JUDICIAL EFFICIENCY IN DEALING WITH ORGANIZED CRIME AND CORRUPTION

Report from the „Monitoring of Organized Crime and Corruption Cases “in Republic of Macedonia

Skopje, August 2013

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

343.192.03:343.352(497.711)"2012/13"(047)
343.192.03:343.9.02(497.711)"2012/13"(047)

JUDICIAL efficiency in dealing with organized crime an corruption : report from the "Monitoring of organized crime and corruption cases" in Republic of Macedonia / [authors Gordan Kalajdjiev ...[и др.] ; editor Goce Sitnikoski, project coordinator]. - Skopje : Coalition of civil association " All for fair trials", 2013. - 60 стр. : табели, граф. прикази ; 21 см

Фусноти кон текстот. - Автори: Gordan Kalajdjiev, Boban Misoski, Aleksandra Gruevska Drakulevski, Divna Ilikj

ISBN 978-608-4552-33-8

а) Основен суд Скопје (Скопје) - Ефикасност - Предмети во врска со корупција - 2012-2013 - Извештаи б) Основен суд Скопје (Скопје) - Ефикасност - Предмети во врска со организиран криминал - 2012-2013 - Извештаи
COBISS.MK-ID 94543882

MONITORING OF ORGANIZED CRIME AND CORRUPTION CASES PROJECT

Publisher:	Coalition of Civic Association „All for Fair Trials“ str. Makedonia 11/2-10, 1000 Skopje e-mail: contact@all4fairtrials.org.mk www.all4fairtrials.org.mk
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Print:	Grafohartija
Circulation:	100

LIST OF MOST COMMONLY USED ACRONYMS

SCRM	Supreme Court of the Republic of Macedonia
ECHR	European Convention on Human Rights
ECtHR	European Court for Human Rights
CPL	Criminal Procedure Law
PPO	Public Prosecutor's Office
CC	Criminal Code
MI	Ministry of Interior
BC	Basic Court
CRM	Constitution of the Republic of Macedonia

CONTENT

SUMMARY

The Coalition „All for Fair Trials“ five years in a raw is implementing a project which realization is based on the monitoring of court cases in the area of organized crime and corruption.

The implementation of projects dealing with the monitoring of court cases connected with the organized crime and corruption was initiated in 2008, but we can find the roots of this project as early as 2007 through the six months pilot phase named „Assessment of the need for monitoring of court procedures related with the corruption in Republic of Macedonia “which was realized by the Coalition „All for Fair Trials“in collaboration with the NGO HBO „Transparency – Zero Corruption“.

The pilot project has provided the determination of the criminal offenses related to the corruption and the empirical material were gathered based on which several types of problems that the law enforcement authorities are facing with while working on cases related with the corruption.

In the frames of the project „Monitoring of Cases from the Areas of Organized Crime and Corruption “40 cases were monitored which are all prosecuted in the Court of First Instance Skopje 1 Skopje. Unlike previous years when the monitoring was conducted in several courts of first instance throughout Macedonia, this year from 01.09.2012 to 31.08.2013, the cases were monitored only in the Court of First Instance Skopje 1 Skopje, and only those that are lead in the Department for Organized Crime and Corruption. This idea, to focus solely on this court, came as a result of the noticed significant increase of interest for court procedures, especially those related to organized crime and the corruption, due to the reason that in these criminal cases there is an possibility for significant breach of the human rights of the defendant persons, on one, and due to the fact that the serious and legal fight against corruption is essential for creation of a democratic society, on the other hand]. Having in mind the fact that the inly court which is responsible for prosecution of these type of cases in R Macedonia is the Court of First Instance Skopje 1 Skopje, it can be concluded that the with the observation of the cases that are tried in this court in the Department for Organized Crime and Corruption all of the republic of Macedonia is covered.

For the needs of this project, 3 teams each consisted of 2 monitors (graduated lawyers), were created and they were present to the hearings of

previously identified active cases which are related to the organized crime and corruption, and in this process they have directly gathered information which were put in the standardized questionnaire consisted of 64 questions which are important for the criminal procedure

This report analyzes the data from 37 cases that were monitored in the period from October 2012 till July 2013.

The material processed in the report is systematized in nine subtitles in which the data gathered from the monitoring of the cases through all of the phases of the criminal procedure: previous proceedings, application of the special investigative measures, the period from the submission of the conviction till the initiation of the hearing and control of the indictment, measures for providing presence of the suspects or defendant persons, main hearing, number of the completed/terminated cases and the period of the announcement of the judgment, analyzes of the penal policy and conclusions and recommendations. In this manner all of the phases of the procedure of the monitored cases are analyzed.

The report is completed with the conclusions through which the situation with the independence and efficacy of the authorities in the fight against organized crime and corruption, as well as the situation connected with the respect for human rights and freedoms guaranteed by the Constitution and law, in criminal proceedings is being analyzed. Based on the recommendations that are coming as a result of this analyses it is expected that concrete measures to be taken on legislative and institutional level in order to surpass the noted weaknesses and improvement of court efficiency.

Strengthening of the fight against the corruption and organized crime in a transparent and fair procedure, will contribute in improvement of the overall social life and will increase citizens' trust in the judicial system.

1. GENERAL DATA

1.1. General notes

The number of criminal offenses and reported perpetrators is rising. According to the data from the State Statistic Office, the number of the reported registered adults - known offenders in 2012, as compared to 2011, has increased for 5.8%.[1] In recent times there is a talk of the rise of the severe forms of crime and corruption, but the statistics speak of something different. Namely in Republic of Macedonia, the mayor number of the criminal offenses are the minor offenses, with the domination of theft and other offenses done against the property with the proportion of even two thirds of the total number of the reported offenders (22292 reported adult offenders or 70% of the total number of 31860 reported offenders in 2012), followed by the traffic offenses (2070 reported adults), bodily harm and other offenses done against the life and the body of an individual (total as a group number of criminal acts – with 1122 reported offenders) etc. This shows that in contrast with the media actuality and the public opinion on the organized crime and corruption, the statistics show a relatively low number of such reported offenses, but on the other hand, what gives a reason for worrying is the number of the persons accused for these crimes which is on the rise.[2]

The available statistic markers show a low level of detected and clarified crime offenses.[3] Namely, out of the total number of reported offenders, the known offenders were less than 50%. The number of the unknown offenders in the criminal acts against the office and other offences connected with the corruption are, statistically speaking much lower; 805 offenders were registered as the known offenders in the criminal acts against the office the total of 843 reported. On the other hand, while the total number of the reported cases is on a rise, the number of the accused and convicted people is declining, so the gap between the reported and sanctioned crime is widening. This general trend continues also in 2012. Namely while the number of the reported offenders is on the rise, in 2012 compared to that of 2011, the

[1] The number of minors who have commited crimes in 2012, in comparison with the same period of the year before, has decreased for 13,9%. In 2012, when compared with 2011, the number of the convicted juveniles has decreased for 23%. Sorce: State Statistical Office, perpetrators of crimes in 2012, Скопје, 2013 (http://www.stat.gov.мк)

[2] For cimes against office (official duty) 843 perpetrators were reported, Criminal acts against public finance, payment and commerce – 490, Criminal acts against freedoms and rights of men and citizens – 645 etc.

[3] There is no official or scientific assessment for the so called „dark number of crime/s“ in Macedonia.

number of the accused and convicted adult persons has declined for more than 7%.

When the offenses against office are concerned the number of reported offenders is on the rise (for example from 685 in 2003) to 2008 when it achieved a number of 1112 reported offenders of criminal acts, to than start a decline, especially in the last 2 years (843 in 2012). These trends demand a special analysis, so that the theses – weather the number of the reported offenders is on the rise during the first few years after the change of the government only to start declining later- could be checked. The number of the convicted for these crimes, on the other hand, is a constant one for the last five years, in which period it is moving constantly in the vicinity of around 150 convicted persons.

The statistics are showing that the major part of the criminal offenses are reported by the Ministry of Internal Affairs to the Public Prosecutors Office. The large number of the reports from the impaired citizens and legal entities, instead to the Public Prosecutors Office, submit their reports to the police. This leads to a conclusion that the police has main initiative not only in the processes of the crime detection, since the number of, and the number of proceedings initiated on the initiative from the Public Prosecution Office is small and is an exception. The passive role of the Public Prosecution Office in comparison to the more active one of the police can be explained with the monopole of the Пасивната улога на Јавното обвинителство наспроти investigative capacity in the Ministry of Interior and the traditionally passive role and office manner of work of the Public Prosecution Office. The large number of undetected offenders and unknown dark figure of crime in a situation where Ministry of Internal Affairs is the main reporter on the crimes and their perpetrators, shows that the police has a significant influence in the decision of the Public Prosecutors Office especially in the decision against which persons the procedures will be initiated, which according to the Constitution is the right and a duty of the prosecution.

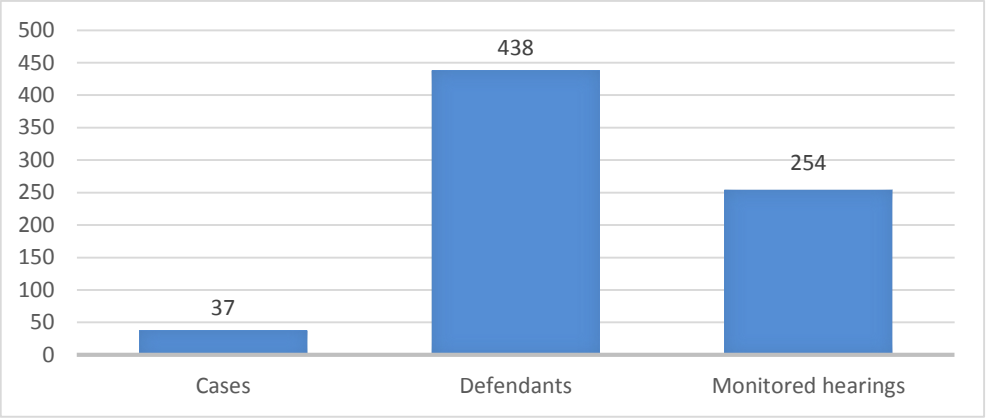
While the enormous percentage out the total number of defendants were convicted,[4] in the case of the offences against office such „success“ of the state bodies is significantly lower – 317 people were charged, and 150 were

[4] Thus, in accordance with the data of SSO in 2012 out of a total of 10.351 defendants, are convicted 9.042 persons, which is amazing 90%!

convicted, out of which 103 for abuse of office and authority (for which 254 were charged).

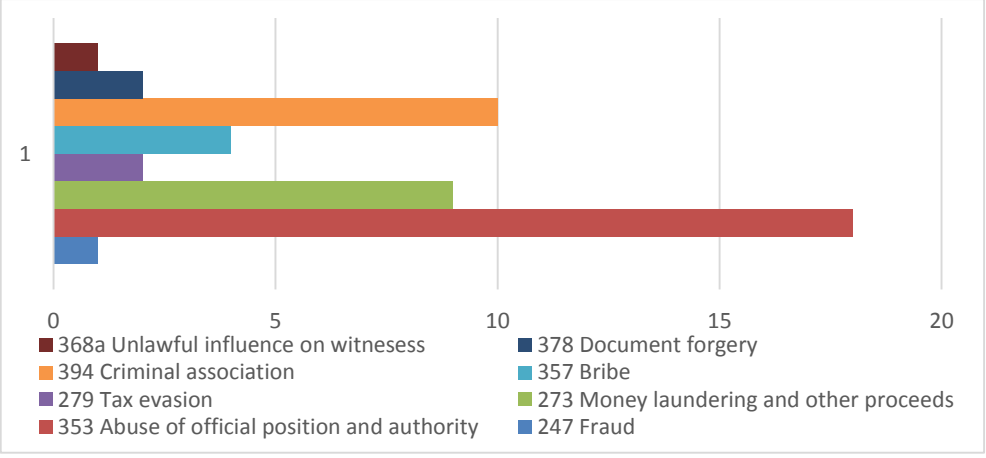
In accordance with the data of the cases that were monitored the following specific information can be gathered.

1.2. General data on the monitored cases



General data

The survey includes data from the total of 37 cases, monitored on the period of 01.10.2012 to 31.07.2013, which were prosecuted in the conducted before the Department for Prosecution of Perpetrators of Organized Crime and Corruption. Out of these, 41% or 15 cases have judgment, and the rest 59% or 22 cases are still in trial. In the frames of this number of cases, criminal proceedings were lead for a total of 47 offenses, for a total of 438 defendants, out of which within the judged cases 205 people were convicted.



Criminal offence that is being prosecuted

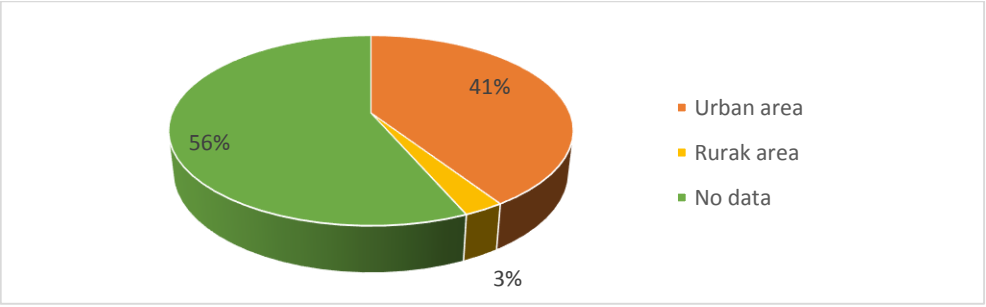
With regards to the monitored criminal offences/acts it can be concluded that the most common criminal offences are abuse of position/office and authority (18), criminal association (10) and money laundering and other proceeds (9). The remaining criminal acts that appear in smaller number are: bribery (4), tax evasion (2), falsification of documents (2), as well as fraud (1) and unlawful influence over witnesses (1).

1.3. The profile of the defendant persons in the cases subject to the monitoring

Concerning the elements that define the profile of the defendants, the survey includes the following questions: place of residence of the defendants, age, national origin, citizenship, education and previous convictions. Still it must be stressed that these information are not provided in sufficient number which can influence the results and make them appear as less credible. The reasons due which these relatively simple data concerning the basic information of the defendants could not be obtained, are mainly related to the fact that the monitors of the coalition were disabled to have an insight in the case which was a subject of monitoring. This, on the other hand, can cause a conflict within the mission of the monitors of the Coalition, which would than appear only as a silent observers or witnesses of the judicial proceedings.

1.3.1. Place of residence

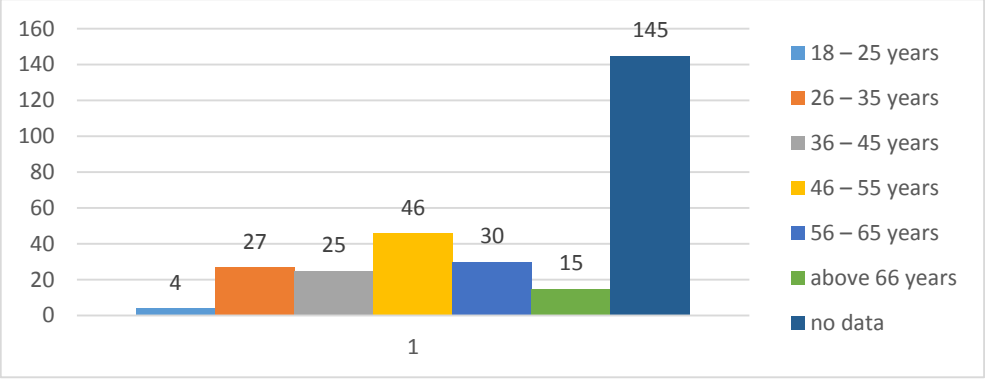
Regarding the place of residence the perpetrators of the criminal acts in the monitored cases in significant number can be located in the urban areas, as they create 41%, while the rural areas are presented only with the percentage of 3%.



