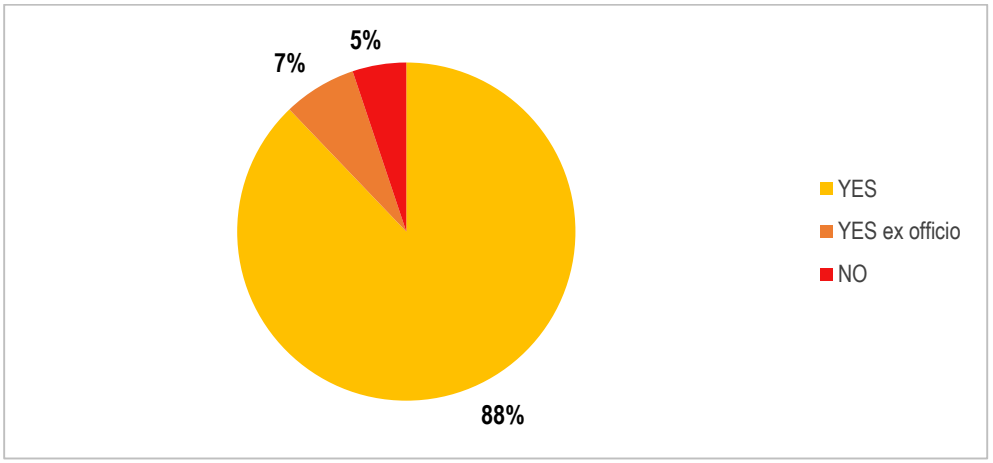
If you take into consideration the data in the period of 2011 to 2014, it will be noted that the criminal cases related to trafficking of migrants appear in a relatively small number at the end of 2013.[12] If we make a comparative analysis with the previous years, it will be noted that this offense was not always highly prevalent, the overwhelming number

[12] "Judicial efficiency and exercising the fair trial"- Coalition All for Fair Trials, 2014, www.all4fairtrials.org.mk/Main_files/Korupcija_2015_MKD.pdf; "Judicial efficiency in handling organized crime and corruption", Coalition All for Fair Trials, 2013, www.all4fairtrials.org.mk/Main_files/Korupcija_2013_MKD.pdf;

of 32 cases in this area of this year [13] indicate the way the Macedonian society responds to the global theme concerning the refugee and migrant crisis.[14]

From the other offenses, the most common are: "Unauthorized production and release for trade of narcotics, psychotropic substances and precursors", "Fraud" and "Criminal association". Unlike the previous years when the offense "Abuse of official position and authorization" prevailed, in this period of monitoring, we monitored only 5 cases of this offense.

The monitoring data show that 88% of the defendants had their own defender i.e. in 118 hearings, while as in 7% an ex officio defender was appointed. Only in 5% of the cases the defendants did not have a defender, the procedures refer to criminal offenses where the defense was not mandatory, or the procedures were postponed due to that reason.



Defender of an accused person

2.1.1. Assessment of the indictment

After the completion of the investigation when the PPO determines sufficient evidence for adopting the judgment of conviction, it prepares and submits the indictment to the relevant court. The Judge or the Council for review of the indictments, submits the indictment to the accused person, who can appeal it within 8 days. Once the Judge or the Council finds that the complaint is timely submitted and filed by an authorized person, it commences the assessment of the indictment, if it is a Judge the assessment is done independently, while as the Council conducts the evaluation in a session. The Judge or the Council may also do the evaluation during a hearing. At the hearing, the Public

[13] 24 criminal offenses 418-b, 4 criminal offenses 418-d, 1 criminal offense 418-a and 1 criminal offense 418-c

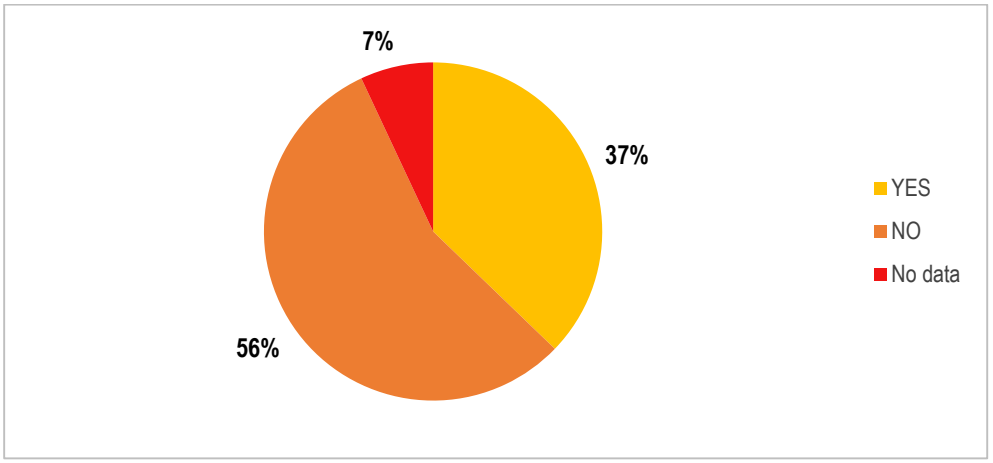
[14] Before entering into force – Amendments to the Law on Asylum and Temporary Protection, www.pravdiko.mk/zakon-za-azil-i-privremena-zashtita/, all the persons who were caught transferring refugees/migrants for the criminal offense Smuggling of migrants or Smuggling of child

Prosecutor, the defendant and the defender, in case the defendant has a defender, are also invited to participate.

For 10 of the monitored cases there was a hearing for assessment of the indictment. Out of 10 monitored cases, on 3 hearings the court was notified about the proposal – a settlement between the Public Prosecutor and the defense[15], in 2 a judgment was adopted due to a guilty plea, in 3 cases the court adopted a decision for approval of the indictment, in 3 cases the court announced a written opinion on the decision, none of the cases had a special decision where the indictment was rejected as groundless.

2.1.2. Application of the abridged procedure

Since most of the monitored cases were conducted before the Department for Organized Crime and Corruption, the possibility for an abridged procedure was usually applied in criminal cases outside the Department for Organized Crime and Corruption, where the envisaged main penalty is a fine or imprisonment of up to five years. 37% of the monitored cases had abridged procedure, in 7% that data is not recorded while as the remaining 56% of cases are conducted in a regular procedure.



Abridged procedure

2.1.3. Preparations and conditions for holding the main hearing

One of the most important novelties in the new CPC refers to the main hearing. The main hearing as a central stage in the judicial procedures, from the point of view of the monitoring, is the most important part since it comprises most of the tenets of the criminal procedure and the international principles. Namely, unlike the previous CPC where the court played the main role even in proposing the evidence when the parties in a procedure have not stated, with the new amendments to the CPC, that role of the court

[15] More about the settlements in Chapter 3-Analysis of penal policy

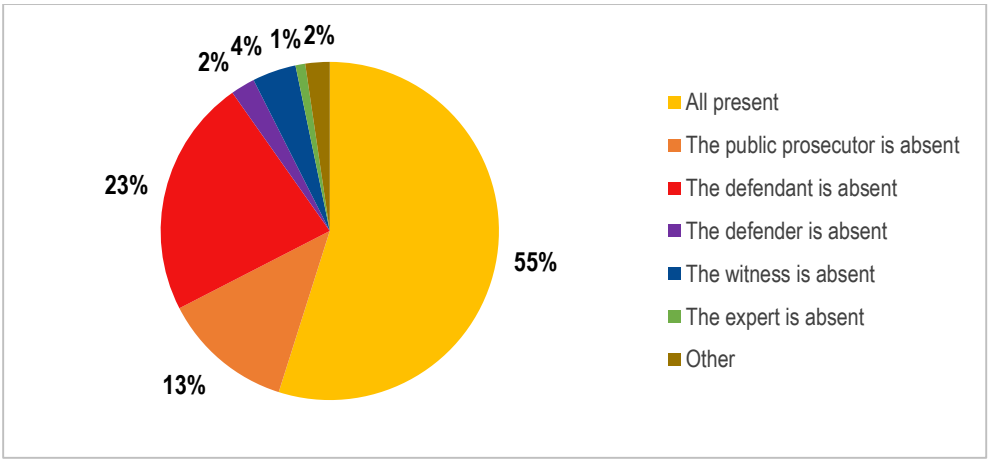
is seized as it is the case in the Anglo - Saxon model where the parties are those who actively participate in providing, proposing and presenting the evidence.

On the basis of the perception of the trial monitors in view to the preparations for the main hearing i.e. the scheduling of the main hearing for a particular time and place, the general impression is that very often the court did not respect the time of the commencement of the hearing, and often changes the location of its maintenance. In several occasions it is noted that some hearings are not held at all, without explanation or announced next term. Such shortcomings hamper the work of the trial monitors and the public who has the legal right to attend the trial. Postponement of hearings without explanation and not having a hearing at all is contrary to the principle of transparency and impartiality of the court. Also, as an appealing information is the fact that sometimes the trial monitors who present the public, are denied the right to attend the hearing by the judicial police, a right entitled only to the judge to exclude the public from the main hearing.

The main feature of the main hearing in accordance with the new CPC is the accusatory where the parties propose and present evidence, in which case the court is released of voluntarily proposing the evidence. The burden of the proving in the main hearing falls on the parties, the prosecution is obliged to prove the guilt of the defendant. However the court retains the oversight role required for smooth conduct of the hearing. For the purpose of holding the main hearing it is necessary to secure appropriate conditions, particularly significant is the presence of all summoned persons.

From the received data of the monitored cases one can conclude that in 55% the summoned persons were present, i.e. in 118 hearings. In the remaining part of cases, the most absent was the defendant (49 hearings), as well as the Public Prosecutor (27 hearings). Insignificant is the number of cases where the witness, the defender or the expert were absent. The new CPC did not envisage amendment to the main hearing, thus the Article 359 stipulates that the main hearing is held continuously, and in cases where a conclusion of the main hearing is impossible to adopt in one session, the President decides to continue the session in the next working day.[16]

[16] Criminal Procedure Code, Official Gazette 150/2010



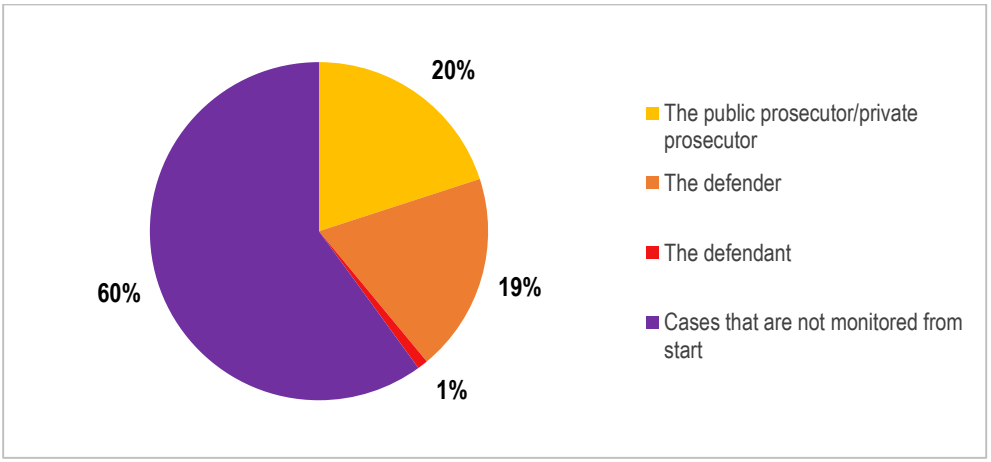
Presence at the main hearing

Since the data on the number of issued security measures, are often lacking, it is difficult to determine the reasons for the absence of the defendant, i.e. if there were objective reasons, that depend on the authorities who implement the security measures. In some cases it is stated that the defendant or the defendants are not present due to the inability to transfer them from the detention and / or prison where they serve the penalty for other crimes. Due to these reasons, the technical equipment of the law enforcement authorities, the communication between the court and the correctional institutions are indicators that point to the lack of preparedness, which leads to delays of the hearings. Also in a number of cases or hearings it is noted that the defendant / defendants are inaccessible to the prosecuting authorities i.e. they are on the run. The CPC provides for the defendant to be tried in absentia only if he/she is on the run or if he/she is not available to the state authorities, if there are particularly important reasons to be tried in absentia, a legal provision which the court uses in a significant number of cases. Of particular concern is the fact that the postponement of the hearings sometimes happens due to the absence of the Public Prosecutor. In 23% of the monitored hearings the absence of the Public Prosecutor was the reason for postponement. This data indicate that the Public Prosecution does not have a sufficient number of Public Prosecutors and / or lack of coordinated timetable of work between the court and PPO. As far as the absence of the witnesses, the defenders and the experts is concerned, although small is the number of cases where they are the reason for delay of the hearings, the court is obliged to inform the witnesses and the experts that in case of unjustified absence the absent would be forcibly brought to court, or be fined if he/she was duly served but unjustifiably absent. Once again the trial monitoring data highlight the problem of absence which may be due to the improper delivery service, but also due to the insufficient awareness of the citizens about the need for presence at the hearing.

2.1.4. Introductory speech

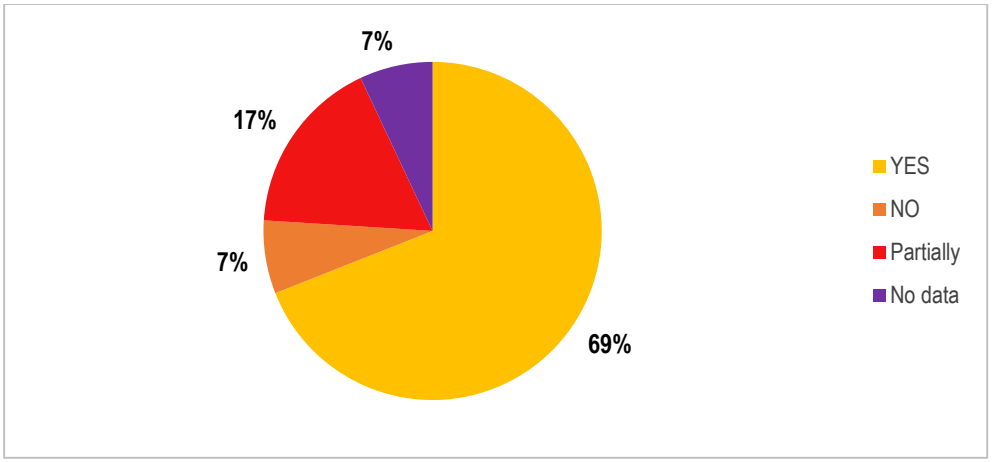
The new CPC introduced the instrument of an introductory speech of the parties, i.e. it is confirmed that the main hearing will begin with introductory speeches. In these statements, the parties have the possibility to present the facts that they intend to prove, to present the evidence, but the defendant has the right to refrain from a speech at the beginning of the hearing. In the previous CPC the procedure started by reading the indictment / proposal, the new CPC introduced an introductory speech given by the prosecutor, then the defense or the defendant. In accordance with the procedural role and the burden of proving the guilt, the PPO has the obligation to give an opening statement, while as the defense may independently decide whether to use this possibility.

According to the data received from the monitored cases, this novelty has been successfully implemented, thus in 29 cases that were monitored from their beginning, in all of them there were introductory speeches, in 40% the Public Prosecutor gave his/her introductory speech, in 39% the defender, and in 1% the defendant. In 57 cases this data is missing which indicates to subsequent inclusion of the trial monitors in the procedure, i.e. the monitoring of a case in a later stage, 37 of those cases were held in an abridged procedure where the opening statements were not required.



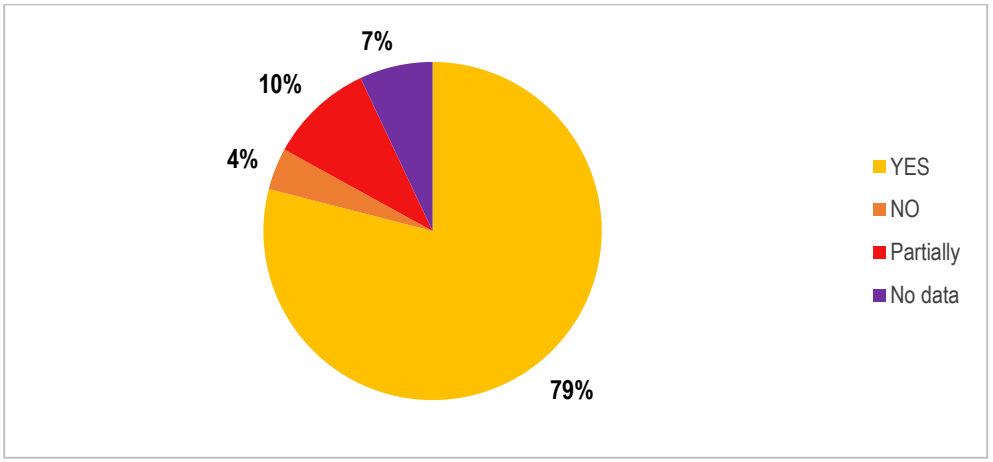
Introductory speech

According to the perception of the trial monitors in 20 cases, i.e. in 69%, one could understand what the introductory speech of the Public Prosecutor's Office claims and which facts will be proven. In 2 cases the introductory speech of the Public Prosecutor's Office were not understandable, in 5 cases only partially the claim was understood, and in 2 cases there are no data about the qualifications of the introductory speech.



Understanding the introductory speech of the Public Prosecution Office/Prosecutor

As far as the introductory speeches of the defender are concerned, as per the perception of the trial monitors, in 23 cases i.e. 79% of the introductory speech of the defender one could understand what has been claimed and which deciding facts will be proven. Only in one case the introductory speech of the defender was not understandable, in 3 cases only partially, and in 2 cases there are no data about the qualification of the introductory speech.



Understanding the introductory speech of the defender

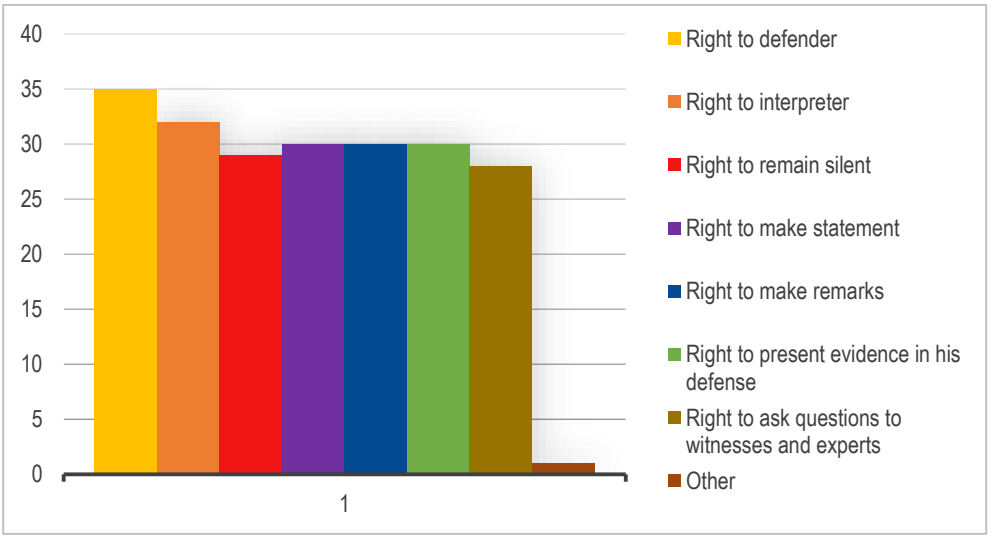
Only in one case where the defendant gave an introductory speech, the speech was assessed as partly understandable.

2.1.5. Moral rights and recognition of guilt

Pursuant to the CPC, after the introductory speeches the court starts instructing the defendant, in accordance with Article 380 paragraph 1 after the introductory speech of the prosecutor, the court asks whether the defendant understands the charges. If the court finds that the defendant did not understand the charge, it stipulates the content of the indictment in a comprehensible way.

From the observed cases one can note that in 43 cases or 50%, the court asked the defendant whether he/she understands the content of the indictment, in 50% of the cases this information was not recorded due to subsequent inclusion of the trial monitors in the procedures. Most of the data regarding this issue are lacking due to the absence of the defendant, and part due to the fact that the procedures were observed after the initiation of the main hearing, in a procedure of presentation of evidence. It is particularly important that this part of the procedure should make part of the future monitoring i.e. to be noted that the court gave clarification, if needed, in cases when the defendant did not understand the content of the indictment. In 39% when the defendant did not understand the accusation, the court gave clarification of the charges.

The court has a duty to point to the defendant his/her right in a procedure. The principles or the rights related to a defendant and the right to an interpreter are specifically listed in CPC, whereas the Article 380, paragraph 2 determines that the court instructs the defendant about the right to remain silent or to give a statement and to advise him/her to carefully follow the course of the main hearing, stressing that he/she could present evidence in his/her defense, to ask questions to the other defendants, the witnesses and the experts, and to make notes regarding their statements.



Moral rights

From the obtained results one could see that in 35 cases the defendant was advised of the right to a defender, in 32 cases to the right to an interpreter, in 29 cases

the defendant was advised to remain silent, in 30 cases the defendant was advised to the right to make a statement, the right to make observations, and the right to present evidence in his/her defense, and in 28 cases to ask questions to witnesses and experts. It can be noted that in 41 cases (10 cases were exempted for assessment of the indictment), there were no evidence of the moral rights, bearing in mind that 76 cases were monitored, which again points to subsequent inclusion in the trial, i.e. monitoring at a later stage of the procedures. In order to assess the issue of the moral rights of the defendant as one of the principles for fair trial, it is necessary to begin with the monitoring of the procedures in their initial phase, the observation should cover the main hearing.

Once the court instructs the defendant of his/her rights, it invites him/her to give a statement about the criminal offenses of the indictment, whether he/she feels guilty or not. If the defendant plea the guilt, in the further course of the procedure only evidence related to the decision of the sanction would be presented.[17] In case of pleading the guilt, the court is obliged to examine whether the confession was given voluntarily, whether the defendant is aware of the legal consequences of the act, and about the consequences related to the property claims and the legal costs.

Pleading the guilt must be willingly, with the obligation of the court to investigate that the rights of the defendant are legally protected. It is especially important for the defendant to fully understand the offense, but also the consequences arising from the recognition of the guilt. This is significant since in the paragraph 3 of the Article 381, it is stated that the judgment or part of the judgment which results from the guilty plea by the defendant at the main hearing, cannot be appealed as a result of wrongly determined factual situation.

According to the monitored cases, in all 24 of them where the defendant pleaded guilty, questions were asked for the purpose of verifying the recognition in terms of the characteristics of the criminal act, also in all 24 cases there were questions about the voluntariness of the confession, so as about the awareness of the defendant about the consequences of the recognition. However, it is noted that the defendants were often pressured by their lawyers or the court to admit the guilt, which entirely contradicts the principle of the presumption of innocence.

2.2. PRESENTATION OF EVIDENCE

With the new CPC, the role of the court during the presentation of the evidence, has undergone a qualitative change, which is in line with the strengthening the accusatory of the criminal procedure, which is most apparent at the main hearing. Unlike the previous CPC when during the main hearing, the court had the main role in the presentation of the evidence, with the new CPC the whole process of the presentation of evidence starts with the examination of the witnesses, experts and the technical advisers, as well as the

[17] More on judgments due to a guilty plea in the Chapter 3 - Analysis of penal policy

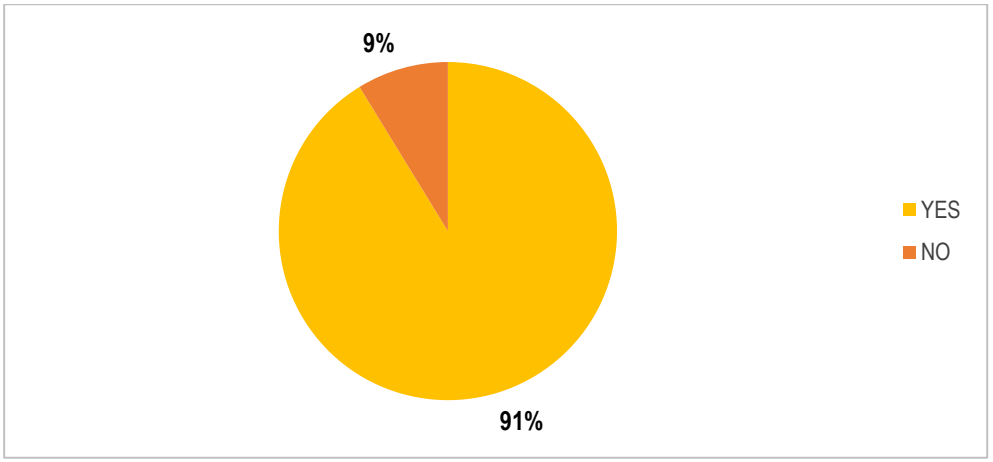
examination of the defendant, if his/her examination is conducted on a proposal of the defense, with the novelties this role passes on the parties who has proposed this evidence. The court or the President and the members of the Council may ask questions to the witnesses, the experts and the technical advisers, once their examination by the parties is completed.

2.2.1. Order of the presentation of evidence

The evidentiary procedure starts with the presentation of evidence proposed by the prosecution and accepted by the court. In the new criminal procedure there is no presentation of evidence on proposal of the court.