Place of residence of the defendants

1.3.2. Age of the defendants

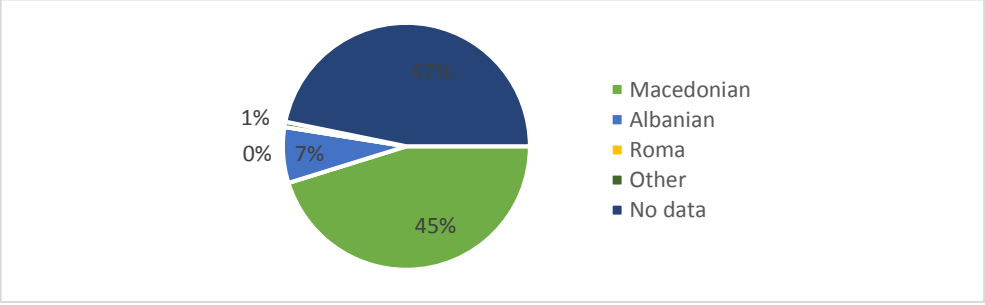
Having into consideration the age of the defandents, it can be concluded that the major part of them are from the age group of 46 to 65 years of age, uwhich presented in percentage consists 26%, out of which 16% or 46 defandants are falling in the grouop of 46 to 55 years of age, while 10% or 30 of the defandants are representatives of the age grop ranging from 56 to 65 years. Significant number of 27, or 24 defandants falls in the group of 26 to 35 years of age, and 36 to 45 years of age respectfully. The smallest representation is noted in the defandants representatives of the age group ranging from 18 to 25 years, and they are presented with only 1%, as well as the group of those of above 66 years of age who are presented with 4%.



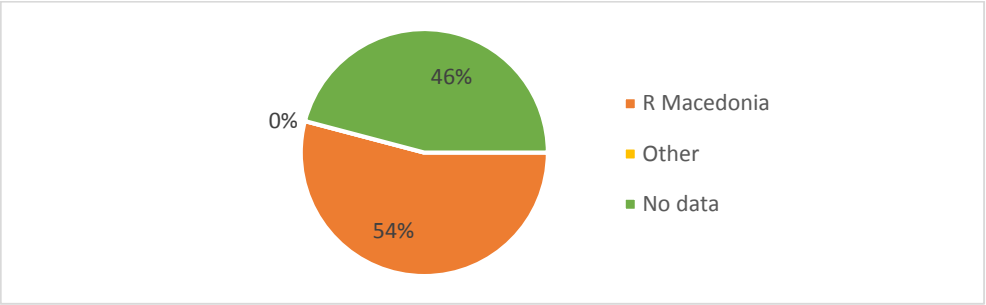
Age of the defandants

1.3.3. Nationality and citizenship of the defendants

The survey shows that the largest percentage of the defendatns are of Macedonian national background, or 45%, while 7% are of Albanian nationality. More than the half of the defendants or 54% of them have a Macedonian citizenship.



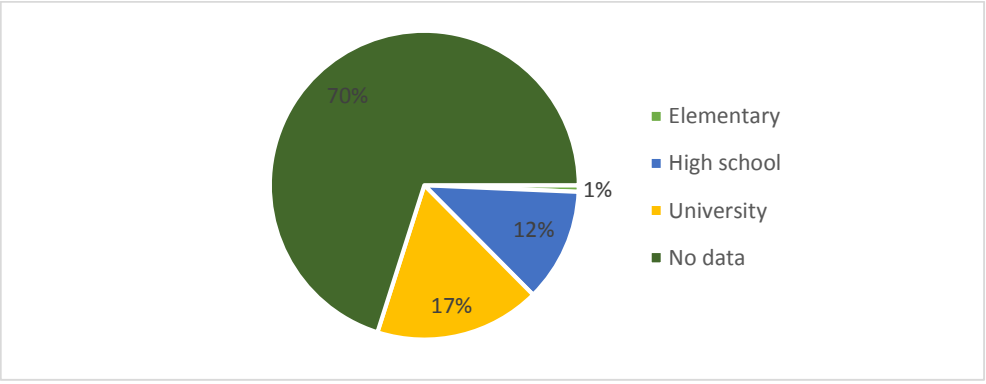
Nationality of the defendants



Citizenship of the defendants

1.3.4. Education of the defendants

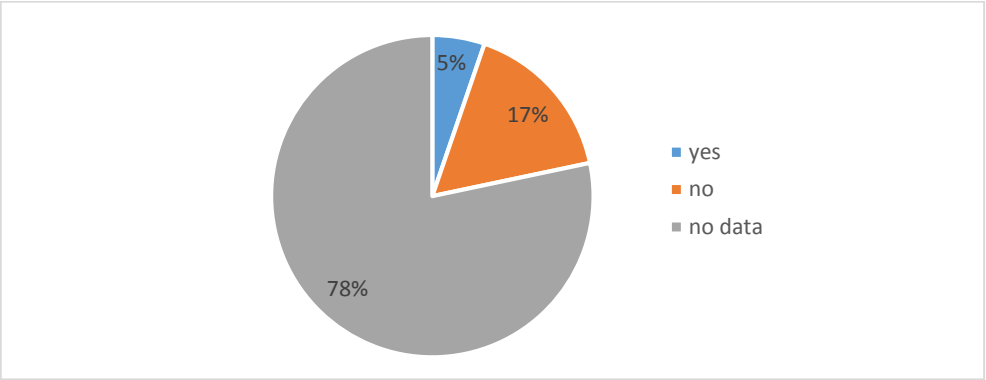
With regards of the type of the criminal offences that are being prosecuted within the monitored cases, the obtained data shows that the major percentage of the defendants for which the information was available, are highly edjucated (17%), the ones with secondary education are reperesented with 12%, while only 1% of the defendats has completed primary school.



Education of the defendants

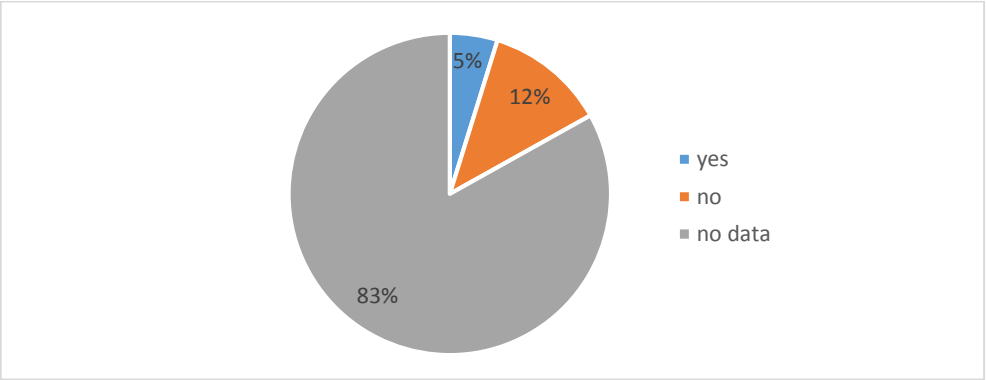
1.3.5. Previous conviction of the defendants

It is worth noting the result that sourced from this survey according to which 5% of the defendants were convicted before, which is smaller percentage as compared to the survey made in 2009, where this percentage equaled 12%. The gathered data doesn't show however, whether the defendants who were convicted before, are being prosecuted for the same criminal act or not. The fact should not be omitted, that this percentage of 5% is actually coming from the 21% of the accused for which the survey obtained a data in relation with their previous conviction, as opposed to 79% of the accused for whom there is no such data.



Previous convictions of the defendants

Similar results can be found in relation to the question whether there is prosecuted for different criminal acr, that show that for 5% of the defendants the answer is positive, while for 12% of the convicted the results show that they are not being convicted and prosecuted for other criminal offense.

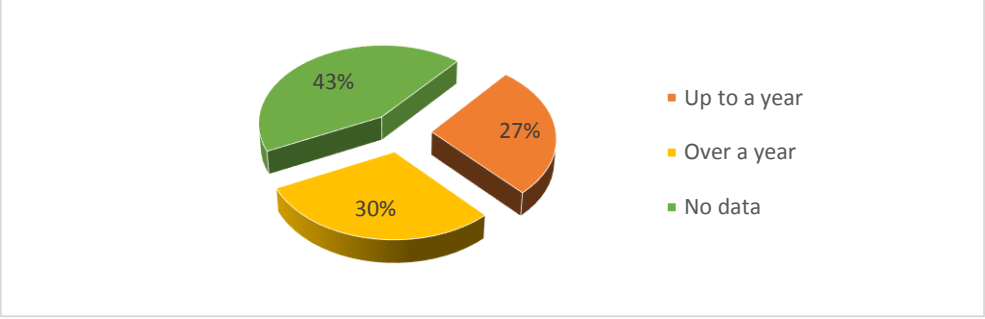


Is there another procedure being lead for other criminal offense

In order to define how the protection of the right to a trial within reasonable time is practiced, the Coalition submitted an official request to the SCRM to provide the information related to the dealing with regards to defining of the infringement of the right to a trial in reasonable time in the period of year 2011, with special emphases on the criminal aspects, The request was responded positively and the data that was gathered were analyzed in the area of this report that deals with the standards for fair and just trial.

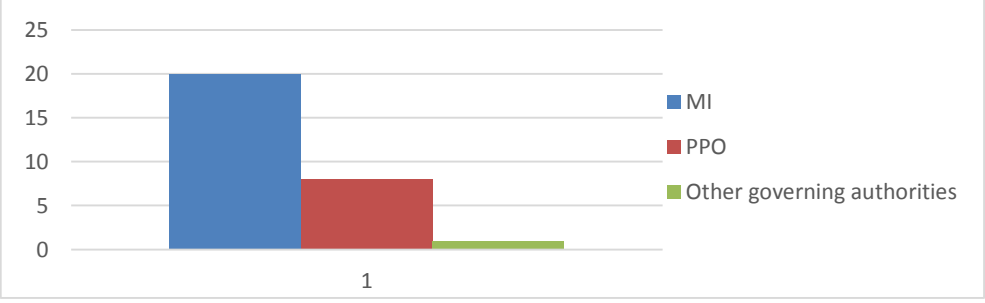
2. PRIOR PROCEEDINGS

The data of this survey which are related to the prior proceedings as a phase; which has a goal to detect and clarify the criminal offence and the perpetrator/the offender, as well as to gather substantive information which will help the prosecutor to decide whether he/she will make charges or not; demonstrate that in 27% of the cases a year has passed from the moment when the crime was committed to the moment the perpetrator was discovered. Furthermore in 30% of the cases this happens in the period of over one year, and for 43% of the cases, unfortunately there is no data available. If we take into consideration only those proceedings for which there is a data, a conclusion is formed that in more than the half or to be precise in 52% of the cases, the period from the of the commission of the criminal offense till the moment the offender was identified, lasted over one year, while in 48% of the cases it lasted less than a year.



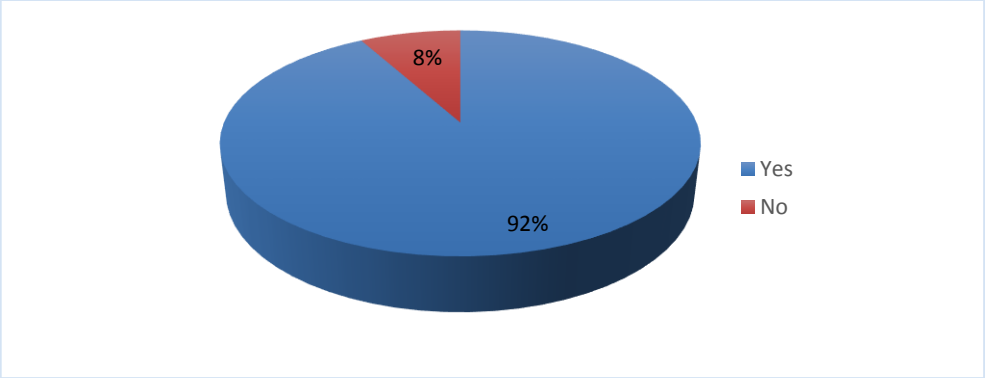
Period from the moment of the execution to the detection of the crime

Furthermore, as it can be seen in the following chart, the criminal charge in the majority of the cases that were monitored was submitted by the Ministry of Interior or to be precise in 69% of the monitored cases, ando only in 28% it was submitted by the Public Prosecutors Office, while in 3% from other bodies/institutions.



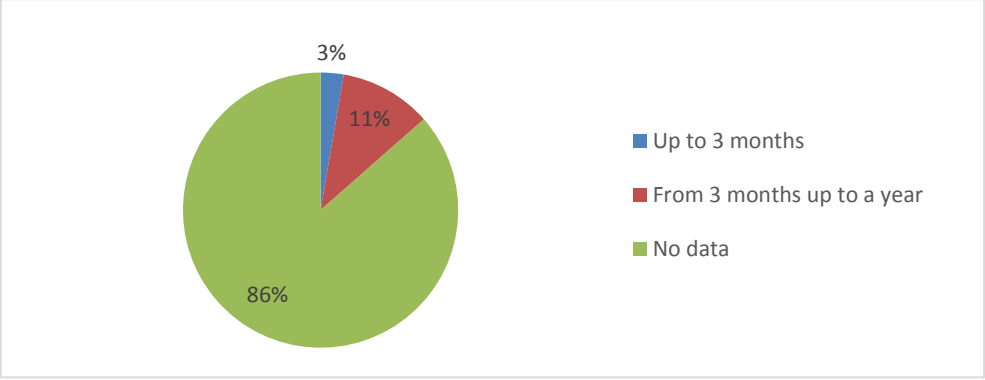
Who filed criminal charges?

With regards to the question – weather there has been an investigation that was conducted, the results of this project show that it has been conducted in 92% of the cases, but for the major part of these cases or for 86% there is no data on how long did it lasted, while those 14% of the cases for which the time of duration of the investigation is known, in 11% it lasted from 3 months up to a year, and only in 3% up to 3 months.



Has there been an investigation

This survey has only obtained a data related to the issue of whether an investigation was conducted and how long did it last, but not for some other important factors and questions such as those connected to the impressions of the observers regarding the influence of the investigation on the trial process or its main flaws, which would create a solide base for one more substantive analyses.



Has there been investigation conducted

3. APPLICATION OF THE SPECIAL INVESTIGATIVE MEASURES

As one of the more important topics of interest during the process of the investigation, the analyses of the application of the special investigative measures is inevitable. The reason for this increased interest can be located in the sole nature of the special investigative measures which represent certain novelty in the Macedonian system of penal justice, which were introduced in 2002, as well as in the fact that through these measures very often, important proofs are obtained, but they are usually obtained with a serious breach and limitation of the basic human rights and freedoms of the defendant and other persons. On the other hand, the application of these measures presents additional burdening of the budget of the law enforcement institutions since the said measures are sophisticated and financially expensive ones. Having in mind this fact, or the nature of these measures as a tool with which, to a great extent the rights that protect the personal integrity and the secrecy of personal communication, the privacy and integrity of the home of the person that is under suspicion, are breached, the CPL provides for special procedures and increased control over the bodies that carry them out.

The cases that were analysed, show that these measures were applied in one third of them, while a clear data that these measures were not applied is shown in only 2 of the monitored cases. Thus it can be concluded that these measures were applied in a significant measure as a tool in detecting and finding the perpetrators of this type of criminality.

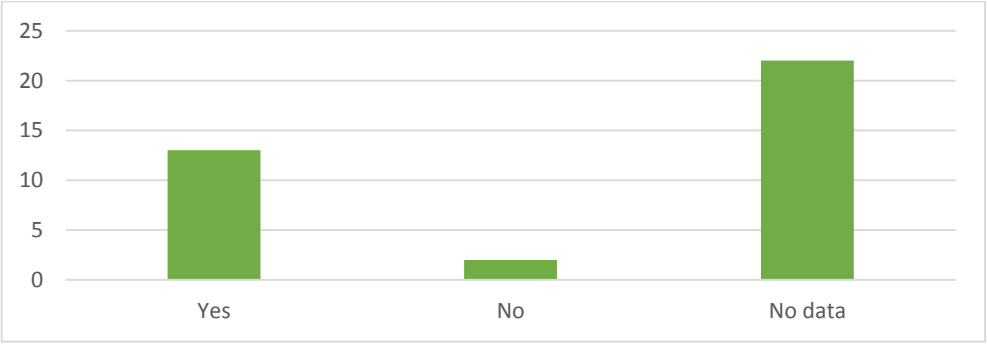
Unfortunately, in more than the half or in 22 of the cases that were monitored, the monitors were not able to confirm the legality of the use of these measures. This percentage doesn't leave a space for certain confirmation of the hypothesis that special investigative measures are dominant source of the proofs connected with the criminal offenses form corruption and organized crime, or in the proceedings that are prosecuted in the Department for prosecution of perpetrators that have committed criminal acts of organized crime and corruption.

In order to confirm this hypotheses, in future the monitors should make a complete insight in the cases that are being monitored, which on the other hand can be commented as greater involvement of the monitors of the Coalition in the criminal proceedings which are the subject of their observation.

However, even this and such data can be a subject of interest and adequate argumentation. This especially since the application of the special

investigative measures in one third of the cases that were monitored signifies not such a small percentage. This means that despite the fact that these measures which by their own nature limit in a great measure the rights of the suspects or of defendants; investigative measures that very often are marked by an increased level of penalty, and in this manner are in conflict with the presumption of innocence of the person against whom a criminal procedure is being conducted; measures that demand greater financial costs and logistic support; and finally from the aspect of the suspected or defendants are viewed as utterly unpopular; but their practical application makes them demanded as measures since in such manner the law enforcement bodies receive evidences that are certain, verifiable and not in contradiction regarding the guilt of the defendants or the person that is being suspected.

Having in mind afore elaborated arguments, we are of the opinion that these measures of investigation should be applied only in exceptional cases and as a last resort measures.[5] The percentage of allmoast one third of the cases where these measures were applied, gives us the right to conclude that the special investigatvie measures are implemented with significant fequency in the cases that were monitored. Still, considering the jurisdiction of the court before which these cases are being prosecuted, and given the total number of the cases which are prosecuded in the work of this department in in the Primary Court Skopje 1, we conclude that the representation of the special investigative measures should not treated as such that create a serious intrusion in the rights of persons against whom criminal proceedings are conducted. Of course, this conclusion can be valid only if we have full insight in the concrete cases that were monitored, which would give us more data in the justification of the application of these measures in each respective case.



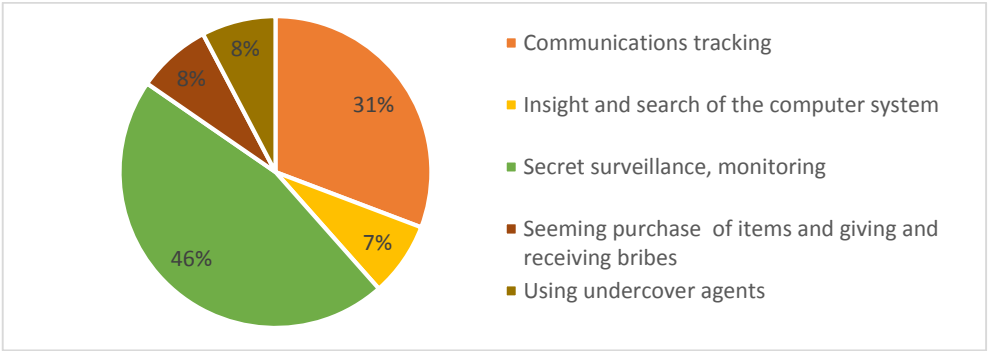
Has application ofspecial investigative measures been ordered?

[5] See: Г. Калајџиев, Ј. Јовчески, Специјалните истражни мерки во кривичното законодавство на РМ, МРКПК, бр. 2/2009г., page 313 and similar.

Unlike the previous conclusions, the analyses of the application of the types of special investigative measures that were applied, gives us a different picture. It can be said that there is a certain favour in using of the more simple special investigative measures as oposed to the other more complex ones. Thus, it is evident that the most commonly applied mesure is secret surveillance and monitoring with almost one half of the analyzed cases. The second most often used special investigative measure is surveillance of communication, which by its very nature is rather similar to the previous one. Unlike these 2 measures, the remaining are used in only 23% or presented in other manner – the remaining special investigative measures were applied each in one case respectfully.

This means that the more sophisticated measures such as virtual or simulated purchase of objects, giving or receiving a bribe, and the use of undercover agents, have received far less common pratice in the cases analyzed, in comparison with the aforementioned measures. Such application of these measures can be due the nature of the criminal offenses that were committed, but also to the mentality of the offenders. In other words, the mentality of the offenders which predominantly organize such activities and who communicate via cell phones, as opposed to the communication that includes computer systems and internet. On the other hand, the insight and the search of the computer systems are emerging as a main tool in the fight against financial crime.

The practical application of the special investigative measures can also give us the picture of the methodology that the law enforcement bodies use in the discovering of the criminal acts; suspicions are confirmed through monitoring of communications or secret surveillance, and then the additional financial investigation through insight into computer systems and databases is made, that would contain facts about the criminal behavior.



Special investigative measures

On the other hand, when one fallows the data connected with the percentage of the cases that were monitored, the fact which demonstrates lesser application in the practice of the measures- ostensible purchase of items or giving and receiving bribe is to be saluted; since in the case of these measures the crucial role is played by the behavior of the agent provocateur, in other words, sometimes his or hers behavior in practice can be seen as an action for encouragement and assisting. Of course this conclusion can be relevant only in the conditions of general and statistical analyses of the data.

To put it differently, the correct application of these measures as well as the real contribution of the persons that are included in their application can be valued only in the concrete cases. In order to achieve this increased attention in the implementation of the special investigative measures is needed, which means their application only in exceptional cases, as well as extreme attention and respect to the procedural and extra procedural mechanisms of control and attention.

At the end of the analyses of the data connected to the application of the special investigative measures, gathered from the cases that were observed, it can be concluded that some of these measures are not applied at all, or more precisely the measures from the paragraph 5, 7 and 8 from line 1 from the article 142-b from CPL are not being implemented.

The question remains, why some measures are not applied at all as well as should they have been included in the said law in a first place. It is understandable that this partial analysis cannot give an answer to these questions, or more precisely, the answer should be completed or become more evident after the completion of one substantive and wider analysis of all the cases in which special investigative measures were applied. Only than, the possible changes of the legal provisions of the CPL or those from the same law from 2010 which derogated these provisions can be reconsidered.

4. THE PERIOD FROM THE INDICTMENT TILL THE BEGINNING OF THE MAIN HEARING AND INDICTMENT CONTROLL

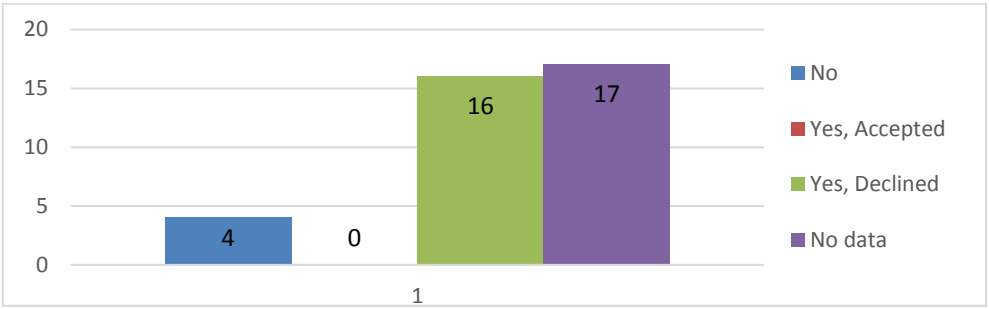
The comments related to the question of the establishment of the time that had passed from the submission of the indictment till the first hearing of the trial, in a large extent are unknown. In other words in almost three quarters of the cases observed, the monitors have no answer to this question. The reasons for the absence of this data can be easily located in the fact that the bigger number of the cases that were observed had been already started, so the monitors were unable to follow them from the start and obtain these data. This conclusion is justified by the fact that with regards to this question the available data was provided for only 9 cases.

It is an interesting data that shows that in one case the trial had begun after the passage of a period which was longer than 3 but not longer than 6 months, from the moment when the charges had been made. We can speculate that the main reason for this was an objection to the charges, which perhaps had led to prolongation of the trial, due to the additional actions that were to be taken in accordance with the article 261, para.2 of the CPL, in terms of completion or conduction of the investigation, or it can simply be a mistake within the data included in the questionnaires since it is evidenced in one case only. If it is not the case, this would represent a breach of the provisions given with the CPL.

In any case, the remaining data on the beginning of the trial in the period between 1 to 3 months is showing that the rest of the cases are respecting the legal frame regulating this. In other words if there was not a complaint submitted regarding the indictment, which truth be told is used rarely, the beginning and scheduling of the trial is mainly done in the legally set frame in accordance with the art. 269, para.2 from the CPL.

With regards to the objection to the indictment, this is a strong tool of the defense and of the defendant; once more and unfortunately we have to conclude that that the bad practice of rare usage of this procedural tool for protection and guarantee of the rights of the defendant in an early phase of the criminal procedure is confirmed[6], in other words, on the very beginning of the, commonly, most complex and substantial part of the criminal procedure – the main hearing.

[6] See: Г. Бужаровска, Б. Мисоски and В. Атанасовска, Компаративно истражување на контрола на обвинението во споредбеното право, МРКПК, no. 2-3, 2008, page 209 and similar.



Objection to the indictment – control of the indictment

Or if we present this in numbers, it seems that the complaints/objections to the indictment were submitted in total of 40% of the monitored cases. Again, in this area too, we meet with the high number of unknown data, or in numbers it is approximately 46% of the observed cases. Following these data we observe that at least 2 questions deserve more thorough analyses.

The first question is related to the fact that all of the submitted complaints/objections to the indictment were refused as ungrounded, and the second question is related to the high level of the unknown data. The answer to the first of the questions could move in two directions. The first direction would state that it is Public Prosecutors Office and the investigative judge, have done their job really well so the defendant has no other options regarding the submitted indictments since there is not much to object about. If this presumption is true, than it seems that the new concept of the CPL that prescribes procedural mechanisms for speeding up the criminal procedure through introduction of the institute of confession and guilty plea is justified, since in such conditions of firm indictment acts the defendants has not much space for maneuvering in the process of the trial regarding the denial of his/hers guilt. In this aspect the optimism in activation of the usage of these procedural instruments for speeding up the criminal procedure, through shortening of the main hearing seems justified, since in cases like this the defendant would only have to settle with the Public Prosecutor with regards to the type and length of the sanction. It is exactly through this procedure can provide the defendant with adequate mitigation of the anticipated legal penalties or other sanctions.

The second direction would be of course the one that is less acceptable, namely that would observe and take into consideration the negative aspects of the direct refusal to accept the arguments provided by the defense with regards the eventual problems with the indictment or lack of foundation for it. If this is the case it would mean lack of sense and courage on the side of the court to

stop the criminal procedure in this phase of objection to the indictment in the cases where there are facts that go in favor of the presumption of innocence of the defendant. This could also mean the lack of desire to set back the procedure and demand further examination or completion of the investigation with additional facts/proofs, when there is apparent lack of its completion or where there is obvious lack of sufficient solid and grounded proofs for the indictment.

This activity of the court maybe located in its will for complete clearance of these dilemmas during the time of the conduction of the adversarial main hearing, where there are sufficient procedural mechanisms for the court to be able to re-evaluate and check all of the defense's allegations independently, and not to pass this job to the prosecutor and the investigation judge during the phase of control of the indictment. Still this for lack of better words - indecisiveness of the court in these cases can only result with additional work, in other words with spending of the already limited courts resources through leading of the long and exhausting main hearing, which outcome may be already known to the court, but it has conducted the main hearing just to confirm the dilemma that was imposed by the objection to the indictment submitted by the defense or the defendant.

That is why we are of the opinion that the existence of the phase of control of the indictment, is and should be understood as a possibility for the court to spare its resources and to provide a quick completion of the criminal proceedings, without violation of the rights of the defendant that happen through such behavior from the court and from the authorized prosecutor. Precisely for these reasons we consider to be justified for the court to pay more close attention to the objections to the indictment, and the defendant or its defense should recognize the potential benefit from making appeal to the indictment and to use it more in practice, as well as not to be discouraged from the statistical data that shows that not one of the submitted appeals to the indictment was accepted by the court in the monitored cases.

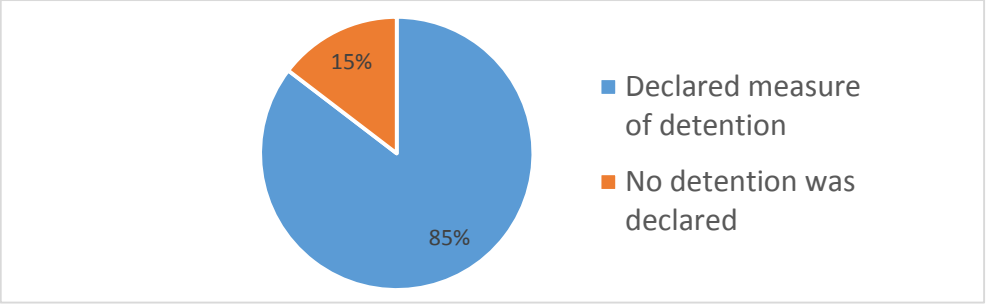
5. MEASURES TO ENSURE THE PRESENCE OF THE SUSPECTS OR THE DEFENDANTS

5.1. Application of the measure detention – general notes

Especially interesting aspect of the criminal procedure is the the protection and the guarantee of the human rights, as well as obtaining the mark of the "just procedure" when the criminal procedure is at stake, that are

provided to a large extent through the following the application of the measures for providing the presence of the suspected or the defendant. The reason for this is visible in the nature of these measures, which by nature are contradictory. This controversy of the said measures is visible in the fact that with them the right of freedom of movement is being breached, which is done for the sake of the right of fair trial that is fulfilled through the adversarial, public and direct main hearing. This is precisely why, the decision of the court as for which of the said legal measures to apply in the concrete case, or in other words - to what extent should the freedom of movement of the person which is protected with the presumption of innocence as a constitutional principle be limited, represents a mark that speaks of the overall fairness of the criminal procedure.

The public perceptions so far, that the cases which are processed in the Department for the Prosecution of Perpetrators of Organized Crime and Corruption, are such that use most often the strictest measure for providing presence of the suspected or the defendat – the detention, are confirmed through the data gathered by the monitors of the Coalition "All for Fair Trials".Namely, the cases that were analyzed show that the most stringent measure to provide presence was applied even in 85%. If we illustrate this through numbers, the detention was applied for 374 out of 438 defendants in the observed 37 cases.



Defendant persons in detention

This is a really big number, which is also can be seen by the fact that all of the remaining detention cases that are in procedure in the Curt of First Instance Skopje 1 is significantly lower.[7]

[7] A previous research shows that the Basic court Skopje 1 has approximately 10% to 15% of detention cases. See: Б. Мисоски, Гаранцијата како мерка за обезбедување присуство на обвинетиот во текот на кривичната постапка, Doctoral dissertation, Faculty of Law „Iustinianus Primus" in Skopje, 2013, page. 350 and similar.

Year	Total no. of cases	Detention cases
2000	2140	123
2001	2026	140
2002	1528	191
2003	1620	137
2004	2158	162
2005	2294	170
2006	2368	111
2007	6396	200
2008	4311	166
2009	4283	198
2010	4427	171
2011	3930	352

Number of detention cases

Of course while concluding this we have in consideration the fact that the Coalition is not following all cases that are tried in the Special Department and hence, that this conclusion is based on the limited number of observed cases.

However, we base our conclusion on the fact that this department has an average of approximately 80 cases that are tried per year,[8] and in that direction the detention was present only in the cases that were observed by the Coalition, so once again it is a situation where we have more than the half of the total number of the suspected or the defendants that are detained and number of cases where this measure is present, once again represent more than the half of the total number of the cases observed. This even more so, when we know that the Coalition is analyzing the cases which are dealing with larger number of defendants.