At the main hearing, during the evidentiary procedure, the proposed evidences are presented in a certain legal order. Firstly are presented the evidences on the basis of which the indictment is founded, and then the evidences related to property - legal requirement, followed by presentation of evidence offered by the defense. After the presentation of evidence of the defense, the new CPC gives a possibility for presentation of evidence to refute the evidence of the defense - called replica, followed by presentation of evidence by the defense, in response to the challenging - called rejoinder.

From the obtained data of the trial monitoring it is determined that in cases where there was a presentation of evidence, in 91% of the cases the legal order of presentation of evidence is observed, only in few cases the order is not observed but it is indicated that due to complexity and the efficiency of the procedure, there is a deviation from the statutory prescribed order.



Legal order of the presentation of evidence

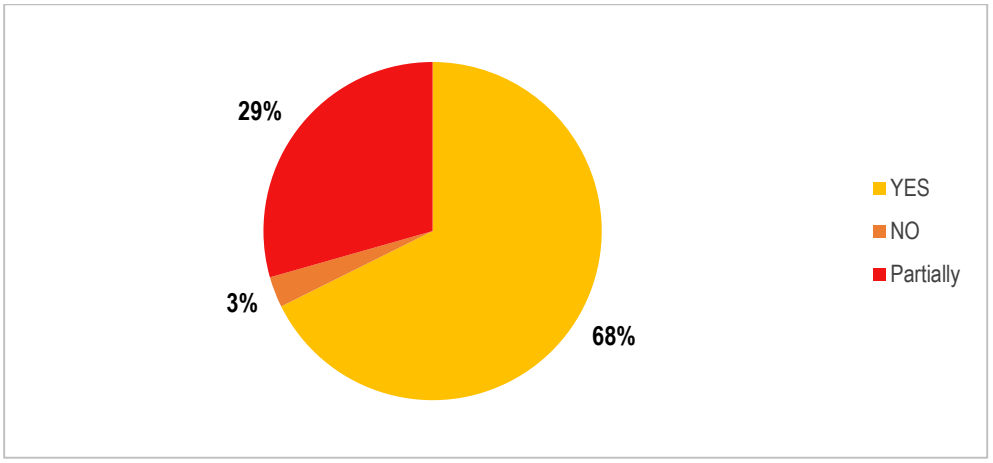
2.2.2. Direct, cross and additional examination

During the presentation of the evidence, the examination could be direct, cross examination and additional. The direct examination is performed by the party who has invited the witness i.e. the expert witness; the cross-examination is performed by the

opposite party, while as the additional examination is once again performed by the party who has invited the witness or the expert. Questions that provoke answers are allowed during the cross-examination, and during the direct and additional examination for the purpose of clarification of the foregoing.

In direct examination questions are asked to its own witnesses, the questions should be short in order to get more extended answers, the witnesses should be prepared for the examination because the direct examination is a basis for further cross-examination. During the direct examination explanation by the person who is examined is expected, it is necessary to present answers who is the perpetrator of the criminal acts, where and when the event took place, what is the motive, what are the consequences, i.e. what are the damages incurred upon its commitment. It is of particular importance that during the direct examination, the questions to the witness or the expert should be clear and precise. From the monitored cases, one could conclude that in all cases when there was a direct examination of a witness / expert, in 78% of the cases the questions were clear and precise and only in 12 cases the questions were partially clear and precise.

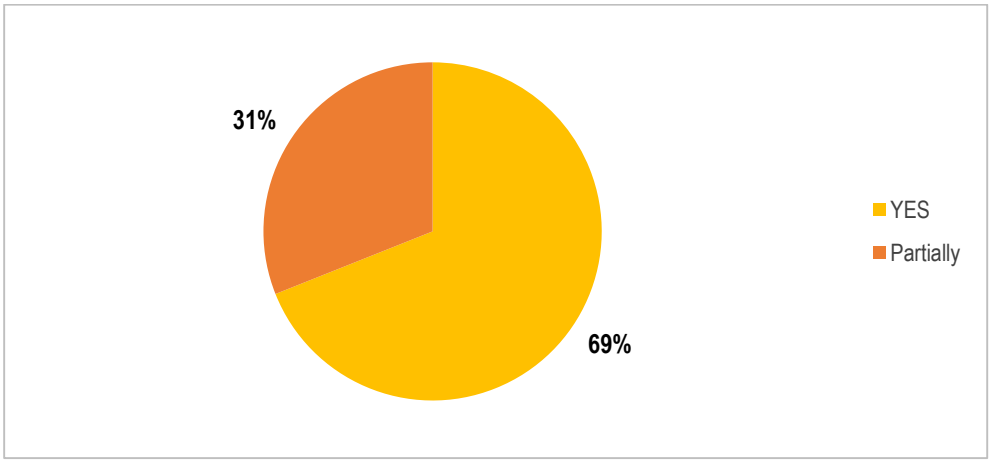
The data referring to the readiness of the prosecution and the defense for direct examination is very interesting. Unlike the last year when the trial monitors had the impression that the defense was less prepared, this year the impression is that the defense and the prosecution were equally prepared, even in one case the PPO gave the impression that it did not know well the case, such percentage does not appear among the defense.



Preparedness of the PPO for direct examination

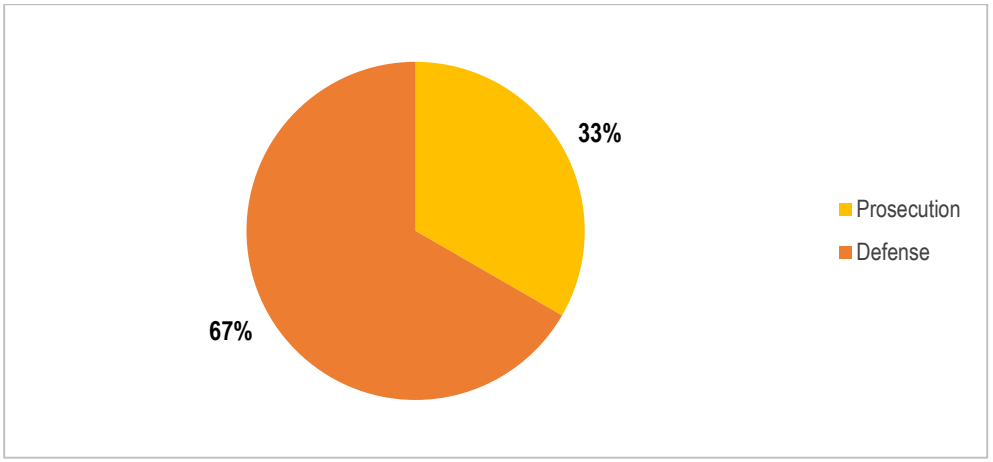
With the new concept of the CPC there is a need for an active role of the parties in terms of the preparation and presentation of the evidence before the court. Apart of the direct and additional examination, the cross-examination is a novelty that requires respect

of the rules of admissibility and relevance of the evidence regardless of the party of the procedure in question.[18]



Preparedness of the defense for direct examination

The cross-examination refers to what the witness has said during the direct examination. The aim of the cross-examination is to reduce the value of the statements that the witness has given in direct examination, i.e. the possibility to refute certain statements or to relativize certain actions. The cross-examination requires special preparation, cooperation with the lawyer for the purpose of readiness for the cross examination questions. It is important that the cross-examination may not be implemented if the defender believes that it is in the interest of the defense. From the trial monitoring data it is noted that the cross-examination is more used by the defense than the PPO.

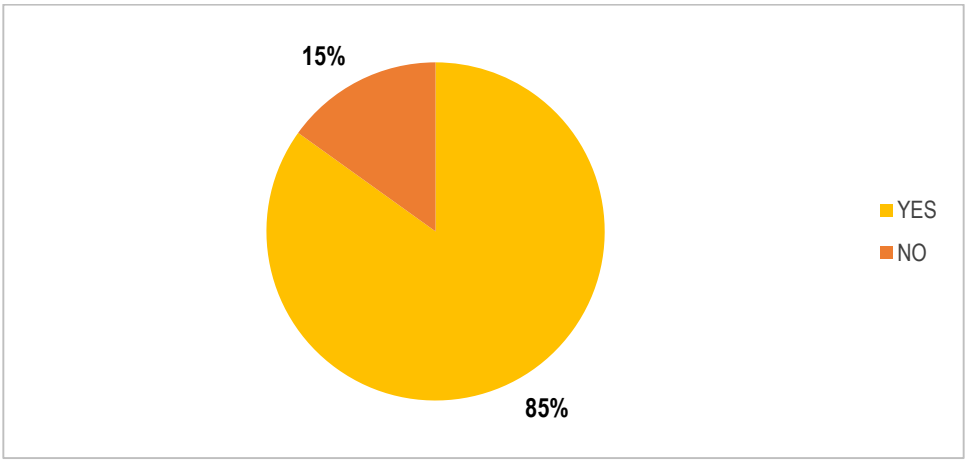


Use of cross-examination

[18] Cross-examination manual for practitioners, Gordana Buzarovska etc., OSCE 2010

There is evidence that only in small number of cases the court did not allow presentation of evidence, in 2 cases by the defense and in 3 cases by the PPO. This data indicates that the Court takes into account the principle of equality of arms. In particular, use of the right to cross-examination of the witness / expert previously directly examined, is always allowed by the court, unlike the last analysis when in 14 cases where this right was required, the court granted it only in 4 cases.

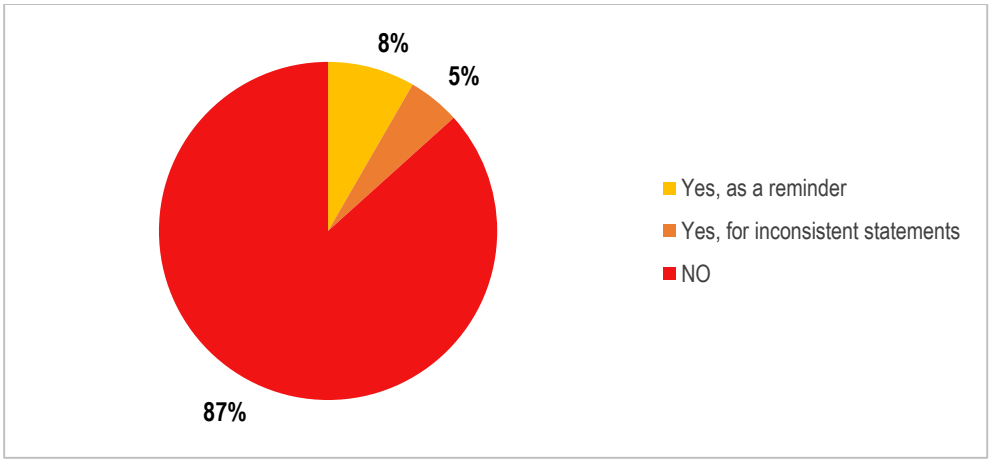
During cross-examination usually "closed questions" are used where mostly "yes" or "no" answers are required. Data monitoring show that in 85% closed questions were used, while as in 15% the questions were not of that kind.



Use of closed questions during cross-examination

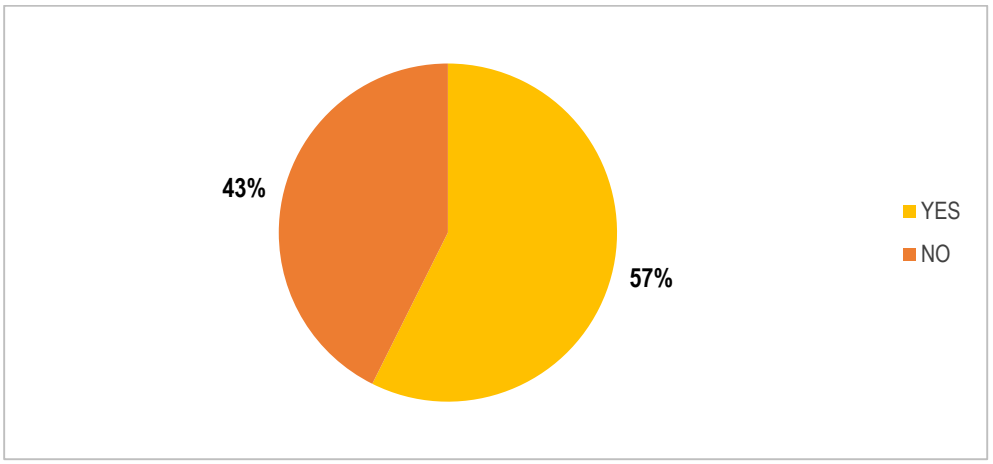
One of the points in the use of cross-examination is that it should be smoothly implemented so that the purpose of the questions could be demonstrated. Unfortunately, in 16% of the monitored cases where this right was used, the same right was interjected, hence, that interjection is due to the fact that the audio - visual recording of the cases has not been yet established under the new CPC.

In 8% of the monitored cases it is noted that during the examination statements given previously were used, the legal structure in the cross-examination allows for questions to contain a reminder of what the witness has said during the direct examination, in 3 cases the statements given previously were used due to inconsistency in the statement.