Is the measure of detention really necessary measure in providing the presence of the persons against whom these procedures are being taken or not, is the issue that is usually defended in the public with the argument that it is a specially case form of criminality at stake which is falling within the authority of this Department, as well as with the fact that it is applied mostly in the case of serious criminal acts that are committed by the well-organized criminal group, by criminals which are reckless, systematic and with previously well

[8] Date obtained from the analyses of the number of cases from the Register which is lead for this department in the BC Skopje 1. In 2010, 80 cases were in process, out of which 52 were detention cases.

thought and organized criminal activities, and not seldom these are also recidivist.

On the contrary, the fact remains that firstly when considering the measures for providing the presence, one should take into consideration the personal characteristics of the person against whom these measures are to be taken, as well as the existence of real proof or indicators that can show that there is a real danger of completion of some of the legal grounds for detention provided with article 183 from the CPL.

In any case, following the practice of the European Court for Human Rights in Strasbourg (in further text ECHR), as well as the provisions of the CPL, the application of the most severe measure for providing presence should be strictly limited in practice and used with exception when the presence of the suspects or defendants cannot be provided with application of the other, more mild measures - as it is literally provided in the Recommendation R(2006)13 from the Council of Europe.[9]

The detention should be strictly related to the personal characteristics of the person against whom the criminal proceedings are being taken, or in other words, it should be considered if there is a real danger of escape, real danger of influence of the investigation, or is there a real chance that the person against whom there is the criminal procedure could be able to complete or repeat the offence that he/she was threatening to commit; and not by the gravity or the type of the criminal offence itself. The ECHR has itself ruled in couple of judgments on this, stating that the detention should be applied only after or when the gravity of the offensive act is taken in consideration.[10]

It is exactly for these reasons that when bringing the decision on which measure for providing the presence should be applied, as well as – weather this measure should be applied at all, we are unable to determine which were the reasons that help the court make a decision, or if and where the court has located the danger of escape, the danger of influence over the investigation or the danger of the repetition of the criminal offense. It is unclear if this suspicion is due the personal characteristics of the person against which the criminal procedures are taken, his/hers social background and similar, or it is due his or hers family and professional ties.

[9] See: Racommandation (2006) 13 from Counceel of Europe.
[10] See: Wemhoff v. Germany, available at:
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57595

We locate the reasons for the arguments against such application of the detention, bearing in mind the personal and social characteristics of the defendants, as well as the type of the criminal offense. In the cases where the detention is ruled to a perpetrator which is suspected of committing a lucrative criminal offense, it would be more adequate to apply and rule another measure for providing the presence. We are having in mind here the guarantee, which is directly aimed to create limitation of the availability of s the financial funds of the defendants (ie the accounts etc.), and in this manner the defendants will be more motivated to actively participate in the procedure, and to appear in the trial procedure in the court etc.

The reasons for the advantage that is given to the measure of detention in comparison with the remaining measures is often explained with the fact that the court not always is in the position of sufficient data regarding the personal and family context of the person against whom the procedure is being conducted and which is held into detention, in the early phases of the procedure. It is due to this, that there are cases when the first ruling that provides a detention is preventive one, and has as a goal to provide the presence of the person while the prosecution provides the necessary data on the personality and the social background of the defendant, through which they could asses in a realistic manner the dangers for some of the bases for which the measure of detention is prescribed.

With regards to the personal and the family contexts of the persons that are subjected to criminal procedures, our monitors have also noticed lack of data and have not provided it. Therefore, following the figures from the beginning of this analyzes we cannot obtain a complete picture connected with the issues that depict if the defendants had firm family ties, permanent job and how long were they employed - if so, did they have families or do they possess some kind of property, and there are no records or data on their previous criminal activity. The similar situation is found with the data related to their mental condition and addiction diseases.

In order to surpass these conditions where the court is not always in possession of all data related to the person against whom the criminal proceedings are taken, we are of the opinion that the creation of a special service made following the example of the „pretrial services“that are known in the Anglo-Saxon system.[11] The main duty of this office would be to present all

[11] For the role of these these services in USA see: R. A. Wilson, Unified Pretrial Services Project, Final Evaluation Report, 1978, conducted by the Ministry of Justice, available at: https://www.ncjrs.gov/

of the beafore mentioned data related to the defendants to the court, providing additional forecast related with the dangers of meeting the grounds for detention.[12]

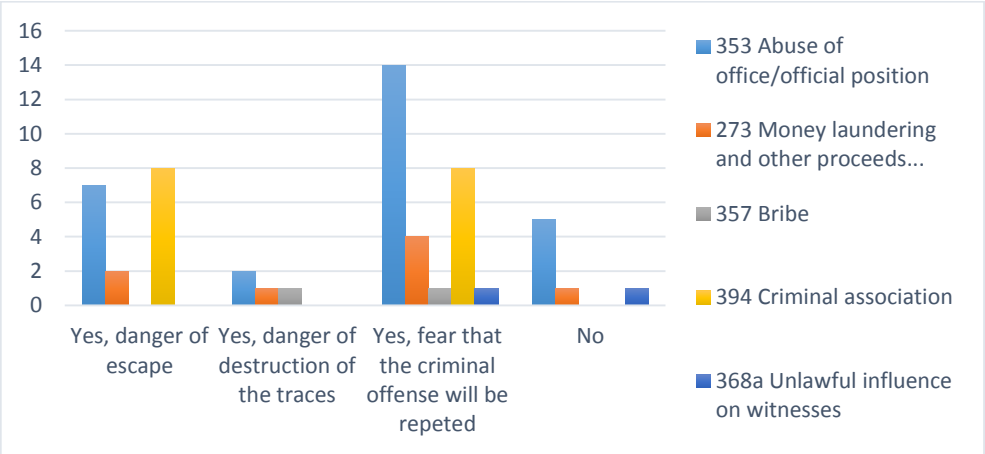
Additional opportunity for gathering data by the court itself is connection with the data bases of the computer systems that are lead within the courts themselves (for information on criminal records), in Ministry of Internal (the data on any eventual previous operational knowledge of the criminal activities) the data from the Central Register Office, cadaster data and credit bureau (regarding his/hers financial situation) and data from the Registers for the Recording Office. In this manner the court could obtain the complete data on the person against which there is a criminal procedure, and additionalлy it can create the authentic profile of the offender, which will help and ease the process of selection and prescription of the most adequate measures for providing presence.

5.2. Grounds for determining the detention

With regards of the number of grounds on which the detention was determined, or why do we have more grounds than the number of observed cases, the argumentation is clear and simple. Namely, out of the observed 37 cases in which 437 persons were charged, the detention was determined for 85% of the persons on more than one ground. This creates the number of 56 grounds on which the measure of detention was determined, as opposed to the number of cases which is 37.

In continuation, we will be focusing on the frequency of the grounds on which the measure of detention was determined. Namely – most often the danger of escape and fear that the same criminal act will be repeated are used as reasons for grounds for determination of detention, as opposed to the fear that the evidence might be destroyed or that the investigation process might be influenced in other manner.

[12] See: A. Hucklesby, Bail Support Schemes for Adults, The Policy Press, 2011, page 20.



Measure of detention declared according the criminal offense

This means that, having in mind the high percentage of application of the special investigative measures through which the evidences for the perpetrators offences are provided, from the data gathered by the monitors from the Coalition, it becomes evident why the measure detention was least often used as to prevent influence over the investigation, since the large number of the evidence were gathered already in this phase of the investigation.

The existence of the measure detention on the other hand, only on the grounds of the danger of escape or fear for completion or repetition of the criminal act, in accordance with the practice of the ECHR are grounds that are subject to the most frequent change of the conditions. Given this, these circumstances should be revised more often.[13] Namely, the fear that the criminal offence – abuse of position and power could be committed again, in accordance with article 353 of the CC, which was detected as the most common danger when determining the detention present in 14 of the monitored cases, loses its validity/importance and urgency in the conditions of disciplinary sanction that can be placed by the employer during the absence of work of the person against which the procedure is being lead, such as, for example, suspension from work due to criminal procedure for negligent performance or misconduct, and sometimes termination of employment.

In relation with the high number of the measures of detention that were ruled on this ground, we can conclude that the court during the criminal procedure will not wait for the disciplinary authorities, but it also means that

[13] See: Neumeister v. Austria available at::
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57544

the court believed that the suspects still had or could have some impact on their working places that could have precluded or interfered with the investigation.

It is possible that this is unwanted practice of the court by which it provides additional guaranties for itself, that the person against whom the criminal procedure is lead will not commit new criminal offense in its duration. In this manner the court is indirectly imposing ban on performing a duty or function, because during the criminal proceedings where there is a determination of detention, the person against whom the criminal proceedings are lead cannot actively exercise his/hers right to work.

All these discussions would be irrelevant or the detention would be justified, in terms when the court in its decisions is also stating sufficient and appropriate facts and arguments in favor of the same.[14] Unfortunately, the nature of the observations that were completed by the monitors who perform only external observation, but don't analyze the content of the formal acts of the court, we are unable to comment on the court's arguments on the grounds of its decisions, and we can only hope that the court had in possession and had taken into consideration all the relevant facts and evidence when making its decision.

In justification of the need for more frequent, time oriented reevaluation of the grounds of a certain measure, it is of great importance to put special attention while interpreting the grounds for - danger of escape, since this ground can have an ambivalent nature. In the conditions of an advanced phase of the criminal procedure, where the judgment and the punishment for the offence can be certain or evident in the process, this can be seen as an encouraging circumstance for escape of the defendant. Jet another case is in the circumstances of long detention, when the defendant has no interest to escape since the eventual sentence he or she would receive, would be roughly same in terms of duration and within the same time that was spent in custody.

5.3. Duration of the detention

Analyzing the data obtained from the monitoring, the duration of the measure of detention can be illustrated in the following manner:

[14] See the criticism in the case *Василковски и останатите против Македонија*, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101358#{"itemid":["001-101358"]}

Case	Days
../12	52
../09	60
../10	147
../10	180
../11	210
../11	420
../12	450
Average	217
There is data	7
No data available	19
Total	26

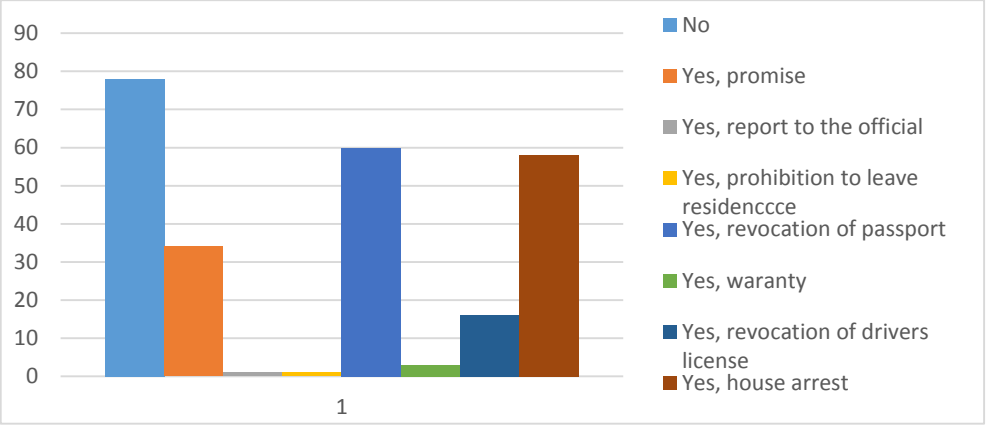
Duration of the measure detention in days

The observers were not in the position to always conclude whether the measure detention was determined and if so – the duration of the time for which it was determined. Therefore, having in mind the fact that the observers have accessed data regarding only one fourth of the cases, we cannot broaden the conclusions to the whole surveyed population. That is why we can only briefly conclude that from the data gathered the detention lasted 217 days, which is not much. Still, from the cases that were analyzed, we cannot tell how long did the detention lasted in the concrete cases, since part of them are not terminated yet, nor we can tell whether these data are related only to the detention that was determined during the main hearing or are a common sum of the detention determined during the investigation and the one which was determined during the main hearing. If it is related only to the main trial process, than there are two cases that come out as worrying, since the detention there lasted longer than a year. Still, having in mind the complexity of the criminality that was to be unveiled during the main hearing, we should restrain from concluding right away that here we are dealing with prolongation of the procedure and trial that is conducted in unreasonable term/deadline.

Still having in mind the comments on the mutability od the circumstances connected with the passage of time due to which the measure of detention was determined, in the concrete cases we are of the opinion that the court should be especially careful when weighting its decision in determining detention, as well as it should seriously take into account the possibility for change the decision for detention with the application of some of the less strict measures for providing presence.

5.4. Application of other measures for providing presence

Especially interesting question when the measures for providing the presence is concerned, is the one of the application and frequency of use of the remaining measures for providing presence as provided with CPL. Namely, in these cases the monitors of the Coalition have gathered the data on the application of the other measures in 173 cases. In this case, the possibility that one person was given several measures for providing presence is not excluded. Still, having in mind the total number of the measures, we can conclude with certainty that they are used in significantly lesser number of cases as compared with the measure detention.



Application of measures that provide presence of the defendant

During the analyzes of the application of the measures for providing presence, it is very visible that the measures which were used the most apart from the detention are, house detention and confiscation of travel documents, while other measures, such as the obligation to report to an official, guarantee and prohibition on leaving the residence are applied by exception. The reasons for this practice can be several. Firstly, the rare usage of the guarantee is mostly due to its legal limitation to be applied only in cases where a danger of escape exists. This legal provision of the guarantee makes it to a large extent inapplicable as a measure, although, having in mind the structure of the committed criminal acts against which the procedures are being lead, above all the ones of lucrative nature, it appears that the guarantee would be adequate measure for providing presence. This is precisely why we are of the opinion that the court when ruling the decisions on detention should be restrictive in defining the grounds according which the detention is prescribed, and with it and with the evaluation of the time of the grounds, it can be expected to change more frequently the detention with the measure of the guarantee.

More hope we see in the more often use of the guarantee given with the new CPL from 2010, according to which the field of application of the guarantee as a measure is significantly increased/widened in the cases when it was determined both as a prevention of the danger for escape, and as a prevention of the danger that the person will repeat, complete or commit the crime is was threatening to commit (art. 150 of new CPL from 2010). Or, this would mean that- having in mind the data gathered from the monitors in accordance with the new CPL, the measure of detention could be substituted with the guarantee in the largest number of the observed cases.

In addition to increasing the measure of guarantee and with the acceptance of the proposal to improve the situation by informing the court about the personal and financial situation of the suspected or defendant, by use of the aforementioned ways is advised.

In many cases, the court was provided only by subtracting/confiscating the passport (in 60 cases) or driver's license (16) as a sufficient guarantee that the person will regularly appear before the court and will not flee. This is an interesting fact since it represents a drastic relief or burdening of the position of the defendants, having the measure of detention on one and the application of these measures on other side. The practice, in which in prevention of escape the guarantee is not used as a transitory measure, is surprising, especially if it is known that instead of it the court had ruled immediately in favor of the measure detention. In accordance with the comparative experiences in the field of the confiscation of the passport or driving license, we can state that these measures are used only as means of strengthening of the security of the court in application of the measure of guarantee.[15]

In this direction we can also comment the lack of application of the measures for caution – obligation to rapport to a certain official or state institution/body and the prohibition to leave the residence. These measures are often combined with electronic surveillance. Through these measures actually all the circumstances that can lead to detention are prevented, and thus the obligation of the defendant towards the orders given by the court is increased, while the fairness of the criminal procedure increases too alongside with the respect of the right to freedom for this person. Our lawmakers and legislators should consider this too when creating the laws, especially since the new CPL from 2010 could provide in more details the possibility of more

[15] See: A. Hucklesby, Police Bail and the Use of Conditions, Criminology and Criminal Justice, 2001, Vol. 1, page 451.

frequent use of the electronic surveillance too, as one of the more efficient measures recognized by the comparative law.[16]

Unlike these measures, the measure of house detention is being more popularized and was applied even in 58 cases. This practice, in our opinion is not to be saluted, since very often in practice it is abused by the defendants. The reasons for this lie in the fact that the idea of the house detention lies in the favor of the specific health conditions of the person against the procedure is conducted, in other words if he or she is seriously ill, old or frail person, pregnant woman, and due to this is unable, precisely because his or hers health condition, to stand the conditions of the detention.