Use of the statements given previously

Although the parties are the main examiners in the procedure, still the court may ask questions, but only after the examination of the parties is being completed. In this part, the court used the right to ask questions to the witness or the expert in 57% of cases and in 26 cases it did not use this right.

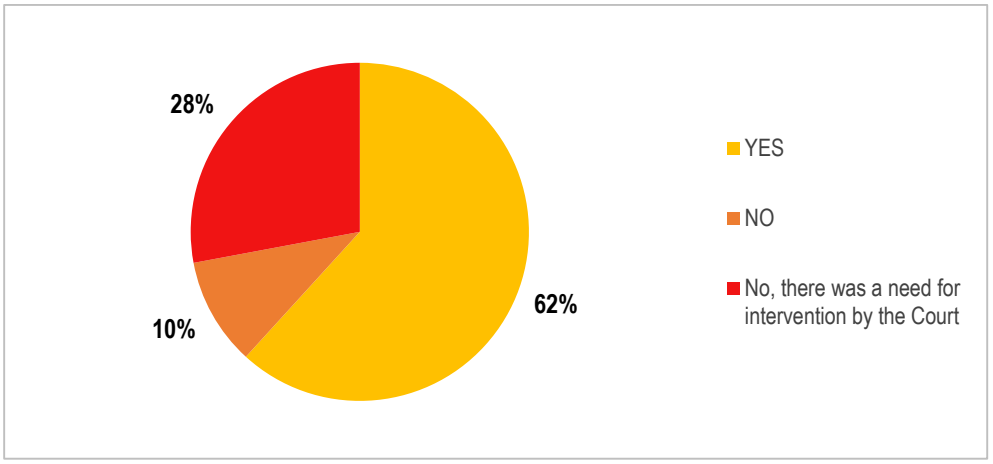


The Court used the right to ask questions

2.2.3. Admissibility of questions and objections

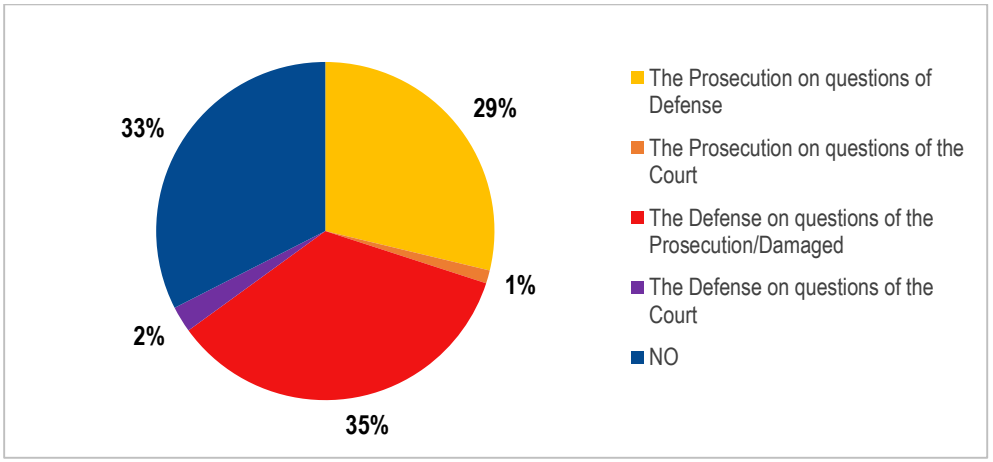
The court is obliged to control the manner and the order of examination of witnesses and the presentation of the evidence, taking into consideration the efficiency of the procedure, it may refuse presentation of evidence if it considers it unnecessary, to approve cross-examination, to take care about the admissibility of questions, fair examination and justification of objections, and for the dignity of the parties, the defendant, the witnesses and the experts.

As for the intervention of the court in respect to the admissibility of questions, in 62% of the cases it is noted that the court took care of the admissibility of the questions, the validity of the responses and the fair trial, in 28% of cases the court did not need to intervene, and in 7 cases it was noted that the court did not care.



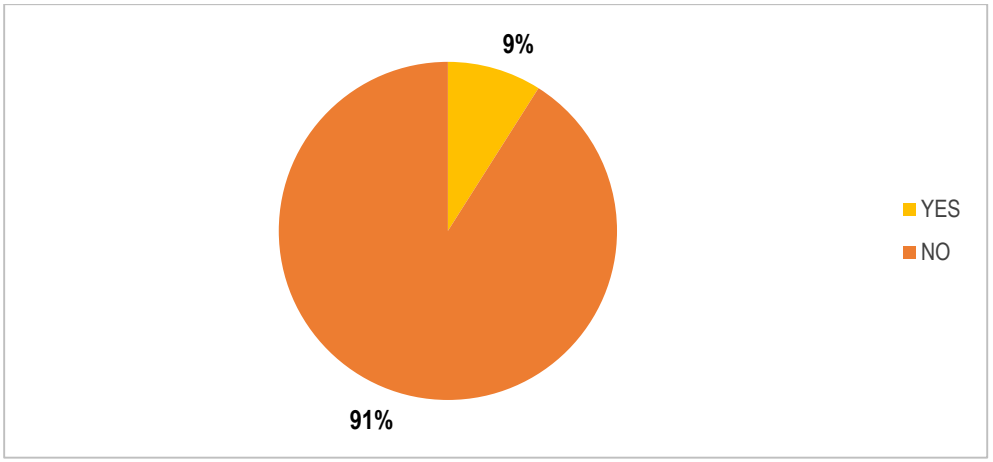
The Court took care of the admissibility of the questions, the validity of the responses and the fair trial

The court may act upon objections of the parties and with a decision to ban a question and answer of a question that has already been asked, if it considers it inadmissible or irrelevant, and to prohibit asking questions that contain question and answer, except in cross-examination. The data from the trial monitoring show that both, the defense and the PPO, successfully use the objection to the questions. More specifically, the defense objected in 30 cases, in 28 cases to questions of the PPO and in 2 cases to questions of the court. While as the PPO objected in 24 cases, out of which only one case to questions asked by the court.



Objection to questions

Although the CPC governs the principle of immediacy, it also foresees exceptions of proving at the main hearing. According to the law, proving of evidence is based on a statement of a person and that should be examined at the main hearing, except in cases of examination of a protected witness, while as the statements of witnesses given during the investigation and the statements collected in the framework of the activities of the defense during the investigative procedure may be used in cross-examination or in disproving of any of the allegations or in response to rebuttal, for the purpose of assessing the authenticity of the statements made during the main hearing. In Article 388, paragraph 3 it is determined that "If, after the commencement of the main hearing there are indications on the basis of which it may be concluded that the witness was subjected to violence, threat, promise of money or other benefits in order to refrain from testifying or false testimony at the main hearing, the witness statements given to the public prosecutor in the previous procedure may, by decision of the court, be presented as evidence".[19] Also, there is an exception when the person who gave the statement died, became mentally ill, or is unavailable. To the question whether the article 388 of the CPC was applied, the trial monitoring data show that only in 5 cases there was an exception during the proving at the main hearing, when the statements of the witnesses were read.

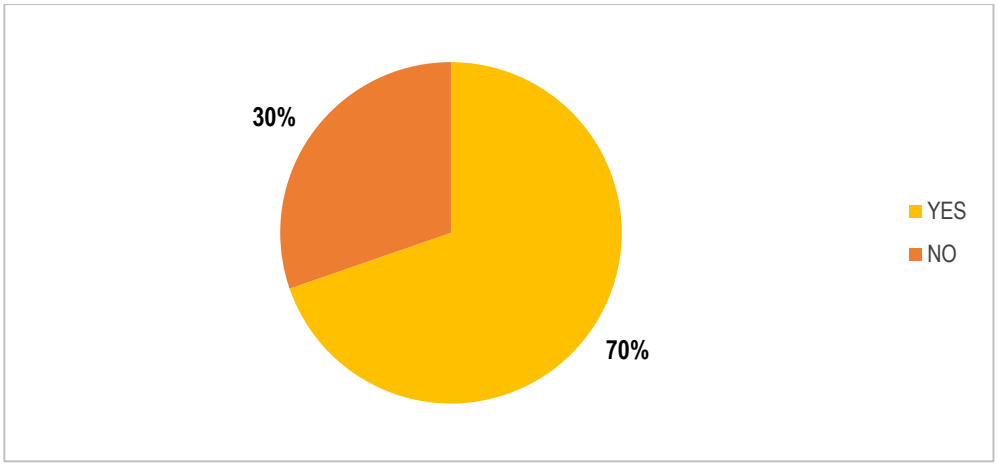


Application of art.388 of CPC

2.2.4. Examination of defendant

With the new CPC the defendant may be examined only if there is a proposal by the defense. With this novelty the legislator endeavored for the defendant to decide together with the defender whether to be examined. From the data obtained in 23 cases the defendant was questioned at the main hearing, while as in 10 cases he/she was not.

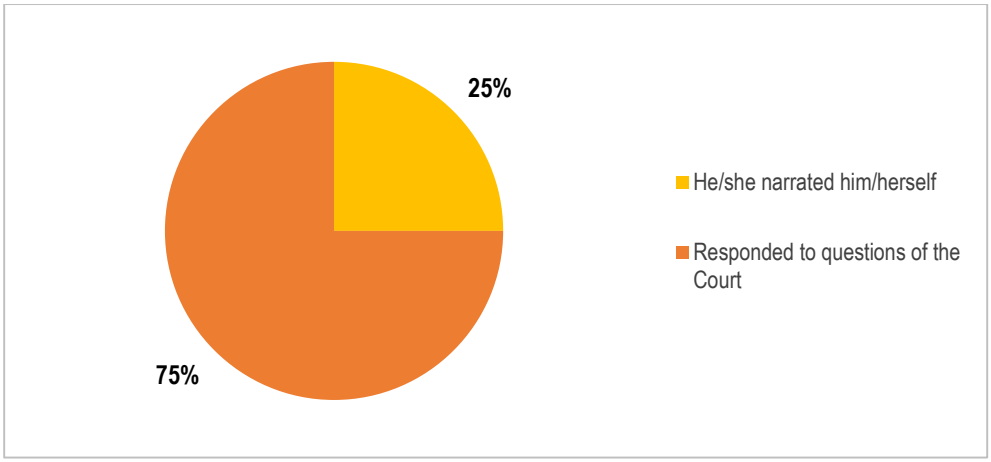
[19] Criminal Procedure Code, Official Gazette of the Republic of Macedonia No. 150 from 18.11.2010



Examination of the defendant in relation to the crime

In 26 cases the defendant was questioned in respect to the circumstances relevant to the determining the sentence.

The Criminal Procedure Code stipulates for the defendant not to be compelled to testify against himself or to confess the guilt or to present his defense. In line with this, it is necessary to distinguish between giving testimony about the event and giving the defense, which implies that giving the defense does not mean at the same time giving a statement on the case. In 4 cases where the defendant did not have a defender, the examination was conducted in a way that in 1 case the defendant him/herself talked about the indictment at the main hearing, and in 3 cases he/she answered the questions of the court.



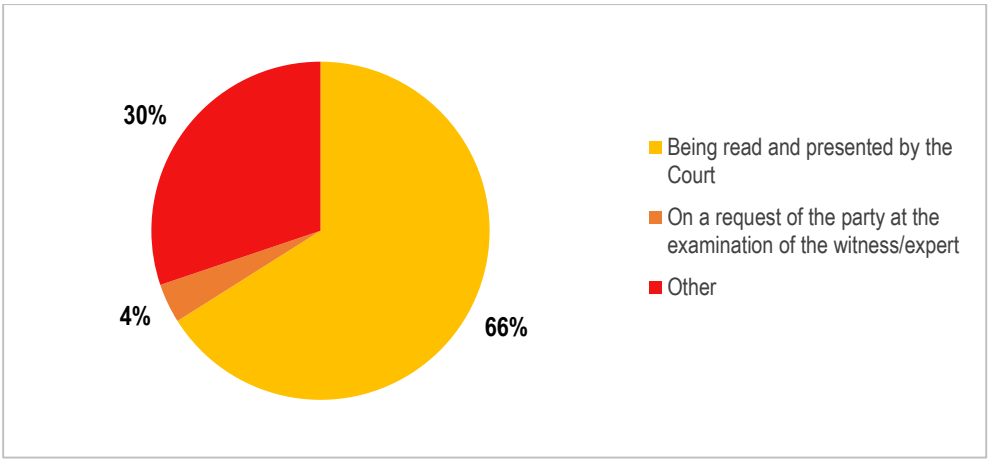
Manner of examination of the defendant who did not have a defender

In terms of the possibility to use the statements of the defendant from the previous procedure, considering the statements given to the police in the presence of the public prosecutor, it is noted that only in 4 cases this possibility is used. In this section one can

concluded that generally the courts have a positive practice, keeping in mind that exactly the intention of the new law was for the evidence to be presented in public and adversarial hearing before the court, while as the reading of the statements from the previous procedure to be used only as an exception.