The abuse is hidden in the fact that in our CPL the legislator had omitted to include these specific characteristics in the causes calling for application of the measure of house arrest detention, and in such manner that the essence of this measure could be found in its analogy with the house arrest provided also in the CPL. Instead of it, in the case of the application of this measure as a substitute for the detention, often inadequate arguments are given, which often don't have the health of the person against which the procedure is being conducted in mind.

This abuse of the system of penal justice, should be stopped as soon as possible, in such a manner that includes provisions in the existing CPL that are similar to those of the new CPL from 2010 (art. 163, para. 2) that regulate house detention, which will return the real meaning and essence to this measure. This even more so, when we bear in mind the provisions for application of the new CPL from 2010, which are planned to be put in power in the beginning of December of this year, in the specific conditions where in the same time the provisions of the existing CPL will still be valid for a certain period of time.

Additional argument for the frequency of the application of the house detention, is the fact that it is a measure that it is where the duration of the detention itself is included by analogy within the calculation of the duration of the effective prison sentence, and therefore, the house detention is also acceptable for the defendants and their defense, in comparison to the other measures for providing the presence.

[16] See: M. Nellis, The Electronic Monitoring of Offenders in England and Wales, Recent Developments and Future Prospects, British Journal of Criminology, Vol. 31, No. 2, 1991, page 167.

6. MAIN TRIAL

6.1. Right to fair trial

It is a general perception of the monitors that the defendants in the observed trials in general had the right through - a fair and public hearing, by an impartial tribunal, in adversarial proceedings to contest the charges made against them and to propose and carry out evidences in their defense. Still, this basic evaluation doesn't mean that the monitors and the media, as well as the NGO's and the experts that followed the trials have not some serious remarks regarding the provision of some of the basic important elements of a just and fair trial. Thus, the right of the defendant to have a hearing, to be informed of the criminal act that he or she is accused of and to be able to propose his or hers own witnesses and to question the witnesses of the opposite side, to have a right of a public and adversarial proceedings, as well as the right of defense through the whole duration of the procedure, as essential set of rights of the defendant, were applied/meet with certain problems

6.2. Duration of the procedure

The long duration of the procedure is an old and known problem to when the domestic criminal procedure is at stake. Thus, in accordance with the data provided by the State Statistic Office for 2012 the duration of the procedure from the moment of the submission of the charges till the reaching of the judgment in the cases with known offender, out of 15 480 submitted charges the procedure lasted: up to 1 month - in 4 492 cases; from 1 to 2 months – in 1 872 cases; out of 2 up to 4 months – 2 203; from 4 to 6 months – 1 330; from 6 months to 1 year- 1 313 cases, and over 1 year – 3 270 cases. Observed through this aspect the picture remains almost the same year in year out, with the difference that the numbers are higher for couple of percents each year. When the acts against office are concerned, the length is somewhat longer due to the complexity of the cases and the number of the offenders that are tried for the same. Thus, according the data of the last year provided from the same source, the procedure for these criminal acts lasted: up to 1 month – in 143 cases; from 1 to 2 months - 104 cases; from 2 to 4 months - 111; from 4 to 6 months - 84; from 6 months to 1 year - 158 cases; over 1 year - 205 cases.[17]

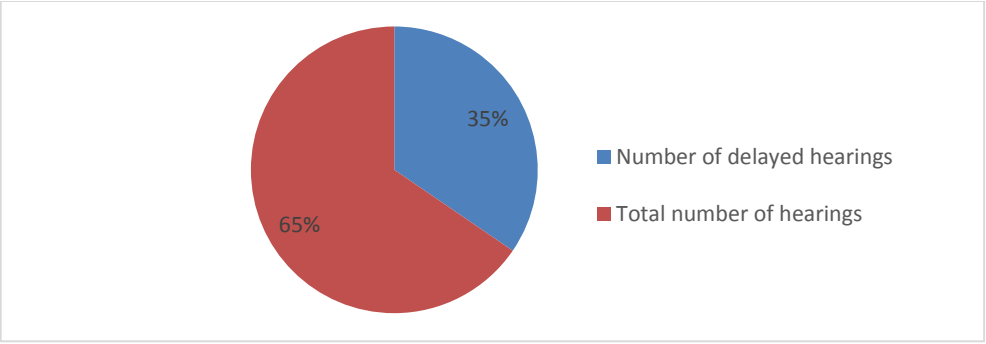
The fact that the criminal procedures last so long is negatively reflected in the efficiency of the penal system in general, but special damages are

[17] Source: State Statistics Office, Сторители на кривични дела во 2012, Скопје, 2013.

suffered by the defendant, especially if he or she is in detention, which was often a case in the observed cases.

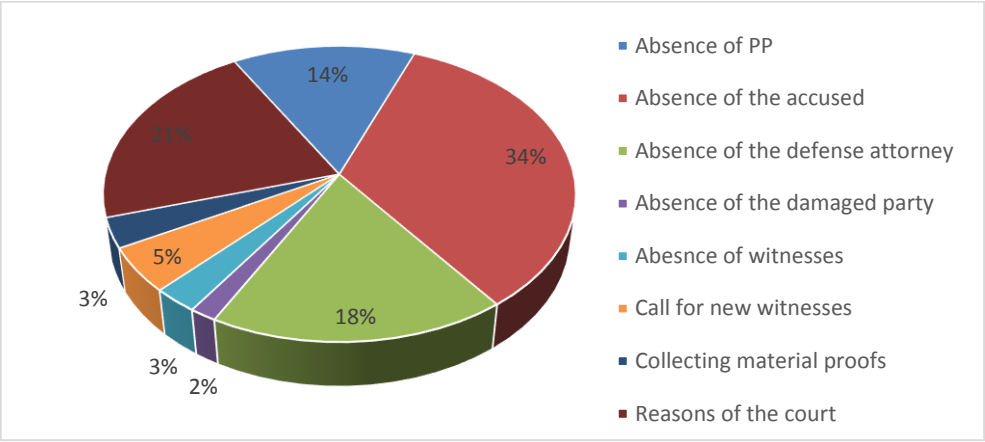
One should bear in mind in the observed cases their complexity – we speak of extensive and complex cases which means that they need more time for completion. The extensiveness and the complexity of these cases is concerned both from the aspect of the actual and legal issues.

6.3. Delaying of the trial



Number of delayed hearings

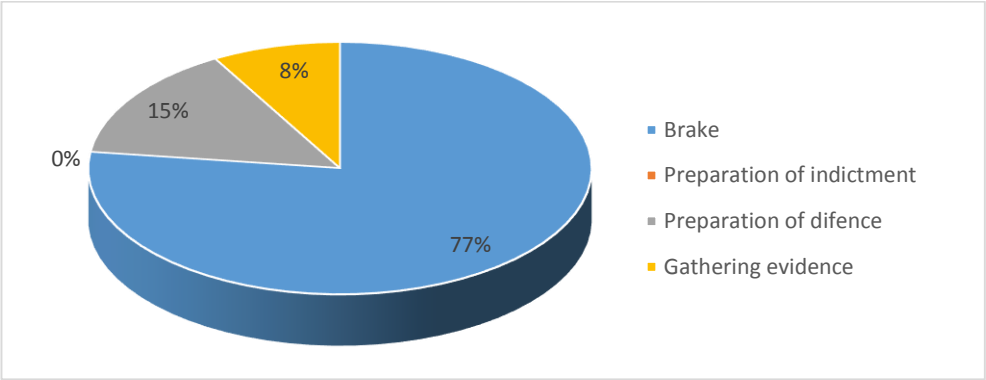
The data clearly shows that the number of the delayed trials/hearings significantly contribute in the prolongation of the procedure. The sole fact that almost half of the scheduled hearings are postponed is really worrying and speaks of the bad organization and the lack of professionalism of the participants in the procedure. Admittedly the worst part here, is seems that everybody are used to this manner of working, and the people (including the media) even perceive as normal the trials to take place in phases and with frequent delays. Some of the experts find the reason for this in the model of the procedure itself, where the proofs are gathered sometimes when the hearing and the trial are in process. Contrary to these, for us common practices, most of the western states find that the efficiency of the procedure is one of the most important principles and thus they speak of the principle of concentration, and the trials are previously well prepared and then are conducted in continuity, and if needed in couple of days in a raw.



Reasons for postponing a hearing

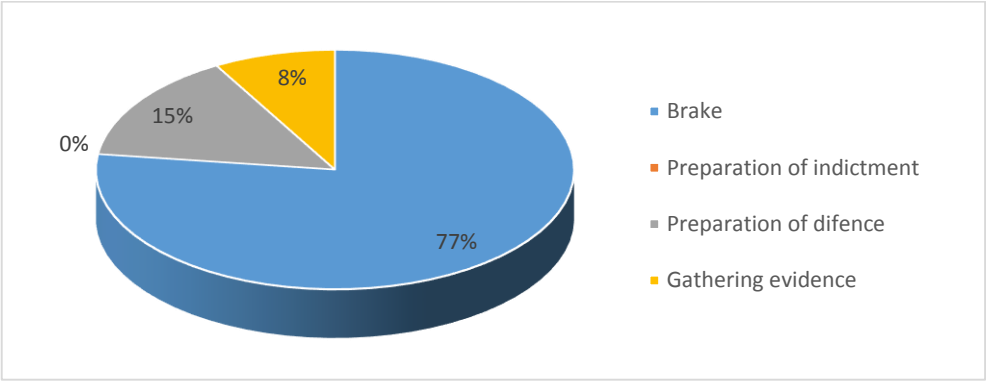
As main reasons for prolongation of the procedure often objective reasons appear – such as when the reason for the prolongation is due the difficulties in finding and presentation of evidence, the time span of the analyses of the expertise etc., but more often the reasons are due subjective factors – when the procedure is prolonged delayed due to the fault of the participants in the proceedings. As it can be seen from the gathered data, the participants in the proceedings, the defendant and the defense were in most cases appearing on the scheduled hearings. In spite of this, the defendant has often submitted objections and complaints which were not seriously grounded, concealed certain facts essential to the length of the case, defense requested a delay because of the excessive workload and so on.

The behavior of public authorities (the court, the public prosecutor and the police) in most of the cases can be evaluated as expeditious since they have shown an active approach in solving the criminal acts, when it was necessary the collection of a large body of evidence and so on, but the cases have been observed where unnecessary delays in almost all phases and stages of the procedure were happening. Thus, the number of the delayed or postponed hearings which in the monitored cases is caused by the absence of the public prosecutor (14%) or because the court has made them in (21%), is simply unacceptable.



Reasons of discontinuation of the trial

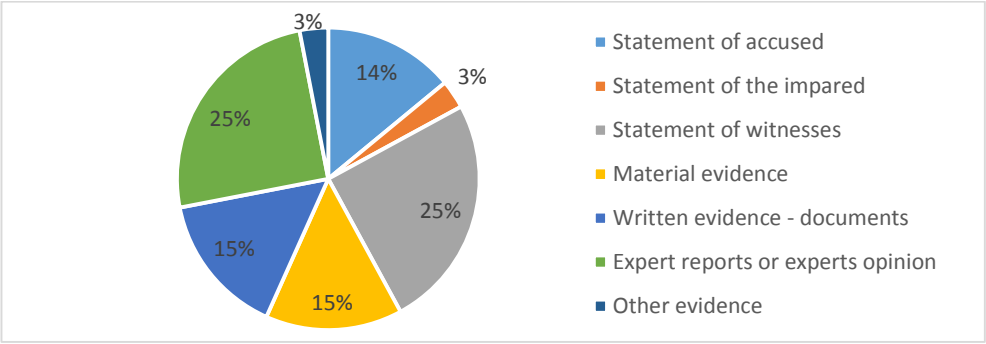
The monitors have noted the existence of numerous and different circumstances, which means that there is a need of interruption of the main hearing (it's stopping in a short period that doesn't surpasses 30 days). Among the circumstances that lead to the interruption of the main hearings are: short reassess/brake during the hearing (77%), preparation of the conviction (8%) or defense (15%), and only in exceptional cases the need for gathering new evidences and other circumstances that are provided for by law.



Reasons for discontinuation of the main hearing

6.4. Proofs

The table shows that in the monitored cases in the period of this report, as it was done previously, most commonly used are the so called **personal proofs** from the defendants (23), witnesses (41) and experts (41). It can be concluded that in these cases, more than in the other trials, there was more usage of expertise and experts present, which is understandable with regards to the nature of the offenses and their complexity.



Evidence

The expertise in most of the cases are done on the initiative of the court and the prosecution, and rarely are initiated by the defense. In the opinion of some of the lawyers that participated on the side of defense during the procedures, the court gives much attention to these expertise opinions and analyses, and is not critical enough when the same are examined. As for the participants in the procedure, there are differences of the opinion on the capability of the court itself to evaluate the findings and opinions of the experts at all, having in mind the fact that it has no experts knowledge from the specific area that is subject to the respective expertise, and due to which it was ordered in a first place.

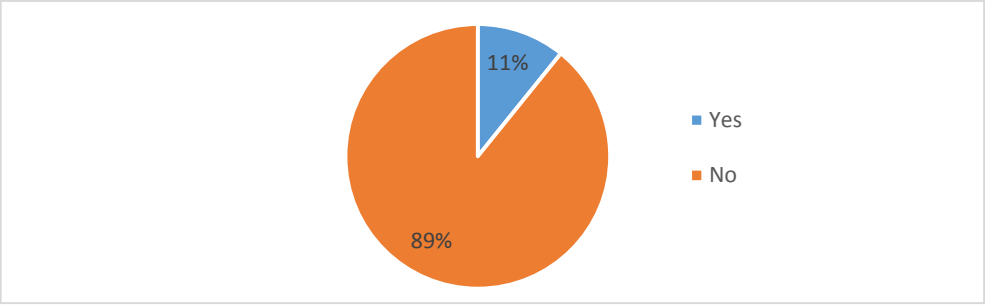
On the other hand, they also complain that the court is skeptical when the expertise is taken under the suggestion from the defense, which also poses the question of providing the equal chances for the defense itself or the so called „equity of arms/weapons ". It is recommended that in future more attention should be placed to this issue, especially in the light of the judgment of the *Stojmenov vs Republic of Macedonia* case, as well as from the aspect of the new provisions of the CPL which introduce the possibilities for inclusion of experts or the so called technical advisers.

An important note given after the statements given from the defendants and the witnesses is that the court was more inclined to believe to the statements given during the investigation, rather than to those given in an adversarial discussion during the main hearing. Namely, the lack of consistency of the statements of the defendant, by rule, were explained as a change of the statement for purposes of evasion of criminal responsibility or similar, and if it was case in the statements of the witnesses, than the explanation was that the said statements were given after a certain passage of time, under pressure or with desire to help the defendant etc. The issue should also be given more attention in the future, given the immediacy and the potential for adversary

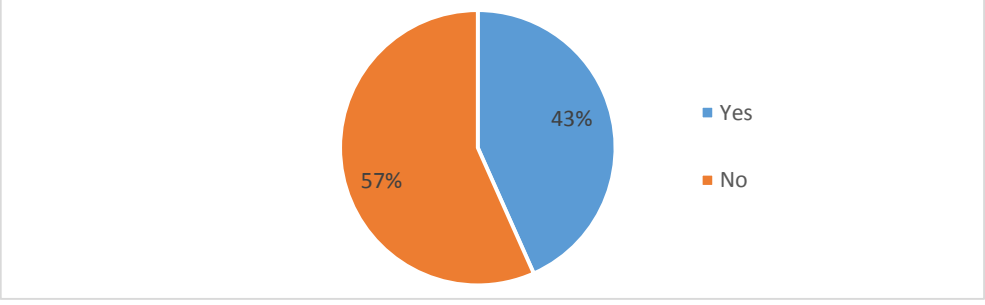
hearing are important preconditions for a lawful and fair trial. Apart from this, the new Law on Penal Procedure allows that the statements given by the witnesses during the investigational procedure, to be used only in the process of the cross examination, and not as a proof, but it allows – which was not case so far – the statements of the suspect which are given to the police in the presence of the public prosecutor to be used as proofs in the procedure.