2.2.5. Manner of presenting written and material evidence

The presentation of evidence or the manner of presenting the written and material evidence under the new CPC has brought uncertainties in the procedure. Namely, as per the introduced changes, the court has a passive role, whereas PPO and the defense play an active role in the procedure for proving the guilt by the Public Prosecutor, and the preparedness of the defense to respond to the PPO. According to the monitored cases in 66% of the cases the evidence in the procedure were presented by reading and by presentation of the court, and only in 2 cases at the request of the party during the examination of the witness or the expert. From these data it can be concluded that most of the written and material evidence are still read and presented by the court, and not by the parties in the procedure, in compliance with the new CPC.

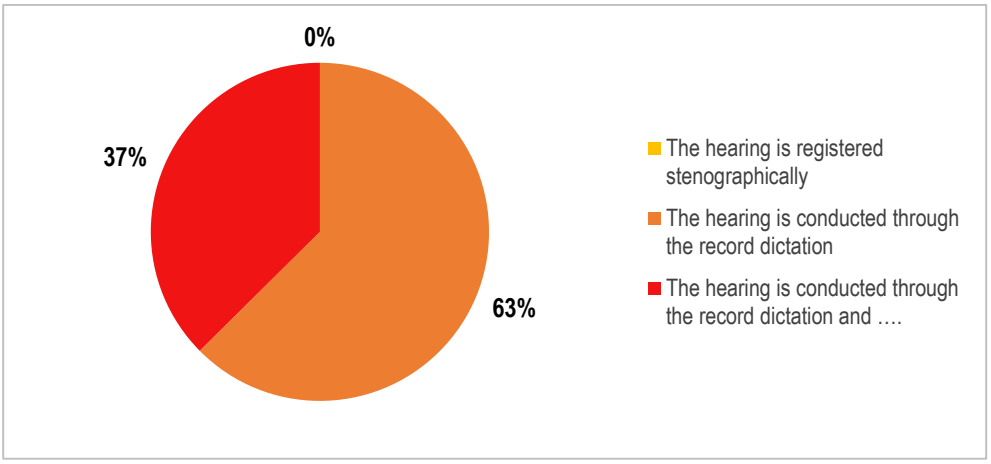


Manner of presenting the written and material evidences

2.2.6. Manner of registration during the presentation of evidence

The new CPC imposed new material - technical conditions for recording during the main hearing. Namely, article 374 states that the main hearing is audio or visually recorded. When there are no technical requirements for audio or visual recording of the main hearing, the presiding judge of the council may order a shorthand minutes for the course of the main hearing. But one of the major objections remained in this respect, the courts remain further insufficiently technically equipped to be able to use the modern techniques for registration. Namely, the data showed that in most cases the registration during the hearing and the presentation of evidence is noted by keeping the record dictation by the President of the Council, in 63% still the courts use this method. In 58 cases it is noted that during the hearing

minutes are taken through dictation by the judge and a direct input of the questions and the answers from the direct and the cross-examination. It is of concern the fact that almost after 2 years since the application of the new CPC the use of technique for audio-visual recording has not been in place.



The manner of duration and registration of the evidence at the main hearing

2.3. STANDARDS FOR FAIR TRIAL MONITORING

One of the postulates of the legal state law and the rule of law are the standards for fair trial. These standards are the basis of every democratic state that guarantees its citizens equal access to justice. They reinforce citizens' confidence in the judiciary, obliged to provide a procedure that fully respects the fundamental human rights and freedoms.

The definition of standards derives from the European Convention on Human Rights [20] which emphasizes the importance of equality of resources in the process, the presumption of innocence and a trial within a reasonable time. Article 6 of the ECHR clearly defines the standards and principles of fair trial, putting a special emphasis on the judges in the procedure who should ensure respect of these standards. Every judge at the beginning of the trial should remind him/herself on the obligations arising from the Convention and at the end of the procedure to check whether he/she performed this duty. The judge is the one who must ensure that the defendant is properly represented, especially for cases where there is a need to create special conditions for the *vulnerable* defendants. The judge is responsible for ensuring that the principle of equality of arms is respected, which means that each party must have a reasonable possibility to present his/her case in conditions that do not put him/her in a considerable disadvantage against the opponent.

[20] European Convention on Human Rights (www.echr.coe.int/Documents/Convention_MKD.pdf), Council of Europe, 1950

The concept of *fair trial* includes several aspects of the trial, such as the right of access to court, investigation in the presence of the defendant, freedom from self - incrimination, equality of arms, right to procedure of both opposing sides, and reasoned judgment.

Article 6 requires for the national courts to explain their decision, both in civil and criminal procedure especially if the submitted evidence is extremely important for the outcome of the case.

2.3.1. Equality of arms

In the definition of fair trial particularly important is the principle of the equality of arms which implies equal opportunities to the parties in the presentation of evidence and equal treatment by the court. This means that each of the parties must have a reasonable possibility to present its case to the court i.e. that one side shall not be in a disadvantaged position compared to the other side. The practice of the European Court of Human Rights shows that equality of arms means that the parties shall have equal procedural position during the trial and equal position when presenting the defense or the indictment.[21] In the criminal procedure the equality of arms is a guarantee of the right to the defense. The principle requires sufficient time and possibility for preparation of the defense, but also includes the right to a defender, the right to propose and examine witnesses and the right of the defendant to be present during the trial.

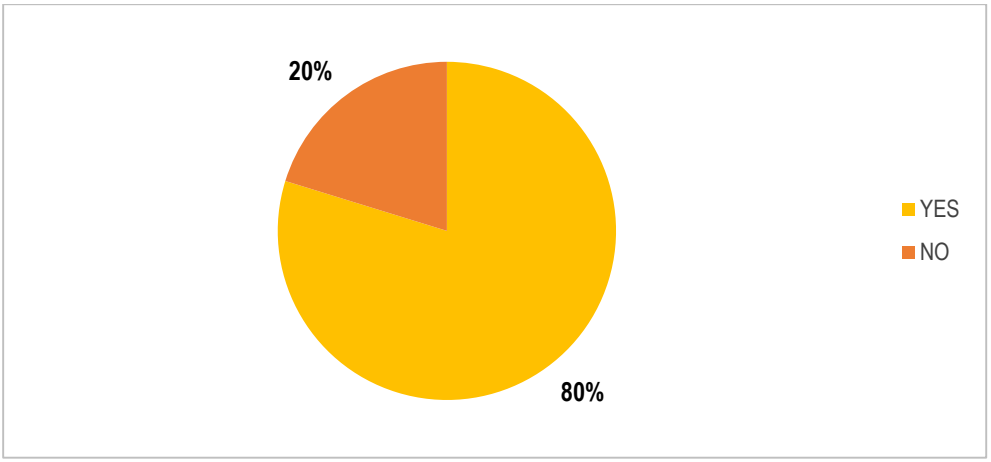
Asked if the prosecutor and the defense were equally treated by the judge in connection to the complaints and the other actions during the course of the procedure, in 94% a positive response is given, the same percentage is given when being asked whether the defense had the same opportunities as the prosecution in proposing evidence. These data suggest that the principle of equality of arms and fair trial are respected, which is a positive trend considering that in the previous model of criminal procedure, most of the remarks referred to the unequal treatment of the parties, i.e. the view that the court was always more sympathetic to the prosecution. This biased stance of the court towards the prosecution is noted in our trial monitoring this year, in cases when the prosecution was invited in the courtroom before the defense.

2.3.2. Public trial

The public trial within reasonable time by an independent and impartial tribunal is part of the standards for fair and equitable trial. The article 6 of ECHR guarantees everyone during the determination of his/her civil rights and obligations or when there is a criminal charge against somebody that each person should be entitled to a public trial. This provision requires presence of both sides at the trial so as the hearing to be open to the public.

[21] Fair Trials, Manual / Humanitarian Law Center, Belgrade, 2001

The public trial is important because it ensures confidence in the judiciary, and avoids any pressure or influence during the court procedure. The question of the right to a public trial is defined in the Universal Declaration of Human Rights[22], and the International Covenant on Civil and Political Rights [23]. The public hearing is in fact an oral hearing on the substance of the dispute in presence of the public, including the media.[24] If we look at the monitoring data one can see that in all cases the trials were public. The presence of the media was also allowed in 99% and 1% of the cases, the members of the public and the media were prevented from attending the trial. However, the trial monitors noted that in 20% of the cases the place and the time of the trials were not announced on the blackboard outside the courtroom, in several cases the prosecution was already in the courtroom, only later the defense and the other public were invited to enter.



Public announcement of the judgment

There are exceptions in the public trial due to the protection of the moral, the public order or the national security, while as special care is provided when it comes to interests of juvenile delinquent i.e. a child as defined in the Convention on the Rights of the Child. According to the monitoring data, in accordance with the provisions of the CPC, the public was excluded from 10 hearings.

2.3.3. Impartial trial

The right to an impartial trial is also one of the rights that enable fair trial. In order to ensure an impartial trial, the instrument of recusal of the judge or the jury is foreseen. The right of impartiality of the court requires for the judges or the jurors to have no interest in the dispute i.e. the procedures should be conducted fairly and to respect the rights of all parties in the dispute. The Human Rights Committee of the United Nations points out

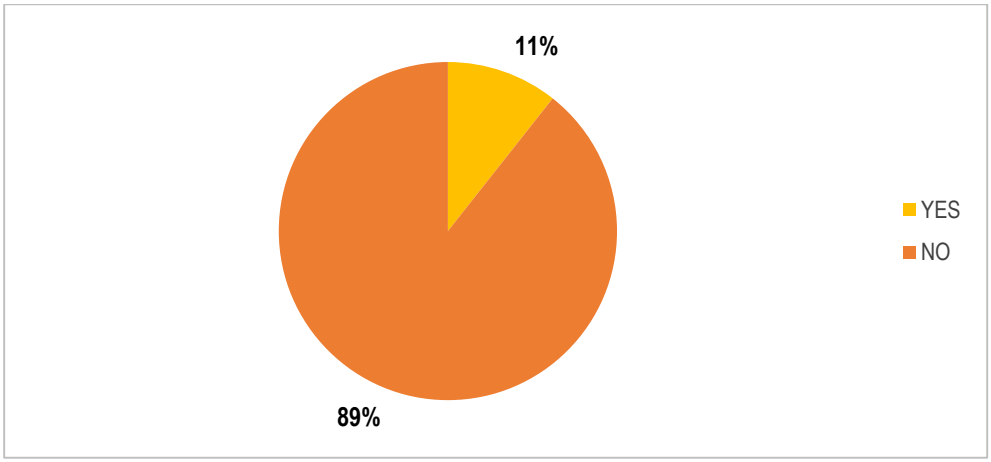
[22] Universal Declaration of Human Rights of the United Nations, 1948
[23] International Covenant on Civil and Political Rights, 1966
[24] Fair Trials Manual, Humanitarian Law Center, Belgrade 2001 (translation of Amnesty International Fair Trials Manual)

that the impartiality "means that the judge must not have a view on the case in advance, and that he/she must not act in a manner that favors the interests of one party in the dispute."[25] The basic principles for the independence of the judiciary determine that "the judges must behave in a manner that ensures impartiality and independence of the court".

The exemption is a way to challenge the impartiality of the court. This was covered by trial monitoring, and the data shows that no recusal of a judge or jury was demanded, in 99% of the cases the trial monitors assessed that the judges or the jurors have not formed an opinion that may affect decision-making. This shows that in most of the monitored cases there was no doubt in the judicial impartiality, only in 1 case there was a suspicion that the judge or the jury had already formed an opinion that may affect decision-making. This case referred to the trial about the protests of 5 May.

To the question whether the court acted with intimidation toward any of the parties, it is noted that only in one case such behavior was observed, where the defender was fined due to inappropriate behavior towards the court, but the trial monitors found that the court ignored the defender thereby showed inequality of the parties in 7 additional hearings. In 2 cases it was found that the court was biased, in 4 cases the trial monitors noted that the court favors one of the parties.

As to the question of inappropriate ex-parte communication of the court with one of the parties, in 16 cases it was noted that the court communicates with the prosecution in a way that helps in the formulation of the questions or points to the prosecution to object certain questions.



Existence of inappropriate ex-parte communication

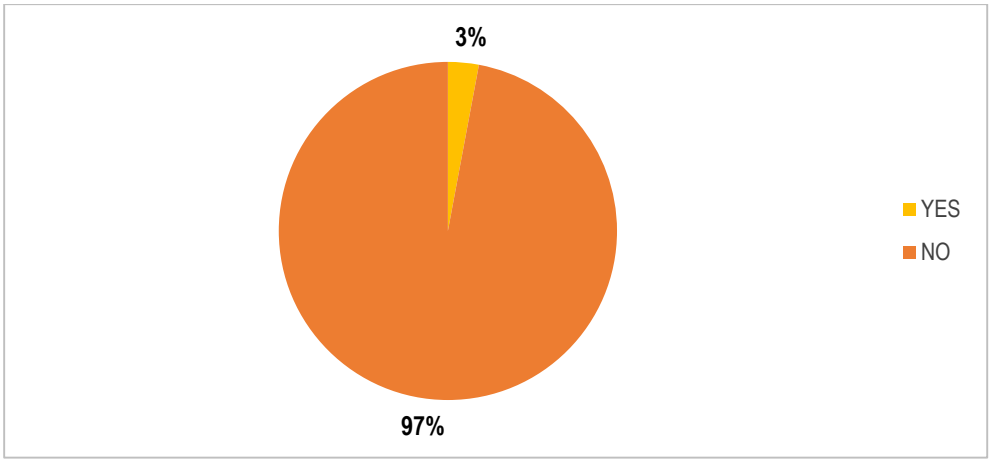
From the obtained data of the trial monitors no use of discriminatory language by the court on grounds of sex, race, etc. is found, in 3 cases the trial monitors had remarks about the attention of the court during the procedure.

[25] Fair Trials, Manual / Fair Trials Manual Humanitarian Law Center, Belgrade 2001, – see the case Karttunen v. Finland (387/1989), 1992 Report of the Human Rights Committee

2.3.4. Presumption of innocence

The ECHR in its Article 6 section 2 stipulates that "In accordance to the law, any person charged with a criminal offense shall be presumed innocent until proven guilty." ECHR is a binding international instrument for all Member States of the Council of Europe and an integral part of their national legislation. In this regard, if there is a violation of the rights guaranteed by the Convention, the citizens have the right to complain to the European Court of Human Rights in Strasbourg.

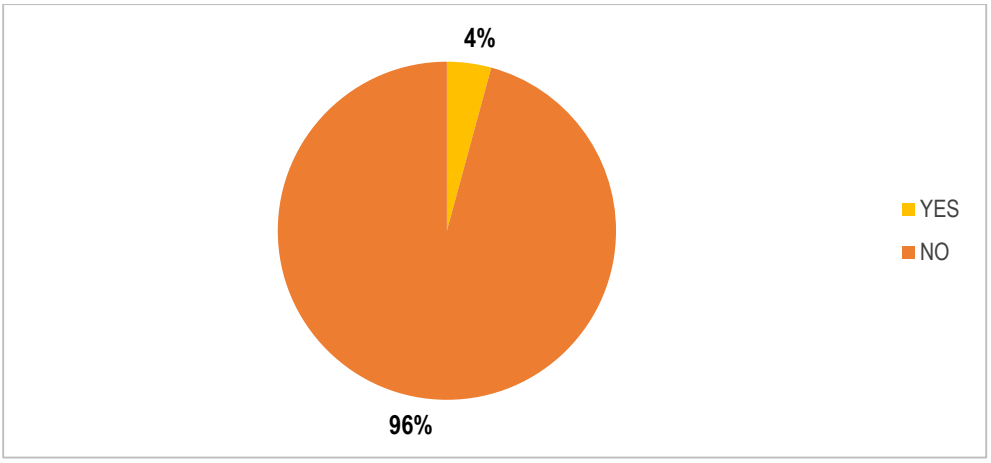
The presumption of innocence is established by the Constitution of the Republic of Macedonia which stipulates that "*A person charged with a criminal offense shall be presumed innocent until proven guilty by a court decision*" and in the Criminal Procedure Code, apart of the basic principle set in paragraph 1 which states that "*a person charged with a criminal offense shall be presumed innocent until his guilt is determined by a court*" another paragraph is added with which the authorities, the media and all the others are obliged to respect this principle. In this Article 2, paragraph 2: "The state authorities, the media and the others are obliged to adhere to the rule of paragraph 1 of this Article, and with their public statements on the procedure in progress may not hurt the rights of the defendant and the injured, as well as the judicial independence and impartiality". The fundaments of the presumption of innocence also include the right of a person not to testify against himself or to confess the guilt, as well as the right to silence. For the purpose of respecting the principle of presumption of innocence the burden of proving falls on the prosecution. The prosecution should prove the guilt of the defendant, and in this regard the monitoring data show that the court has respected the presumption of innocence and the burden of proof had the prosecution, i.e. there were no actions that suggest that the burden of proof is on the defendant. From the monitoring data it was detected that in 4 cases the trial monitors had the impression that the burden of proof fell on the defendant.



The burden of proof during the trial fell on the defendant

2.3.5. Rights of the defendants

The rights of the accused persons are part of the principle of fair trial. In the ECHR as minimum rights of the defendant are: the person should be immediately informed in details in a language that he/she understands about the nature and the grounds of the accusation, sufficient time and facilities to prepare a defense, the right to defend him/herself by a defender of his/her choice, or if not having sufficient financial means to pay a defender, to be entitled to an ex officio defender, the right to examine the witnesses, and to be provided with an interpreter if he/she cannot understand or speak the language of the court. Similarly, the International Covenant on Civil and Political Rights regulates the issues of the rights of the accused persons. The ICCPR [26] provides that "everyone charged with a criminal offense shall have equal rights to attend the trial, to defend him / herself or with the assistance of a defender, and to be provided free of charge defender if he/she cannot pay." Among the rights of the defendant is the right to attend the trial, thus the trial monitors concluded that only in 6 cases the defendant was excluded in some of the stages of the trial, and in 96% the defendant was present during the trial.



The defendant was excluded in some of the stages of the trial

The international standards also determine a ban on harassment and intimidation of the lawyer, the right to confidential communication with the defender and the right to free legal aid. One of the basic rights of the defendant's right is the right to defender. The Criminal Procedure Code determines the existence of a mandatory defense attorney and an ex-officio defender. If the defendant is mute, deaf or unable to successfully defend him/herself, or if there is a criminal procedure against him/her for a criminal offense for which the law prescribes life imprisonment, the defendant must have a defender even during the first trial. If there is a detention in place, the defendant must have a defender during the entire time of the detention. When there are no conditions for mandatory defense, if according to his/her economic situation the defendant cannot bear the costs of the defense, the defendant at his/her request may have a defender when that is required with the interests of the justice,

[26] International Covenant on Civil and Political Rights, 1966

in particular due to the gravity of the offense and the complexity of the case. The data monitoring show that in 88% the defendants had a defender i.e. in 118 hearings, while as in 7% an ex officio defender was appointed. Only in 5% of the cases the defendants did not have a defender.

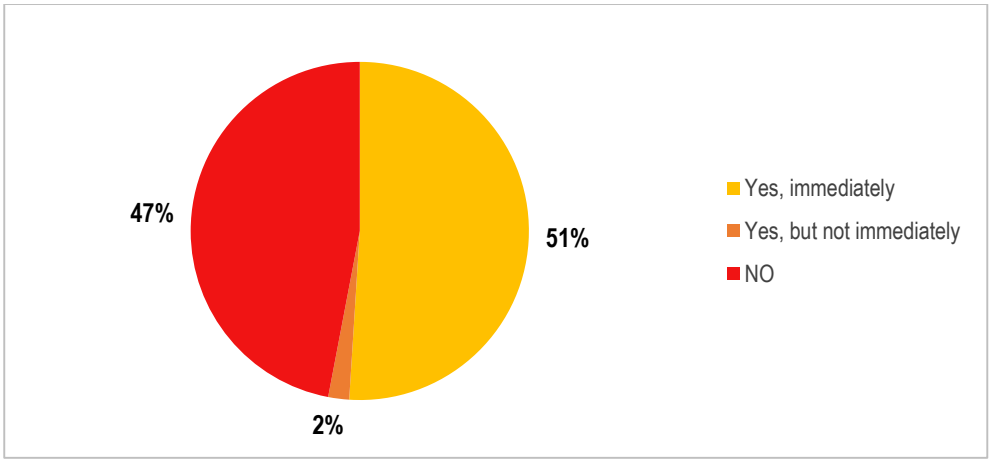
Only in 50% of cases the defendant was advised of the right to free legal aid, and in the remaining 50% he/she was not advised. Although the CPC envisages among other rights of the defendant (Article 70), the right to receive free counsel if he/she is not able to pay for that, and that is also required by the interests of the justice, so as the gravity of the offense and the complexity of the case, defense for the poor persons is also envisaged, small is the number of cases where the person was advised about the right to free legal aid. These data lead to the conclusion that the courts did not always check whether the defendant is financially able to cover the costs of the defense and they mostly react in cases when the law provides for mandatory defense. The right to free legal aid depends on the fulfillment of two cumulative conditions: the person cannot reimburse the costs of his/her defense and the free legal aid to be in the interest of the justice.

The new CPC provides greater freedom or sufficient time for preparation of the defense of the defendant during the procedure, while as special attention is paid to the preparation of the main hearing. The subpoena must be submitted to the defendant in such way that in between the submission of the subpoena and the date of the trial there must be sufficient time for preparation of the defense, at least 8 days in advance. The defenders have to help their clients and undertake all the measures in the exercise of their rights and interests. The trial monitors noted that in 99% the defenders were adequately prepared for the case and did not leave an impression that they do not adequately represent their clients.

The legal system in our country guarantees the right to silence, but it does not have an explicitly provided mechanism of how the silence affects the court. According to the assessment of the trial monitors, in 7 cases the court drew adverse inferences from the use of the right to silence, which is not easy to conclude in cases when the court would not explicitly say that, thus conclusions could be derived from the additional analysis of the number of convictions in cases where the defendant used this right.

The right of the defense provides for sufficient time for preparation, so it is important to know whether the defense complained about lack of time for preparation or there were certain restrictions in place. The trial monitors noted that the defense in this section complained in 6 cases, in 67 of the monitored cases there were no complaints.

The ECHR provides that in order to achieve a fair and just trial, the defendant should have a free of charge interpreter if he/she cannot understand or speak the language used in the court, i.e. he/she is entitled to interpretation. From the data obtained in 51% of cases the defendant was in need of an immediate interpreter, in 2 cases an interpreter was requested additionally.



Did the defendant need an interpreter and whether he/she was granted one immediately?

The quality interpretation is essential for a fair and equitable procedure because the interpreter not only translates oral statements which are orally given in the procedure, but also translates documents and other written materials, the quality of translation provides equality of arms in the procedures. The correct translation is a necessary prerequisite for the right to a fair trial. However, our system does not provide a possibility to challenge the translation as incompetent or biased, as it provides the European Directive on the right to an interpreter. The data of the trial monitors point at 6 cases where there were suspicions. Hence, even in such case there must be a mechanism in place for disputing the quality of the translation which is essential for the exercise of the right of the defense.

3. ANALYSIS OF THE PENAL POLICY

The penal policy in the Republic of Macedonia has been criticized from several aspects. The general opinion is that the existing penal policy in Macedonia is good and the sentences range mostly below the minimum stipulated by the Criminal Code or on the border of the minimum specified fine, greater is the percentage of imposed alternative measures, including the most common, the probation.[27]

For a first time in the Macedonian criminal – procedural legislation, the new CPC contains provisions that regulate the possibility for settlement of the public prosecutor and the suspect on the type of the criminal sanction, envisage different status of the guilty plea in the phase of control of the indictment, and of the confession given during the main hearing of the regular procedure, and during the hearing in the abridged procedure, than it was the case by now when the defendant was able to give a recognition in the court.[28] These new legislative solutions brought substantial reform in the procedural actions, transferred from the Anglo-Saxon institute specific for countries of ***common law*** with their necessary adaptation to the European judicial practice. The criminal - procedural law and the judicial practice are typical for the traditional European territory, until now they opposed the conventional or consensual justice starting from the determination that the penal reaction is strictly statutory determined and it does not recognize dialogue, compromise nor a settlement in view of the fact that the main objective is to protect the fundamental social values. Already for some time in the criminal - process literature there are accusations that the mixed criminal procedure features slowness, stressed formalism, inflexibility and, as a result of all this, inefficiency. It is expected that with the given possibility for settlement, partially it shall overcome these objections and shall enable the criminal justice to be achieved in shortest possible time.

However, in order for the settlement to begin functioning, it is necessary for the country to have two preconditions: a stable and uniform penal policy. In Macedonia, when the application of the new CPC has started, had none of these two preconditions, thus in order to revive the settlement we approached towards the creation of instruments for equality of the penal policy when imposing the penalties. In this regard the Ministry of Justice proposed adoption of a Rulebook on sentencing.[29] The adoption of this regulation caused variety of strong reactions by all stakeholders in the justice system. While some of the actors supported the existence of this type of rulebook for harmonization of the penal policy and the need for creation of instruments for unification of the penal policy when imposing the penalties, another significant group of experts severely criticized the adoption of this rulebook due to the fact that it interferes with the independence of the

[27] Lidija Brasher Tajd – Analysis of the Macedonian penal policy and recommendation for its future development: towards uniformed system, Skopje, 2012

[28] Manual on the Criminal Procedure Code, Ministry of Internal Affairs, Bureau for Public Security, Training Center, Skopje, 2012

[29] Rulebook on Sentencing (Official Gazette of the Republic of Macedonia No.64/14).

judiciary expressed through discretionary decision on fines.[30] The apparent discontent over the Rulebook on sentencing culminated when the adoption of the Law on determining the type and the severity of the sentence was proposed [31], especially with its entry into force and application starting from 06.07.2015.