In some of the monitored cases, it became evident that the domestic judiciary/court practice has no clear attitude regarding the controversial issue of whether the *silence* of the defendant can be a ground for forming negative conclusions. The majority of the actors participating in the procedure are of the opinion that the court takes into consideration the silence, but does not stress it explicitly in the explication of its rulings.

In the cases that were monitored the so called „witnesses by hearing", which have heard of the said event from someone else, and were no direct witnesses to it. It seems that the domestic court practice has not provided or created significant and adequate guarantees for this contradictory witnessing, which would strengthen the immediacy and the adversarial character of the main hearing.



Were actions taken for providing efficient protection of witnesess?



Can the defendant and his/hers attorney pose questions to the protected witness through the court

Protection of witnesses remains to be a subject of controversies both for the legal experts and the wider public. There is a strong impression that in some cases this institute, similar as in the case of special investigative measures, is used more to provide easier ruling rather than because there isa real need for protection of witnesses or victims who are in real danger. The manner in which witnesses are examined does not provide sufficient guarantees for testing and challenging the credibility of the witness, which not only remains anonymous, but the defense cannot question him or her in a manner that provides sufficient and adequate opportunity to question his or hers credibility. The exclusion of the public in these cases is made by default, although it is not provided for in the CPL.[18]

Moreover, police officers and other persons involved in the application of the special investigative measures are protected in the same way as the other vulnerable witnesses, which is not in accordance with the European Court for Human Rights provisions, which demands these witnesses to appear on the trial, where they could be interrogated under the pseudonym, false identity etc., but still they will be able to witness in a direct manner. The provision from the CPL prohibiting defendant to be convicted based solely on the testimony of a protected witness should be reviewed. Jurisprudence of the Court in Strasbourg forbids this to be, not only unique, but also the key evidence to convict, since other evidences almost always exist, which, without the testimony of the protected witness, would not be sufficient for conviction.

6.5. Public

The monitors and the experts stress the issue of using the special investigative measures and protection of the witnesses, without sufficient care being placed on the interests of the defense or the trust of the public in the courts or in the criminal justice system as a whole. Thus, the special investigative measures are by definition are being regarded as classified information, and thus the public can be excluded from the trial, during the examining the proofs, although this is not provided by the Law for criminal procedure. Indeed, the public can be excluded, for protection of the state or professional secret, but in accordance with the Law on classification of information – in order to classify something as a state secret or to classify it with any other degree of classification, is provided only for public interests or

[18] In presentation of the evidences gathered through special investigative measures, the public is by rule excluded without any special explanation given by the court, for which there are serious objections from NGO's and OSCE office.

for security and so on, and not for any particular investigative measure. The *Law for Interception of Communications* provides classification of data collected using the PIM measures, as well as their declassification during the procedure, with which they not only become available to the public, but they should also be tested in terms of reliability in an adversarial procedure. Indeed, the data for those who conducted the measures should be kept as a secret, but not the evidence deriving from them.

The exclusion of the public in each case where the special investigative measure was applied, which is allegedly done for protection of the classified information, prevents the control from the public, which is constitutionally guaranteed principle guaranteed by the International law on Human Rights.

In several of the cases the public was excluded from the main hearind exactly when the key proofs provided with the special investigative measures were discussed, even though the law is not prescribing measures for exclusion of the public when the proofs gathered with the afore mentioned measures are being presented. With such action the court had deprived the public of the insight into the evidences on which the indictment was based. Exclusion of the public without proper legal support, when considering the key evidence to a case, represents a procedural violation of one case and violation of the right to a fair and public hearing by an impartial tribunal.

6.6. Defence

By rule, the defendant has an indisputable right to a lawyer in police and court procedures. The defense is entitled to attend to the trial of the accused and to take all actions that may be taken by the defendant. He or she has the right to attend the proceedings, to have insight into the documents, to appeal against the indictment, to gather evidence for the defense, and to invest or suggest legal remedies.

In practice, the accused rarely use attorney in the police procedure as opposed the court proceedings. In fact, despite legal guarantees for legal advice for the suspects, the data from the Committee against Torture and the Ombudsman confirm the claims of the lawyers that the police is using problematic methods of "persuasion" of the suspects “advising” them not use counsel during the police investigation.[19] In addition, contrary to the law

[19] According to the reports published by the Committee for Prevention of Torture of the Council of Europe Советот, only 5 to 6% of the suspects had a lawyer present in the police station. See the reports of Committee on: http://www.cpt.coe.int/documents/mkd/2012-04-inf-eng.pdf The reports of tge

requirements - the suspects, before they are interrogated by the police, to be given an opportunity to consult with their defense attorneys, which according the experts implies conditions of confidentiality, in other words – a possibility this communication to be conducted in private; are prevented to do so.

The persons who engage defense attorneys have a right of an attorney from the moment they are called in the police or other state institution. In contrast to this are the cases where the defense attorney is delegated ex officio - namely in the cases where an obligatory defense is needed or for defense of the poor, and where the attorney could be appointed in the various later stages of the procedure, depending on the severity of the crime that they are charged with, the complexity of the case and their personal condition, or they are also given the possibility to defend themselves.

In accordance with the data from the monitored trials, there is a large number of cases where the defendants had a defense attorney during the procedure. This especially if one has in mind that we are dealing with rather complex cases where the need of using the services of the defense is more visible. One of the cases provided an interesting data since the monitors concluded that the defendat had no defense attorney. The reason for this might actually be found in the fact that this hearing was not held, so the monitors were also unable to presume or confirm if the defendant had an attorney or not.

Does the defendant have a defense attorney	
Yes	36
No	1
Total	37

Does the defendant have a defense attorney?

The circumstances of the domestic court practice is worrying when it comes to the services provided by the so called ex officio defense attorneys, they are not always selected in a clear and transparent procedure, which leaves space for certain potential for corruption of the advocates by the court itself, since it is the court that appoints them as defense in the cases where the law provides for mandatory defense. Namely, in practice, them.e police and the

Ombudsman regarding the visits to the police stations in function of a national prevention mechanism for protection against tortureare published on internet and available on the page od the Ombudsman of R Macedonia http://ombudsman.mk/ombudsman/upload/NPM-dokumenti/2013/NPM%20Godisen%20izvestaj%202012_FINAL_PDF.pdf

courts have informal lists of advocates that are regularly or often contacted and appointed in the cases where the defendant has no his or hers own advocate or in the cases where they are unable to reach their attorney. This connection between the advocates and the court, in the opinion of the interviewed judges and advocates, leads to a situation where the advocates appeal less these rulings of the court. The legal obligation, for the court to be responsible for the quality and of the engagement of the defense attorneys in such cases, is not functional because the sole character of the procedure provokes a certain collision of interests in the judge who is leading the trial/procedure. Another reason for such poor quality of the services of the advocates who are appointed ex officio, lies in the modest remunerations – two to three thousand per day per held hearing. The modest compensation for only the „necessary expenses"(a it is explicitly stated in the CPL) demotivates the advocates and prevents them to be engaged in more research oriented approach when preparing the defense, and they are more of a décor in the court and a condition for the trial to be held, rather than some real help to the defendat.

Serious objections have been made with respect to the fact that in the proceedings before the domestic courts, for years ina row, no register was made of realization of the so-called "Poor Law" under art. of CPL. Namely, in practice there are no record of the cases where the advocate was appointed to be a defense attorney ex officio, by request of the defendant, on the grounds of poverty, apart of the said cases of mandatory defense (art. 67 CPL). On the other hand, even in the cases of so called mandatory defense, the defendants rarely use the opportunity to be relieved of payment of the costs related to the services provided by the defense attorney, using the grounds of povertya.

6.7. Interpretor

The use of the language in the procedure (regardless of the fact that the defendant might know Macedonian language) now is being guarantied for the people who speak official language different than Macedonian. The court provides an oral interpretation to these people for that that they or the others are elaborating on the trial, as well as the content of the documents or other written materials. The court, apart from this, also provides translation of the written materials that are of importance for the procedure or for the defense. The other participants in the procedure have the right for free legal help of an interpreter only if they do not understand or speak the language on which the procedure is being lead. What interests us more however, is accordance with European standards, now it is explicitly demanded that translation should be

made for the conviction and the judgment for all who do not know the language of the procedure well.

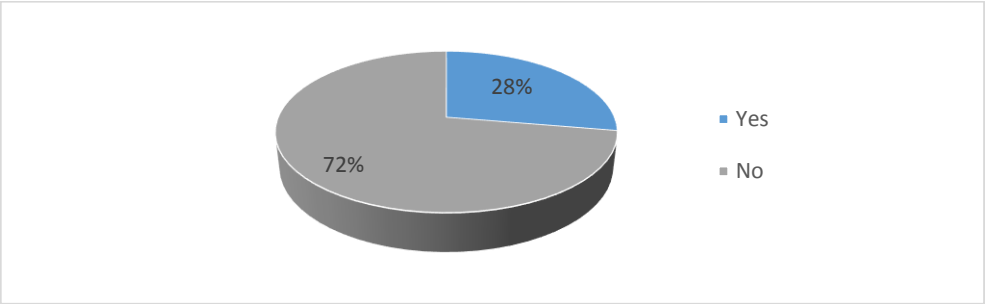
The courts have employed a certain number of people who do know Albanian language, which is most commonly used in the police and judicial procedures. Their number is not known, having in mind the fact that apart from the biggest courts, that process highest number of cases, and apart from the cities where Albanian is most commonly spoken language, the same persons are also employed to other positions, and they do translate only when there is a need and as a part of their working responsibilities.[20]

6.8. Trial in absence

The defendant can also be tried in absentia/absence only if he or she has escaped or is otherwise not available to the state authorities and there are especially important reasons for him/her to be tired although absent (article 292 para. (3) CPL). The trial in absence is undesirable from the perspective of the right of trial as an essential part of the fair trial, but it is permitted due to the fact that the delay of the trial may sometimes lead to loosing of the evidences, obsolence of the possibility of prosecution and the like.

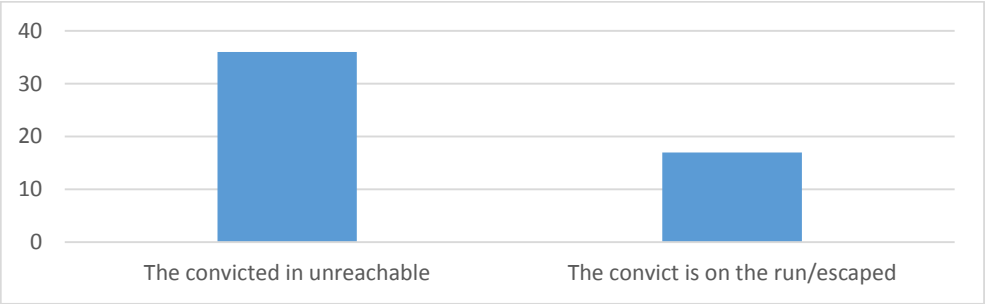
Still, the number of trials in absence shows that this institute is being used more often than prescribed by the law – only exceptionally and only if there are especially important and justified reasons. The fact that the court rarely explains in clear manner why it has found that it is of essential importance that the defendant be put on trial in absence is worrying. As especially important reasons for trial in absence, the participants in the procedure state the gravity of the act, interest of the victim, the public interest and similar moral reasons. Still, according to the practitioners, the most important are the practical reasons such as obsolescence of prosecution, the ability to perform some of the sanctions in the absence, for example, fine, confiscation of proceeds, damages to the injured party and so on. It also happens that the penalties for the convicted that are tried in absence be higher, in order to put pressure on the person, to appear and demand a new trial as well as to prevent the obsolesce of the prosecution of the punishment.

[20] In accordance with data received from the Court Budget Council of the Republic of Macedonia, apart from the permanently employed interpretors, enganes when there is a need and throught the whole country, additional interpretors that are engaged in aprozimately 500 per year, for which they are payed a honoraria similar as in the case of dhe ex officio advocates, approximately 50 euro per case. This amount does not reflect all costs connected with translation and interpretation,and are related only to the honorary interpretors, which by rule are taken from the list of registered court interpreters.



Is the trial tried in absence?

As a main reason due which the defendant is tried in absence is the unavailability of the defendant (53).[21] The most common reason for unavailability is the escape of the defendant (36). This, in practice is established by the police, and the court only notes it without placing a critical check up on the reasons for this, and whether the police has done all it could to confirm if the person is really unavailable for the state authorities.



Reasons for arrest order

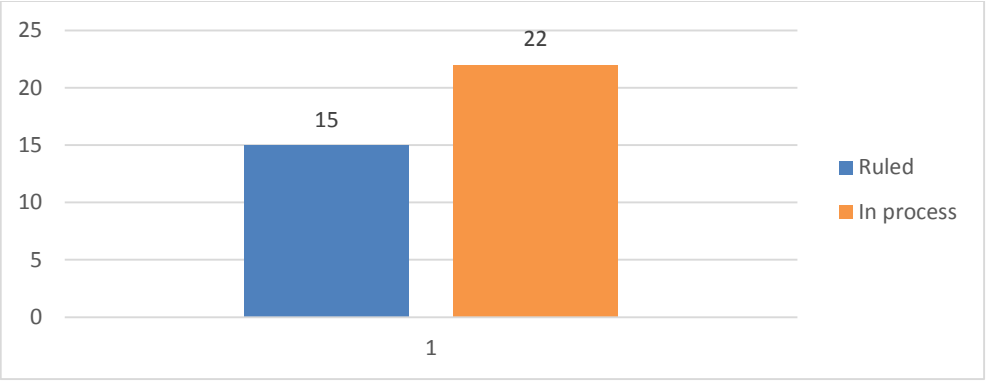
In accordance with article 66 para (4) from the CPL the defendant which is tried in absence (article 292) must have a defense once the decision to trial in absence is made. Some of the judges that were participating in the survey admit that in these cases the participation of the defense is passive, and not rarely, practically represents an abuse of this warranty.

[21] In gthe tables and questionnaires the escape and unavailability are presented as completely unrelated circumstances, which is wronf since escape is only one form of unavailability. Thus, the number of unavailable is not 36, but 53 persons.

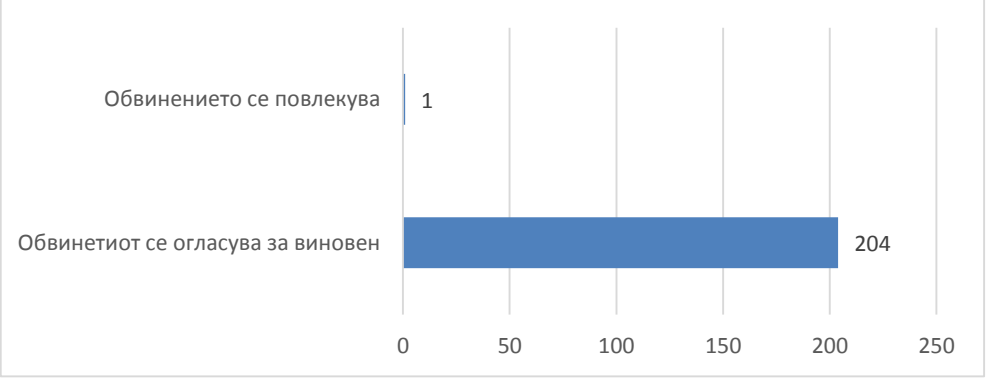
7. NUMBER OF COMPLETED CASES AND THE TIME OF ANNOUNCEMENT OF THE JUDGEMENT

7.1. Data on completed cases

In accordance with the data regarding the completed cases, out of a total of 37 cases, 15 are completed (41%), while 22 cases (59%) are still in process. Within the 15 of the cases that were completed, a total of 204 people were convicted and only one person the charges were withdrawn.



Number of completed cases

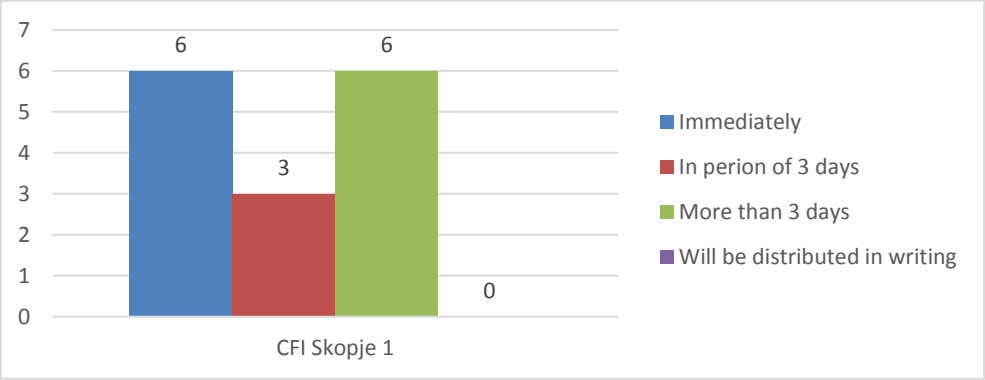


Type of judgment

7.2. Announcement of the judgment

With regards to the analyses of the data related to when the judgment was announced, in 6 of the cases (40%) it was announced immidiately, in 3 of the cases (20%) it was announced in the period of 3 days, in 6 cases (40%) it was announced in the period of over 3 days.

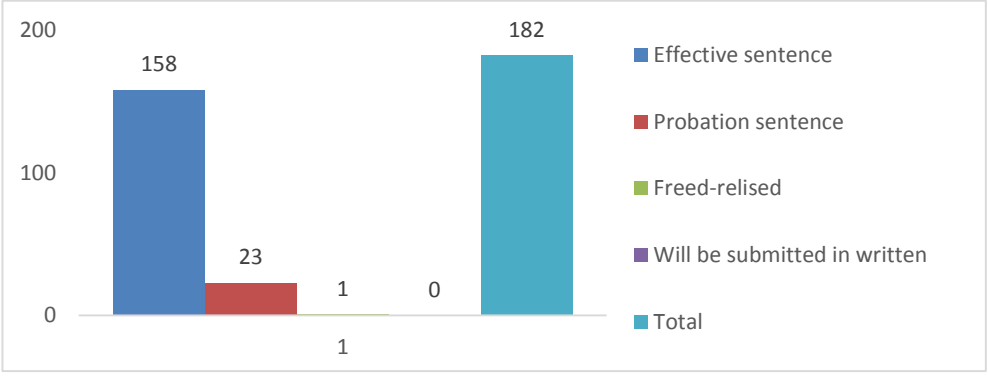
This leads to conclusion that the court was precise and announced the judgments in a prompt and timely manner.



When was the judgment announced?

8. ANALISES OF THE PENAL POLICY

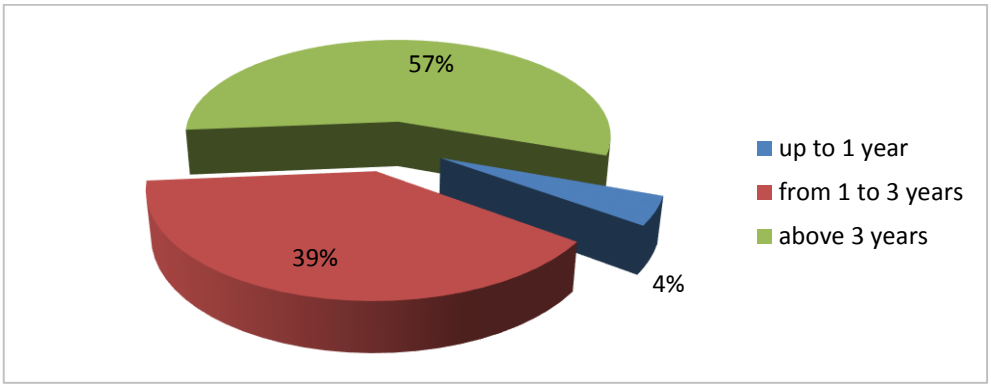
When the penal policy is in question, it can be concluded that out of the 15 cases that were analyzed and which had judgment from the Court of First Instance Skopje 1 in Skopje, 204 people were convicted, while 1 person was acquitted, 181 people were judged with the effective penalty of jail, and for 23 people were released on probation.



Type of punishment

Out of the total of 181 judgments for effective penalties of jail, 57% (102) were in duration of over 3 years, 39% (70) out of the all ruled penalties of jail are within the range of 1-3 years, and 4% (8) are in the period of up to 1 year. This confirms yet again the gravity of this type of crime, and the rigor of the court when ruling this types of punitive measures for these criminal acts, is due to the fact that the court while defining the punitive measures for the

perpetrators of such crimes, had in mind their criminal responsibility, the gravity of the deed/crime, and the reasons /goals of the punishment (satisfaction of justice, special or general prevention).



Length of effective prison judgments

Regarding the criminal acts that are subject to this analyses (art.247 - fraud, art.353 – abuse of office and authority, art.273 – money laundering and other proceeds, art.279 – evasion of taxes, art.357 - bribe, art.394 – criminal association, art.378 – forgery of documents, art.368a – unlawful influence on witnesses), and depending on the forms in which the criminal acts were committed – be it basic or qualified, the Penal Law of Macedonia sets relatively high punishments. For most of the analyzed criminal acts, for their basic form the law proposed prescribing fines or a penalty of imprisonment in duration of minimum 6 month that can amount to 3 or 5 years, while for the qualified forms of these criminal acts the law prescribes penalty of jail in duration of at least 3, 4 amounting to 5 years in prison, which means that the penalty can range up to the general statutory maximum of 15 years in prison.

The analyses of the data leads to the conclusion that the Court was strict in determining the sentences and penalties, inasmuch so, as we have already mentioned before, the most common effective sentence that was ruled was that of imprisonment in duration of above 3 years. More specifically, the Court was most commonly ruling the penalty of jail in duration of 3 years and 8 months, followed by the penalty of jail in duration of 3 years and 11 months, and it was also ruling for penalties of jail in duration of 4 years' time. These are followed by the rulings in duration of 5 years, 3 years and 8 months, 3 years and 7 months, 2 years and 6 months etc. The highest penalty of imprisonment that was ruled to one person was 6 years and 6 months. In order to create more complex analyses, we are lacking the data connected with the issues for which specific article were the persons convicted of, which prevents us from

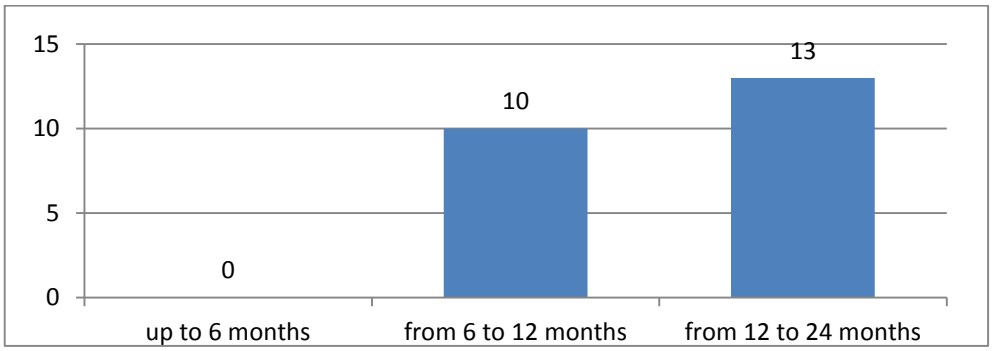
producing more consistent conclusions related to the penal policy of the Court regarding the criminal acts that are subject to this analyses. Due to the lack of these data, we are unable to extrapolate and create conclusions regarding to why the Court has not ruled sentences in duration over 6 years and 6 months, or penalties of imprisonment in duration of 15 years. One conclusion still remains, namely that the penal policy of the Court in relation to the criminal acts that are subject to this analyses is rigorous/strict.

Out of the 204 inmates, 23 persons have been issued a suspended sentence, 13 people (57%) have been issued a conditional sentence in length ranging from 12 to 24 months, and 10 people (43%) have been issued a suspended sentence in length ranging from 6 to 12 months. No one is sentenced to a suspended prison sentence of up to 6 months, which again confirms the view of the seriousness of this crime and the judge's determination to combat it by imposing high penalties for it, compared to the penal policy of Republic of Macedonia in general.

Overview of the number and amount of penalties and conditional sentences is presented in Table 20. Most of the conditional sentences were ruled with a length of 14 months, four with a length of 12 months, three with length of 10 and 11 months, two in range from 18 to 24 months and two conditional sentences were ruled to last from 15 and 19 months.

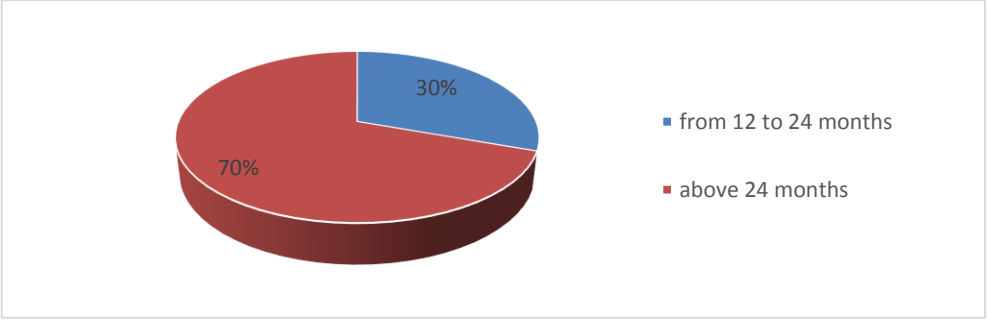
If one considers that in the Republic of Macedonia more than 40% of the ruled sanctions are conditional sentences, it can be concluded that, according to the seriousness of the offenses, which is a subject of analyzes of this study, a very small number of people (11%) has been given a suspended prison sentence. As to the amount of suspended sentences imposed, there is a notable domination of those with a length of up to 3 months, followed by those with length of 3-6 months and the ones of 6 months to 1 year. Conditional sentences with a length of over 1 year are considerably less ruled. This is not the case however with the offenses covered by this analysis, where the ones that dominate are those with length of between 12 and 24 months and those from 6 to 12 months. This is another confirmation that judicial sentencing policy in relation to these crimes is relatively strict.[22]

[22] See: А. Груевска-Дракулевски, Казнената политика на судовите во Република Македонија во периодот 2007-2011, in: Macedonian Review for Criminal Law and Criminology, No.1-2, 2011/2012.



Probation

As for the time of control that the court has determined to the ones with the sentence of parole, in the case of 16 people court determined that the sentence shall not be executed if in a period of two to a maximum 5 years, they do not commit another crime. Specifically, to the 9 persons the court has determined a period of control in duration of 2.5 years, to 3 persons in duration of 3 years, for 3 persons in duration of - 4 years, and for one person designated period in duration of 5 years. Furthermore, the Court has ruled the sentence of parole with obligation to report to the parole officers in this order – for 7 persons the control period in duration of 1 to 2 years, more precisely all 7 persons were obliged to report for control in the period of 2 years. Again, starting from the seriousness of this type of criminal act, the court in majority of the cases (70%) opted for determining the time of control that is longer when it was ruling the probation sentences, over 24 months, and in 30% of cases it determined the time of control to be conducted in the of 12-24 months.



Time of reporting that the court determined in judged conditional sentences

Of the 204 convicted, the court has ruled a financial fine in addition with a minor penalty of imprisonment to 97 persons. In addition, 85 persons (87.6%) had a fine of 1.226 million denars, 7 persons (7.2%) had imposed a fine of 100,000 denars, and the fines of 5,000, 70,000, 80,000, 120,000 and 4,904,000 denars were given to different individuals respectfully.

In terms of judicial sentencing policy on the amount of fines that were ruled as a minor penalty in the country in general, it is visible that in most of the cases, an average of 43% are fines that varies from 10,001 to 30,000 denars. Then, on average 39% of the ruled fines amount to over 30.000 den, in 17% of the cases the fines range from 5001-10000 den, and only 1% goes to the fines of up to 5.000 den.[23]

It can be concluded that regarding the offenses which are the subject of this analysis, the court was ruling relatively high amounts of fines that were ruled as a minor penalties, which is expected when the nature of these crimes is taken in consideration.

Amount	Punnishment
5.000 den.	1
70.000 dan.	1
80.000 dan.	1
100.000 dan.	7
120.000 dan.	1
1.226.000 dan.	85
4.904.000 den.	1
Total	**97**

Number and lenghr of ruled financial punishments

Further, the court had ruled only two separate criminal-legal actions of confiscation of property, namely - in one of the cases it ruled the confiscation in the amount of the value of the damage that was done, and in the other case the court had ordered the confiscation of the property. According to the data gathered, however, the court has ruled sentences of confiscation of property in 3 cases (see Table C23 and Table 24). The court has not ruled in any of the cases the sentence of an extended confiscation. There is no data on whether the – confiscation of objects was ruled as separate criminal legal action. Given the nature of the offenses covered by this analysis, we conclude that the court has ruled very limited amount of special criminal llegal measures of confiscation of assets and property. For the rest of the rulings the observers had no available data which depicts the application of these measures.

[23] За ова в. повеќе: А. Груевска-Дракулевски, Казнената политика на судовите во Република Македонија во периодот 2007-2011, во: Македонска ревија за кривично право и криминологија, Бр.1-2, 2011/2012.

Confiscation of property	
Yes, in the amount of caused damage	1
Yes, whole property	1
Total	2

Number of judged criminal law measures for confiscation of property.

Have the court its judgment with which the defendant is found guilty decided confiscation of property	
Yes	3
No	4
Total	7

Number of judged criminal law measures for confiscation of property.

Out of the remaining minor penalties, the court ruled only 8 - prohibition of conducting professional engagement, activity or duty, for what we are of the opinion that according to the nature of these crimes, is very mild sentence. Furthermore, the court ruled to 9 persons a sentence of expulsion form the country for a period of 10 years.

8.1. Summary regarding the penal policy

The recommendation of the Council of Europe concerning the consistency in sentencing, [24] advocates for institutional penalties to be considered as the final sanction and to be ruled only in the cases when the serious offenses were committed (section B, item 5 (a)). Furthermore, it is recommended the application of institutional sanctions and measures in favor of restrictive use of imprisonment for individual offenses (section 5 (c)). If the person is not complying with the execution of extra-imposed sanction or measure, then the person can be sent to jail, but only if you have exhausted all other institutional sanctions and measures. Recommendation of the Council of Europe concerning consistency in sentencing, advocate institutional penalties to be considered as the final sanction and imposed only in cases of serious offenses committed (section B, item 5 (a)). Furthermore, it is recommended the application of extra-institutional sanctions and measures in favor of the restrictive use of imprisonment for individual offenses/criminal acts (section 5 (c)). If the person is not complying with the execution of the imposed extra-institutional sanction or measure, in that case he or she can be sent to jail, but

[24] Recommendation No. R (92) 17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing.

only if all remaining institutional sanctions and measures have been exhausted.[25]

The public is often informed that penal policy of the Republic of Macedonia is mild, hence, the toughening of the penalties within the Criminal Code is increasingly been sought after, and as a result it is demanded that the perpetrators of crimes should be convicted with harsher penalties which are imposed in order to reduce crime rates. In the same time, and according to the views of the public, stiffer penalties will be just and in adequate penalty for the committed criminal acts. However, according to the results of numerous conducted studies, it can be concluded that not the severity of the punishment, but the urgency of the sentence and the certainty of a penalty deter persons from committing offenses.