The greatest benefit i.e. criticism towards the Rulebook on sentencing and the Law on determining the type and the severity of the sentence lays in the newly introduced institute in the CPC – the settlement. Unfortunately, this analysis cannot fully address the settlement, because the monitored cases are only cases that are in the court, not in the earlier stages of the procedure, especially during prosecution' investigative procedure. In this respect, in the 10 cases that were monitored in the process of evaluating the indictment, in 3 cases the court was notified at the hearing about the reached settlement between the Public Prosecutor and the defendant.

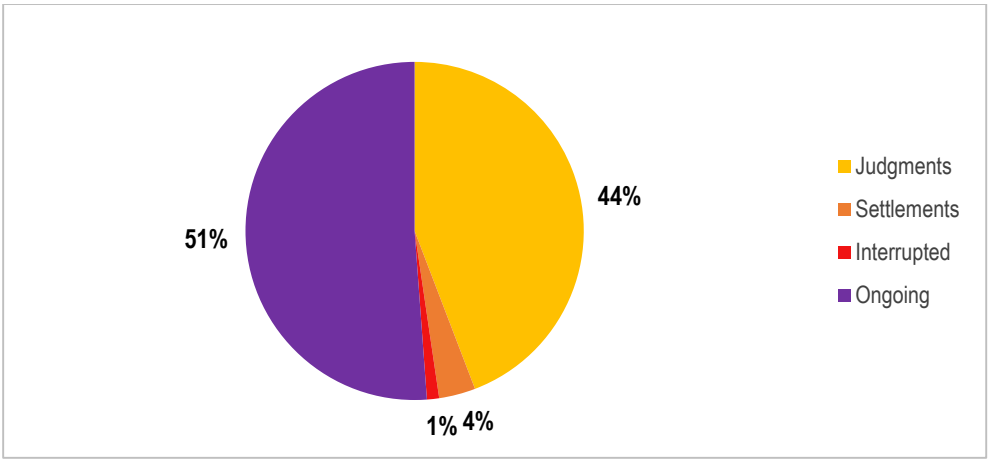
However, both the Rulebook and the Law have visible application during the procedure, during the settlement and in the determination of the sentence by the court.

Case	**Criminal offense**	**Settlement**
COC.Al No.00/2015	Art.418-б and Art.418-c from the CC	1 defendant – imprisonment of 9 years and 2 months
COC.Al No.11/2015	Art.215 par.3 with par.1 from CC	2 defendant – imprisonment of 3 years
COC.Al No.35/2015	Art.215 par.3 with par.1 from CC	3 defendants: The first defendant- imprisonment of 7 years The second defendant- imprisonment of 4 years The third defendant – imprisonment of 3 years and 6 months

From the obtained data of 86 monitored cases, in 38 cases there were adopted and published judgments, 1 case is closed with a decision to discontinue the procedure, and in 3 cases there is a settlement achieved between the Public Prosecutor and the defendant.

[30] Reform in the penal policy or something else, 1.02 Scientific review article UDKZ 43.19.077.6.04(497.7), Bogdancho Gogov, PhD

[31] Law on determining the type and the severity of the sentence (Official Gazette of the Republic of Macedonia No.199/14)

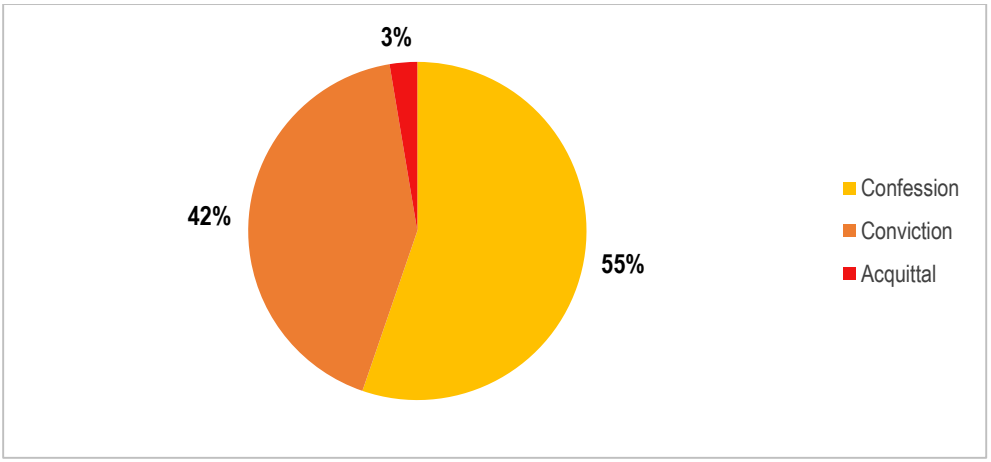


Number of finished cases

From the total number of 38 published decisions, 25 decisions were adopted by the Department for Organized Crime and Corruption, 11 judgments refer to other criminal cases that are of importance to the public and other corruptive cases and 2 judgments are adopted in a hearing for assessment of the indictment.

The guilty plea as a right of the defendant is nothing unknown and new, it was envisaged in the old CPC. The key novelty that comes from the new CPC is that now on the basis of this recognition and under conditions stipulated by the law, at the main hearing the court may adopt a judgment without obligation thereby of presenting additional evidence. It means that now there is a significant change regarding the probative value of the confession of guilt. The procedure for recognizing the guilt at the main hearing is regulated in Articles 380 and 381 of the CPC. It is interesting that the defendant may plead the guilt or reach settlement no matter the nature and the severity of the offense for which the procedure is about. Also, he/she may plead the guilt in respect to one or more criminal charges of the indictment.

From the monitored cases and the adopted 38 judgments related to a total of 70 defendants, 24 judgments are adopted on the basis of a guilty plea, 13 are convictions and 1 is acquittal. According to this data, convictions are adopted in 37 cases and only one is acquittal. It is interesting to note that the guilty plea is often used by the defendants, even in 55% of the cases. However, the perception of the trial monitors shows that the defendants are often pressed by the court and by its defenders to admit the guilt, even when it is clearly noted that they do not freely express their will for pleading the guilt.



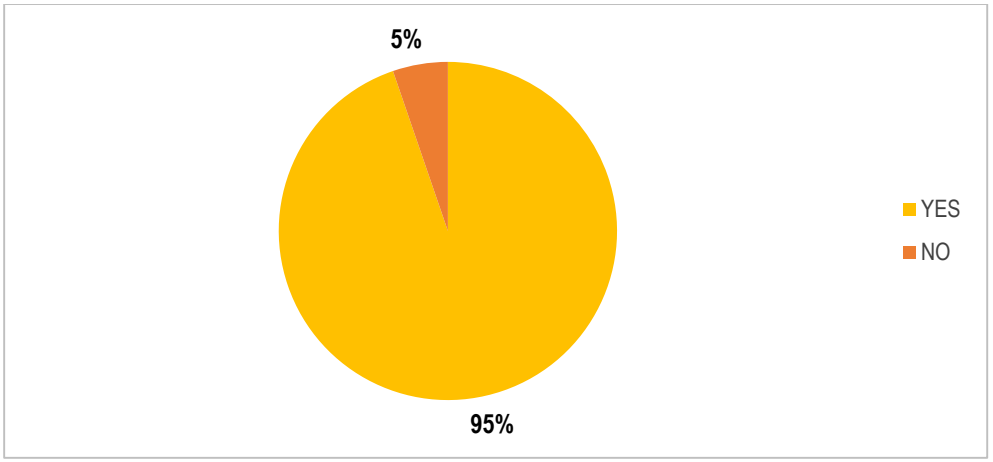
Types of judgments

The court usually adopted imprisonment i.e. in 25 cases a prison sentence, which ranged from a minimum of 6 months to a maximum of 12 years and 6 months, in 11 cases suspended sentences, while only in 1 case a fine. The Court adopted mandatory sanctions in 3 cases - confiscation of assets and property, in one case seizure of a motor vehicle and in 2 cases a secondary measure - expulsion from the country. It is of concern the fact that the court did not adopt the measure - extended confiscation, since exactly from this measure are expected significant results in combating corruption.

Another important principle when adopting a judgment is its publicity, unless there are no restrictions in that respect. In accordance with the principles of the ICCPR[32] exceptions to publicly announce the judgment exist when it refers to a minor whose privacy must be protected when it comes to matrimonial disputes and in cases of child custody. Public announcement of a judgment is applied even when the public was fully or partially excluded from a trial.

From the data obtained one can see that only in 2 cases the judgment was not announced publicly. According to this information the court almost always publicly announces the judgment.

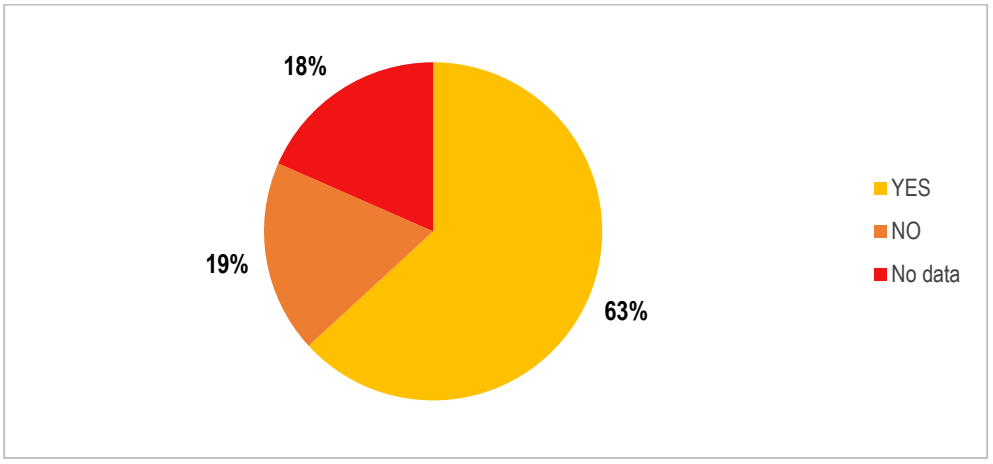
[32] International Covenant on Civil and Political Rights, 1966



Publicly announced judgment

When the announcement of the judgment is concerned, the court has an obligation and a duty to instruct the defendant about the right to appeal. The legal remedies are particularly important for assessment in terms of the access to justice. The European Court emphasizes that, although in the Article 6 of the European Convention on Human Rights the right to appeal is not explicitly stipulated still that right is indivisible from the right to a fair trial. This guarantee is confirmed with Article 2 of the Protocol No. 7 to the Convention which provides for the right of appeal in criminal cases.

Thus, the data gathered from the trial monitoring shows that the court explained the conditions for an appeal to the defendant in 63%, and in 19% it did not. In this section it should be emphasized that in the Article 406 of the CPC an instruction is provided that "after the announcement of the judgment, the presiding judge shall instruct the parties about the right to appeal and the right of reply to the appeal."



Instructions for an appeal

The ultimate conclusion about the judicial efficiency in fighting organized crime and corruption is that with the new amendments of the CPC and the institute settlement and the recognition of the guilt, the conviction rate is significantly increased and the duration of court procedures is reduced. For comparison we will make a parallel with the monitoring of the judicial procedures between October 2012 and July 2013, in which period we monitored 37 cases before the Department for Organized Crime and Corruption. In a time frame of 10 months of monitoring there were judgments for only 15 cases.[33] It is obvious that there are improvements in the implementation of the new CPC after 2 years of its active exercise. However it should be taken into account that it is about criminal offenses for organized crime and corruption where the procedures last longer because of the complexity in the degree of the proving, the volume of the cases and the number of the defendants, and the inclusion of experts for criminal offenses in the area of the economic crime.