In addition to this, the public, which is often of an opinion that the penal policy in the R Macedonia is mild, should be convinced that not the severity of the punishment, but the urgency of the sentence and a certainty of punishment are the reasons that deter people from committing offenses. The public must be convinced that the the oppressiveness of the criminal justice system should be reduced. Then, that with the non-institutional sanctions the criminal justice system is not debilitated or compromise the criminal justice system because they take into account the position of the damaged party - the victim, while the defendant undergoes a treatment and supervision of experts and agents in the community, and that precisely these penalties are more effective in terms of reducing the rates of recidivism.[26]

Determining the sentence by type and length of duration, largely depends on the goal of the punishment. And the severity or leniency od the said criminal justice system depends from the purpose of the said punishment. Undoubtedly, the systems which see the prevention as a dominant purpose of the punishment (be it general or special) as opposed to those which favor the retribution, are usually characterized by more stringent punishment. This is opposite with the systems that propagate rehabilitation as the main purpose of the punishment. But, what still deserves more attention, is not the severity or leniency of the actual policy of punishment, but its adequacy. If the policy of punishment fits the set goals then it is appropriate, realistic and socially justified criminal policy.

[25] See: А. Груевска-Дракулевски, Влијание на казната затвор врз рецидивизмот (Doctoraldissertation), Faculty of Law „Iustinanus Primus“ in Skopje, 2010.
[26] Ibid.

The analysis of data on judicial sentencing policy for the offenses that are covered by this analysis (art.247 - fraud art.353 - abuse of official position and authority, article 273 - money laundering and other criminal proceeds, art. 279 - tax evasion, art.357 - bribery, art.394 - criminal association, art.378 - forging documents, art.368a - unlawful influence on witnesses) can draw the following conclusions:

- In 15 of the cases that were ruled in OSS1 Skopje 240 people were sentenced 204 and 1 person was found free of charge, 118 people have been issued effective imprisonment, and 23 people have been sentenced to probation.

- Of the 181 ruled effective sentences, 57% (102) were in duration of over 3 years, 39% (70) of the total prison sentences were for 1-3 years, and 4% (8) amounted to 1 year. This confirms the seriousness of this type of crime and the severity of the court when imposing penalties for these offenses, and the court with regards of the determining the punishment for the perpetrators of this criminal acts, took into consideration the criminal liability of the offender, the seriousness of the offense and the goals of the punishment (the realization/fullfillment of justice, special and general prevention).

- Regarding the offenses covered by this analysis, depending on whether it is a basic form of the criminal act or the qualified form, the PLM has set relatively high penalties. For the most of the analyzed criminal acts, regarding their basic form, the prescribed penalties range from fines to imprisonment of at least 6 months to 3 or 5 years, and for the qualified forms the prescribed minimum sentence can be from at least 3, 4 to 5 years, which means that the amount of the penalty may move up to the general legal maximum of 15 years in prison. The highest sentence that has been ruled to a person is 6 years and 6 months. For a more comprehensive analysis of course, the data on the specific articles/positions on which grounds were the defendants found guilty, are missing, and prevent us to draw more consistent conclusions on penal policy of the court with regards to the criminal acts that are subject of this analysis. Due to the lack of these data we cannot draw conclusions on why the court have not ruled sentences in duration over 6 years and 6 months, or imprisonment up to 15 years. However, the conclusion remains that the court penalties against crimes that are subject to this analyses is a strict one.

- Out of the 204 convicted people, 23 persons have been sentenced with probation. If one considers that in R Macedonia more than 40% of the

sanctions are probation sentences, it can be concluded that according to the seriousness of these offenses, which are the subject of analysis of this study, a very small number of people (11%) have been sentenced with this particular measure.

- When the length of the ruled parole sentences is concerned, in the penal policy of R Macedonia in general, we note a domination of those amounting to 3 months, followed by the ones ranging between 3 to 6 months, and then the ones from 6 months to 1 year. Probation sentences in duration of over 1 year are ruled significantly less. This is not the case with the criminal acts that are subject to this analysis where the ones in length of 12 to 24 and 6 to 12 months are predominant. Namely, 13 people (57%) were sentenced with parole in duration of 12 to 24 months, 10 people (43%) were sentenced parole of 6 to 12 months. No one was sentenced with the parole in duration of 6 months, which once more confirms the opinion for the seriousness of this type of crime and the determination of the judges to fight with it through ruling of high sentences in comparison with the general penal policy of R Macedonia.

- Concerning the time for checking/control with the parol officer tha the court has ruled with the parole sentances, for 16 people it has ruledthat the said sentanced will not be executed if in the period of to to 5 years the prosecuted do not commit new criminal act. Furthermore, the Court has ruled to 7 persons a control/checkperiod of 1 to 2 years, or more precisely all 7 persons were sentenced to parole with checking perod of 2 years. Once again starting with the seriousness of this type of cries, the court in large number of cases (70%) has ruled in favour of longer time for control period while ruling the parole sentances, hence the ones of 24 months, and in 30% of the cases it has ruled the time for control in duration of 12-24 months.

- Out of total 204 convicted people, for 97 the court has ruled a fine alongside the penalty of jail, as a secondary punishment. More precisely, 85 of the convicted (87,6 %) were sentenced a fine in the amount of 1.226.000 den, 7 of the convicted (7,2%) were sentenced to pay a fine of 100.000 den, and to one person respectively a fine of 5.000, 70.000, 80.000, 120.000 и 4.904.000 den. When the penal policy of the court is at stake regarding the amount of the fines that were ruled as a minor penalty in R Macedonia in general it can be concluded that with regards of the criminal acts that are subject to this analyses the court has ruled relatively high fines as minor penalties, which is to be expected given the nature of these criminal acts.

- Furthermore, the court ruled only two separate criminal legal actions of confiscation of property, in the first case in the value of the damage that was done, and in the second the whole property was confiscated.

Given the nature of the offenses covered by this analysis, we conclude that the court has ruled very small number of special criminal law measures - confiscation of assets and property. In the end we can conclude that the sole topic of severity or leniency in punishment is complex and relative one. The sanctions can vary in their nature and length and are ruled in order to achieve different goals. The severity or leniency of the penal policy cannot be valued solely on the number of ruled penalties of jail, but other sanctions should be also taken in consideration (fines, other minor penalties, alternative measures etc.) which complicates this issue additionally since people tend to perceive and understand certain values such as freedom, money, reputation etc. in a different manner. On the other hand, when one talks about the strict or lenient penal policy, taking as a criteria the ruled penalties of imprisonment, the question arises – weather the severity or lenience should be measured by the number of people convicted to jail or by the length of the ruled sentence and the type of the penitentiary where the said punishment is being served.

In any case we can conclude that the judicial sentencing policy regarding crimes that were analyzed (art.247 – fraud, art.353 - abuse of official position and authority, article 273 - money laundering and other criminal proceeds, art.279 - tax evasion, art.357 - bribery, art.394 - criminal association, art.378 - forging documents, art.368a - unlawful influence witnesses) is relatively strict, compared to the general judicial sentencing policy in Republic of Macedonia. The court, starting from the gravity of this type of crime, while ruling on the penalties for the perpetrators, took into consideration the criminal liability of the offender, the seriousness of the offense and the goals of the punishment (achieving justice, special and general prevention).

9. CONCLUSIONS AND RECOMMENDATIONS

- The lack of data for certain types of questions is evident. In this respect there is a necessity for providing insight into the case that is being monitored, which would provide full and adequate data, that can then be used in court to promote the judicial function.This is the case because the observers are often unable to follow cases from the beginning to the end, as well as because of the frequent adjournments of cases which stops them

from researching and obtaining specific data. This also stresses the need of the continuous monitoring of the procedures during the whole year around.

- Public Prosecutor office should seriously be prepared in organizational, technical and personnel aspect in order to take a more active role in the detection and prosecution of criminal offenses, rather than to hide behind the explanation of a lack of staff and facilities when the management of the previous procedure is at stake.

- In accordance with the recorded increased use of special investigative measures a reduction in their application is recommended and the application of the same is recommended only in exceptional cases, during the investigation, and even then only in the cases where the evidence cannot be obtained by using ordinary evidence procedure. Thus, the special investigative measures will not constitute the primary means of evidence.

- The fact that the court has not accepted in a single case the notes to the indictment that it was referred to by the defense, is worrying. Re-actualization of the importance of control of the indictment, as one of the important stages through which the court can protect the rights of the accused from unfounded accusations is recommended.

- The frequent use of detention in cases monitored is evident. A decrease in the application of this measure and an increased use of the other measures for obtaining presence is recommended.

- It is recommended that the court be more restrictive and more critical in assessing the grounds for which it rules the measure of detention, as well as to have a critical attitude towards its use when it assesses the time/period on the grounds of which this measure is imposed.

- It is recommended that an increased attention by law enforcement authorities should be placed in the collection of data related to the personality of the person against whom the determined measures to ensure presence are taken. Future legislative changes should be considered, aimed at introducing a special service that would serve these information to the court, and eventual networking with the computer networking systems ACMIS which will enable the court to have easier accessto the data for the person/s against whom the criminal proceedings are being taken.

- The increased practice of applying the measure house detention is evident. Amending of the current CPL is recommended in accordance with the template for the new CPL from 2010, with a provision which would define in a more precise manner the conditions for the application of this measure.

- An introduction of new measures for providing presence, such as electronic surveillance measure or establishment of better conditions for its implementation is recommended. In this manner the application of the lighter measures for providing the presence will be ensured, and this would reduce the use of detention as a measure.

- The presence of the accused in the proceedings is of an essential value for an equitable and fair trial, thus the trials in absentia should become the rare exception, not the rule. In this sense the courts must develop a criteria for the justifiable reasons and conditions under which a trial in absentia can happen.

- The public trial is an important guarantee of fairness of the same and is a sure protection against political show trials. The practice which was developed in the past few years, which excludes the public whenever there is a presentation of the evidences gathered with special investigative measures or when there is an examination of a protected witness, is something that is not provisioned for in the CPL and should be abandoned.

- A series of organizational and other measures are to be taken in order to speed up the judicial procedures, while the trials should be organized and prosecuted in a concise and concentrated manner, without unnecessary delays.

- The delay in the proceedings because of the absence of whichever/whoever of the subjects that participate in it should be seriously sanctioned. On the other hand, the procedure should sanction by forbidding all delayed proposing of evidences which are aimed to prolong the procedure.

- Conditions for effective defense of the defendants who lack sufficient means to pay for it should be provided.The restrictive approach noted in the survey and the low quality of services given by the defense lawyers acting ex officio is a complex issue that is completely neglected in R Macedonia. Clear and transparent criteria for determining counsel for poor and liability lawyers who will take a certain percentage of cases to work pro bono publico, should be considered as well as the possibility of establishing public advocates for

the poor that now represent a percentage as high as one third of the population in the country.

- In terms of the analysis of data connected with the issue of when the verdict was announced, it can be concluded that the court was accurate regarding the announcement of the verdict that were announced in timely manner.

- The analysis of judicial sentencing policy in respect of the offenses/criminal acts that are subject of analysis of this study leads to a conclusion that the court was relatively strict in imposing the penalties.

- For a more comprehensive analysis it must be noted that data is missing on the issue related to – based on which paragraph of the Criminal Code were the convicted tried for their specific offenses in the cases monitored, which prevents us to draw more consistent conclusions regarding the penal policy of the court against the crimes that are the subject of analysis. In future we recommend greater attention to be paid when noting the criminal acts in the cases that are monitored.

10. EXCERPT FROM THE REVIEW OF PROFESSORE D-R LJUPCO ARNAUDOVSKI

Preparation of the review for the report of this project implemented by the Coalition „All for Fair Trial“ represents great pleasure for me, since I was participating in this project that is already being implemented for couple of year, both as a researcher and as a reviewer, the later, starting from the last year. In this manner I am in an objective position to make a comparative analyze of the results that were obtained.

Before I go into analyses of the content of the Report, I would like to point out some methodological problems that appear in the realization of this project, and which are directly reflected in the quality of the results obtained with the survey:

- The time frame of the project is not synchronized with the work of the courts and the duration of the procedure of the court cases that are being monitored. As per rule. The monitoring cannot follow a certain case through all of the phases of the procedure, and thus get to a certain closure itself. It is necessary in order to be able to observe and evaluate the work of each service that is a part of the procedure, and of the procedure in its entirety;

- The monitoring is being conducted during the case procedure itself (when the court is in session and the facts are being noted based on what is being said or presented during the hearing). The observers don't have insight in the case itself nor in the documents related/consisted in it. In this manner the survey is being deprived of one of the most significant sources of information (data);

- It is of essential importance that the monitors, during the process of the gathering the information, be provided with the access to the case acts of the case that is monitored, in order for them to be able to note/include the data into the questionnaire.

The final report of the project „Monitoring of Cases in the Area of Organized Crime and Corruption “ entitled as Judicial Efficiency in Managing the Organized Crime and Corruption was prepared by the following authors: Prof. D-r Gordan Kalajdziev, doc.D-r. Bpban Misoski, doc. D-r. Aleksandra Gruevska Drakulevski and M-r Divna Ilic. The authors of this report have managed with high level of knowledge and professionalism of the topics that are subject therein, even in a condition where they were not in possession of sufficient data, to grasp and analyze the problems that the survey had made surface.

The material that was processed in the report is systemized in nine subtitles that follow all phases of the procedure of the monitored cases. The report starts with analyzes of the general data related to the criminality in Macedonia based on the information obtained from the State Statistic Office and the general data from the monitored cases. Social and personal characteristics of the persons against which the indictment was submitted in the monitored cases, are not significantly different from the characteristics of the convicted persons and their participation in the total sum of criminality.

The international surveys show that the recidivism of the perpetuators of criminal acts in the area of organized crime and corruption is high. In out context the recidivism is increasing its participation in the aforementioned forms of criminality, in the last years. The question remains – how do you determine recidivism: whether by the defendant's statement? This is so because the criminal record is not transferred to the judiciary yet, and it is not being updated regularly. This is a problem that must be solved quickly.

The criminal offenses from the aria of organized crime and corruption fall in that area of criminality, where the application of the special investigative measures are proven to be as a necessary one, and perhaps even it can be said that this measure was introduced into the criminal proceedings especially for discovering and proving this criminality. The problems that occur in relation to their application, their abuse and similar, are processed in this report as it is a practice of this organization.

The report also observes the data related with the measures that were applied for providing presence of the suspect-defendant. It is the opinion of the Coalition that was noted in several previous reports that the measure of detention is used too often and it applied for excessive period of time/excessively. The authors of the report placed sufficient attention to these institutes stressing the negative consequences from the application of this measure. Still, we don't have an answer related to the question of how often is the detention as a measure being applied, nor is there an insight in the reasoning based on which it was decided to apply it as a measure. For the needs of this project it is advisable that the measure detention and its application should be determined for each monitored case respectively, including here the answer to the question – how was the detention case closed?- too. When considering the Main Hearing this year's report also concludes the following:

- Excessive duration of the procedure. The criminal acts related to the corruption still ask for a quick and efficient response in leading of the procedure, in order that the goals due which it is being lead, to be fulfilled.

- Postponment of the main hearing due to absence of the accused or other parties, is condition that is being repeated over the years. The dynamics of the main hearing as well as the manner in which the whole criminal procedure is being lead has direct influence on its efficiency and on the completion of the goals it was initiated and is being lead in a first place. Therefore in the reviewers assessment the questions related to the main hearing, proving of the guilt and the overall efficient conduction of the procedure, deserve a increase attention. Even more so, when one knows that these weaknesses are notable in the previous reports too.

When analyzing the penal policy of the courts, through the sanctions that were applied in this type of criminality, which is marked as a heavy form of criminality, the finding that there is no penal policy through which one can evaluate how the fight against this type of criminality is being conducted through the application of the punishments, nor can the effect of the same be assessed, is confirmed. The results that were produced in this survey show that the penal policy in this type of criminality differs significantly from the penal policy in the criminality in general in R Macedonia, with final assessment that the specific nature of this type of criminality is not expressed through the applied measures/penalties and is characterized by the general mark: „lenient penal policy “, while the penalty of jail is most often applied in the legal minimum, and same goes to the financial punishment too.

The reviewer of the report stresses the need for further monitoring and research of this type of criminality Republic of Macedonia, not only because of the belief that the presence of this criminality is high, but also because the fact that we can learn a lot about its phenomenology, and about the etiological factors that determine it too. In the same time it is recommended that activities should be taken in order to advance/improve the report and the survey itself, its shaping and realization, through introduction of new methodological approaches which will provide higher quality of the results

Ph.D. Ljupco Aenaudovski