[33] Judicial efficiency in dealing with organized crime and corruption, Coalition "All for Fair Trials", Skopje, 2013

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. CONCLUSIONS

- The monitoring of cases for organized crime and corruption had a short duration, the later inclusion in the stages of the procedure, and its incomplete coverage, affects the general findings about judicial efficiency and the respect of the rights in the procedures for this type of criminal offenses.
- The judicial independence is an important tenet in the achievement of justice, for the purpose of securing it, the state should establish standards that will ensure the independence of the judges and should enable conditions under which each judge will independently and without pressure carry his/her decisions.
- In the area of organized crime and corruption during 2015 the most common monitored cases were those for the criminal offenses: "Human trafficking and trafficking of migrants", "Unauthorized production and release for trade of narcotics, psychotropic substances and precursors", "Fraud" and "Criminal association", while as the other criminal offenses that make part of this group are less present.
- In terms of the hearings for assessment of the indictment, the court has not adopted a single decision where the indictment was rejected as groundless.
- The basic feature of the main hearing in accordance with the new CPC is the accusatory where the parties propose and present evidence, thus the court is released to voluntarily offer evidence but the presence of the participants in the procedure is of essential significance. From the monitored cases one can conclude that the most absent party in the procedure was usually the accused person, which imposes the question about the regularity of the delivery of writs, and the implementation of measures to ensure the presence in the procedure, the technical preconditions of the police to bring the accused persons from custody or prison. In 27 hearings, the PPO was absent which points to the fact that the prosecution is cluttered with cases.
- The novelties of the CPC are being implemented and the parties give introductory speech which per the trial monitors in a significant extent or in 69%, among the prosecutors, and in 79% among the defenders, the introductory speech is understandable, in terms of what the party claims and which decisive facts will be proven. There are 2 registered cases where the introductory speech of the PPO i.e. 1 case where the introductory speech of the defender, did not provide the court with clear and concise information about what the party intends to prove and which decisive facts will try to prove.
- In 50% of the cases the court asked the defendant if he/she understands the charges. In 39% of the monitored cases the person did not understand the charges, thus the judge gave additional clarifications.

- The court regularly instructs the defendant about the right to remain silent or to make a statement and advises him/her to carefully follow the course of the main hearing, instructs him/her about the right to present evidence in his/her defense, to put questions to other defendants, witnesses and experts and to make notes regarding their statements. However, it is noted that in 7 cases the court drew negative conclusions about the exercise of the right to silence.
- It is noted that the defendants often use the guilty plea, the court regularly asked questions in order to check the plea in terms of the characteristics of the crime, on the voluntariness of the confession, as well as the awareness of the defendant about the legal consequences from the confession. However, it is noted that the defendants were often pressured by their defenders or the court to admit the guilt, entirely contrary to the principle of presumption of innocence.
- The CPC stipulates the order in which the evidence are presented, i.e. firstly the evidence of the charges, then the evidence related to the property - legal requirements, followed by the evidence of the defense, the evidence of the prosecution to refute the evidence of the defense, and the evidence of the defense in response to the challenging. The monitored cases confirm that this order of presentation of evidence is respected.
- According to the trial monitors, the PPO and the defense were well prepared for the direct examination, only in 1 case the PPO did not leave the impression to master the case and did not know why is asking the questions.
- In direct examination it is important to ask clear and precise questions to the witness or to the expert. In 78% of the cases the trial monitors noted that the questions are clear and precise, only in 12 cases they were partially clear and precise. It can be concluded that there is a progress in the capacities of the PPO to ask direct questions.
- The cross-examination as a novelty of the CPC is successfully used especially by the defense. During cross-examination normally the so called "closed questions" are asked, the data from the trial monitoring show that in 85% of the cases these closed questions were used, only in 8 cases the questions were not of this type. It can be concluded that there is a progress in the skills of the PPO and the defense for cross-examination.
- In cross-examination the personality of the witness or the expert was respected, only in 8% of the cases the previously given statements were used.
- In 57% of the cases the court used its right to ask questions to the witness/expert.
- Mainly the court took care about the admissibility of the questions, the validity of the responses and the fair trial.
- The objections to the questions were used in greater extent by all the parties in the procedure.
- The Article 388 of the CPC was used as an exception in only 5 cases when the witnesses were absent.
- The examination of the defendant was allowed only if the defense proposed that. In 23 cases the defendant was questioned about the criminal offense, and in 26

cases the defendant was questioned about the circumstances relevant to the extent of the sentence.

- With the new concept the court has a passive role, but it can be concluded that in greater part of the written and material evidence the court continues to read and present the evidence and not the parties in the procedure.
- The new CPC imposed material - technical conditions for recording the duration of the main hearing, however, one of the major remarks that remained in this respect is the fact that the courts are still insufficiently technically equipped to be able to use the modern techniques for registration.
- In most of the data it can be concluded that the defense and the prosecutor were equally treated by the court, mainly the defense had the same possibilities to propose evidence as the prosecutor.
- Most of the trials were public (99%), but in 20% the court did not announce the place and the time of the trial.
- Mainly the court left the impression of being impartial, it did not treat the parties with intimidation, nor discrimination during the course of the procedure. However an improper, ex parte communication was noted in 16 cases between the court and the Public Prosecutor's Office.
- In 50% of the cases the defendant was advised about the right to free legal aid. Not always the courts check whether the defendant is financially capable to cover the costs of the defense, the court usually reacts in cases when the law provides for mandatory defense. The right to free legal aid depends on the fulfillment of two cumulative conditions: the person is not able to reimburse the costs of his/her defense and the free legal aid to be in the interest of the justice.
- In most of the cases the defendants had a defender by personal choice, only in 6 cases the defense complained about the lack of sufficient time for preparation.
- The right to an interpreter is practiced by the defendants, only in 6 cases the quality of the interpretation was questioned. Hence, our system do not provide for possibility to dispute the interpretation as incompetent or biased which is of crucial importance for exercising the right of defense.
- The settlement as a new institute in the CPC is hard to be monitored because it takes place in the prosecution itself. From the hearings for assessment of the indictment, 3 settlements were monitored where this institute was successfully applied. However, the consequences upon the other defendants who will not settle directly affect the principle of the presumption of innocence.
- In most of the cases the judgments were public.
- Mainly the court ruled convictions, 55% from them are due to guilty plea.
- In the convictions the court ruled the sanction – imprisonment, while as in several cases conditional sentence.
- In 66% of the judgments the court instructed the defendant on the right to appeal.

4.2. RECOMMENDATIONS

- The trial monitoring should cover the trials in their full extent, until the adoption of the judgments. This is needed for the purpose of adopting a proper conclusion about the judicial efficiency and the criminal - law response in the fight against organized crime and corruption.
- Strengthening the standards for independence of the judges and creation of conditions for independent action without pressures and influences when adopting the decisions.
- Strengthening the control over the delivery in order to secure proper delivery of the writs and application of measures for ensuring presence of all parties in the procedures.
- Securing access of the defense to the evidence, as well as sufficient time for preparation, taking into consideration that one of the fundamental rights of the defendant is sufficient time, the possibilities to prepare the defense, and the access to files in order to get to know the evidence against and in favor.
- In respect to the moral rights, it is necessary for the court to review the conditions for obtaining free legal aid and to instruct the defendant about it.
- The introductory speech given by the parties in a procedure should be understandable and it should provide clear and concise information to the court about what it will prove and which crucial evidence will try to prove.
- Continuation of the trainings for the new concept of the CPC for the prosecutors and the defenders in terms of the novelties for cross-examination, and the need for quality governance of the case in the evidentiary procedure.
- In direct examination the questions should be clear and precise, while as in the cross-examination questions of the so called “closed type” should be used which examine the witnesses proposed by the opposite side.
- The recognition of the guilt as a right of the defendant should be explained and pointed to the defender prior the start of the procedure so that the defendant would independently without pressure decide whether to exercise this right.
- The right to silence of the defendant should not have consequences over the adoption of the decision by the court.
- The court should secure equality of the parties in the procedure and should refrain of improper ex parte communication with the prosecution.
- Only in exceptional cases the court could propose presentation of evidence.
- The material - technical conditions for recording during the main hearing or the use of modern equipment for registration should be provided as per the CPC.
- The principle of public trial should be maintained by public announcement of the place and the time of the trial.
- To determine the possibility for contesting the interpretation/translation if the client suspects that it was incompetent or biased bearing in mind the essential importance to achieving the fair trial.

- It should be mandatory for the court to instruct the defendant on the right to appeal, and on the right of a reply on the appeal guaranteed by Article 2 of the Protocol No. 7 to the European Convention on Human Rights which provides for the right of appeal in criminal matters.

5. REGIONAL AND JUDICIAL PRACTICE – GENERAL RECOMMENDATIONS

The experience in the fight against corruption from the last years emphasizes the challenge of the entire region to invest efforts in many areas with active participation of all local and international stakeholders. Therefore, three key areas should be priority of the countries in the region:

1. The efficient prosecution of corruptive senior politicians and senior civil servants is the only way to send a strong message that "the corruption will not be tolerated." The practice in Croatia and Slovenia, by bringing corruptive politicians to justice has proven very effective in the strengthening of the anti-corruption measures.
2. An independent mechanism to monitor corruption should be introduced at national and regional level in order to gather data and by its analysis to find most appropriate tools for monitoring corruption, establishing diagnosis and finding suitable weapons to combat it. Its eradication should be through multiple priorities, one being to increase the accountability of the authorities especially in the management of the state-owned enterprises.
3. The international community, especially the European Union should directly support civil society organizations that work on this issue in the region since that is the only way for them to be accepted by the wider public and to ensure their active participation. The responsibility and accountability of the government bodies towards the international organizations should not have precedence over the accountability towards the local electorate. In that way the efficiency of the international support shall increase which will provide us with skills, experience in monitoring and analysis of the corruption.

Although numerous efforts have been invested for searching solutions in the fight against corruption and poverty reduction, its suppression and complete eradication, there is no sustainable mechanism for the evaluation of anti-corruption policy. This requires statistical data on the achieved results in all fields (investigations, indictments, administrative measures, seizure of property), all that monitored by independent bodies, external persons with involvement of the civil society and building basic approaches and components of non-administrative systems for monitoring corruption.

Implementing mechanisms for feedback on the implementation of the anti-corruption policy is essential. Such mechanism could be based on new instruments that

have been proven to be more accessible, as the case with "the integrated tool for monitoring the implementation of anti-corruption legislation" developed by the Center for Study of Democracy and the University of Trento. It provides an opportunity for those involved in the fight against corruption to assess the risks for corruption in a government institution and to recognize the effect of the relevant anti-corruption policy. Not less important should be the specialized anti-corruption agencies and agencies for oversight as the national audit institutions including their budgets, facilities and personnel who should have broader competence. For the purpose of greater transparency, they should produce specific annual or mid-term programs that shall give priority to the type and the area of prevention.

The anti-corruption fight should be evenly distributed among multiple government agencies. There is a need to expand the legal incriminations which requires full engagement of all public bodies to tackle corruption in their ranks rather than transferring the responsibility to the police and public prosecutors. Despite the visible improvement of the situation, it is necessary to continue working on the strengthening of the capacities of PPO in order to increase their efficiency in terms of detection of corruption offenses. The studies conclude that the holder of this process is still MOIA, but also points to the fact that the role of the Public Prosecutor's Office has improved.

The absence of the application of the measure extended confiscation has significant role in the final results for the suppression of this type of crime. The application of this measure so far was rather minor, only in 5% of the cases. Its use is really symbolic having into consideration the fact that the goal of the corruptive acts is to acquire in an unlawful manner huge resources. The confiscation of those assets is one of the most important tools that shall make the perpetrators think whether to take such action when there is a danger that everything illegally gained will be confiscated – along with the inevitable sanction and the criminal punishment.

In order to improve the capacities of the law enforcement authorities on the identification of the corruptive acts, full and timely collection of all evidence for argumentation of the factual situation, it is necessary to have continuous trainings for all involved in these procedures. The training should contribute to increase the capacities for prompt observation of the manifestations of this crime, its phenomenal shapes and specific characters that affect not only the individual features of the offenders but also the way the crimes should be proven.

The programs for external assistance should not be left out. An example is the international anti-corruption assistance to the national governments that should provide for stronger role of the civil society. This includes participation of the civil society organizations as partners for implementation, monitoring and resource organizations, especially in the evaluation of the impact of the projects, like this for instance.

The preparation and the findings of the regular reports of the European Commission should be fully embedded in the local politics by relying on local civil society and the business community.

All the obtained results from the national local authorities, international reports and special reports of the civil society organizations as direct monitors in the management of the court procedures in the fight against corruption need to be transparent and accountable since only by joint forces and the use of the experiences of the other countries, with direct monitoring of the situation in our country and the full engagement of all involved we will achieve good results that will be an incentive to eliminate and even eradicate, this kind of crime which is not only one of the most prevalent forms of crime but even worse, it violates human rights and undermines human dignity.

These are the findings from the researches that for many years already the Coalition "All for Fair Trials" has conducted in Macedonia, monitoring trials before the Department of Organized Crime and Corruption and before the other courts in the country. By analyzing the penal policy and the imposed fines for crimes known in the world as most difficult ones in terms of the economic stability of each country, it has been proven that the penal policy is mild, while as the imposed penalties on the border of the legal minimum which contradicts the serious efforts for protection of the goods from these criminal offenses. Right here we should be looking for the cause of the recidivism among some of the offenders for whom the given mild punishment did not contribute positively, but rather encouraged them to commit the crime for a second time especially if the confiscation measure was not applied or the cumulative fine was small. Even further, often this encourages new offenders to acquire high profits in an easy way.

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