COURT EFFICIENCY IN HUMAN RIGHTS PROTECTION IN THE CORRUPTION RELATED CASES

Report of the Project "*Corruption Trial Monitoring Programme in the Republic of Macedonia*"

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INTRODUCTION

Project "Analysis of the Court Efficiency in Human Rights' Protection in Corruption Related Cases in 2010 "

This analysis comes as a result of the programmatic activities of the Coalition "All for Fair Trials"; within this Programme in the course of 2010, court proceedings on corruption related cases in the Republic of Macedonia have been monitored. The main objective of the research was to get an insight of the actual condition and draw certain conclusions and recommendation on the efficiency of the courts and other competent bodies in the fight against corruption and to evaluate the respect and realization of the human rights and freedoms and the rights guaranteed with the Constitution, the laws and the ratified international agreements.

The Coalition has been continuously implementing the monitoring activities since 2004; over time, the quantity and coverage of the monitoring has been marking constant increase in quality. The empirical research of the court proceedings implemented by the Coalition are expanded and enriched on annual basis, both from the aspect of the number, kind and typology of the monitored criminal cases as well as from the aspect of factors and elements which are subject to observation and consequent professional analysis.

The human rights and freedoms and the efficiency of the institutional mechanisms to protect them have a high priority and an exceptionally important position in every state that is founded on the principles of the governance of the law. Hence, the Coalition developed several analytical reports that address the issues of human rights protection in the police and court proceeding. In 2006, a special report was developed dedicated to the court efficiency in human rights protection in the criminal proceedings with a special emphasis on the respect of the principles and standards of fair trials.

Since a critical timeline has passed since then, the need to re-evaluate the status of the human rights protection in the cases from the sphere of organized crime and corruption by the courts has emerged. The need of this analytical report was also determined by the significant reforms that were introduced in the legal system of the Republic of Macedonia in the previous period all in order to evaluate its compatibility with the international and European standards in this sector.

Hence, the focus of this analysis is placed on the approximation of the domestic legal frame and practice with the international principles and standards regarding the right to

fair trial within a reasonable timeframe, as a fundamental right of each individual against whom charges have been raised. Furthermore, the efficiency and capacity of the jurisprudence in the realization of the human rights and freedoms, and especially the right to a fair trial, are analyzed through the prism of the insights and evaluations contained in the reports of the European Commission and the other relevant international factors.

The analysis begins from the positive national legal and institutional framework, the valuable empirical data obtained through the monitoring of the court cases and the international principles and standards for fair trials. The data gathered and processed during the research represent the starting point and it is used not only as a valuable source of insight but also as an argument-based support for certain conclusions and recommendations to improve the right to fair trial.

On the basis of the recommendations that result from the implemented analysis, concrete measures at legislative and institutional plan are expected to be undertaken in order to surpass the detected weaknesses and improvement of the human rights protection in the court cases dealing with corruption related trials and improvement of the efficiency of the jurisprudence as key criteria influencing the realization of the strategic determination of the Republic of Macedonia to access the EU.

In this context, we need to mention that based on the empirical data obtained from the research undertaken in the course of 2010, the Coalition developed yet another analytical report that is focused on the court efficiency in fighting corruption in the Republic of Macedonia.

In this occasion, the Coalition would like to express special gratitude to the “Civil Rights Defenders” from the Kingdome of Sweden for the financial and overall support that enabled the realization of this project.

1. GOALS, SUBJECTS AND METHODOLOGY OF THE RESEARCH

1.1 Subject of the research

The results from this report are obtained through monitoring of the corruption related cases; the cases were analyzed from the aspect of the realization of several fundamental human rights and freedoms which are incorporated in the Constitution and the criminal law of the Republic of Macedonia and which are guaranteed with numerous international documents

The constitutional and legal guarantees for human rights and freedoms are viewed in correlation with their actual realization and protection in practice i.e. in the procedure of the monitored criminal corruption related cases, in order to assess if they follow the international principles and standards as stipulated by the European Convention of Human Right and the jurisprudence of the European Court for Human Rights.

Starting from their meaning, the subject of analysis are the following fundamental rights that are inherent to the personality of each and every individual:

- Right to a fair and public trial
- Right to a trial within a reasonable timeframe
- Presumption of innocence
- Right of freedom and safety of the person
- Right to efficient remedy protecting the right to trial in a reasonable timeframe

The primary position in this analysis is the fulfilment of the international standards on the right of fair trial within a reasonable timeframe and the right to efficient legal remedy and their protection in the domestic legislation and practice.

Furthermore, the key factor influencing the court efficiency and the realization and protection of the right of the defendants in the criminal proceeding are also looked at and analyzed, as well as the efficiency of the courts in the processing of the cases from the sphere of corruption.

1.2 Goals of the research

The goals of the research undertaken in the frames of the projects are as follows:

- Analysis of the data obtained from the monitoring of the procedures of the corruption related court cases

- Support of the judiciary system so that it increases its efficiency with respect to the penalty and legal response to corruption
- Analysis of the application of the legal provision and the process guarantees on the realization of the basic human rights and freedoms in the criminal proceeding, with special emphasis on the right to fair trial within a reasonable timeframe and the right to efficient legal remedy
- Analysis of the length of the court procedures and the reason for their delay, as well as the available domestic legal mechanism to decrease the excess length of the procedure
- Recommendations to improve the detected weaknesses in line with the international principles and standards of fair trial
- Raising the awareness and strengthening the capacity of the main actors in the criminal proceedings with regard to the duly realization of the human rights and respect of the fair trial standards.

1.3 Methodology

This report is a sublimate of the findings received from the empirical part of the research that was implemented by monitoring of court procedures on criminal corruption related felonies in the course of 2010. For the needs of the research, a total of 24 felonies were covered with the term *corruption*.[1]

The monitoring was conducted in seven principal courts i.e. in the principal courts in Bitola, Veles, Kavadarci, Kocani, Skopje, Strumica and Stip.

The research was based on data gathered through monitoring and following the court hearings; the monitoring was performed by two observers from the Coalition, who have had previous experience in monitoring of these types of criminal actions.

Standardized and detailed questionnaires were used during the monitoring and the obtained data was systematically fed into an electronic database that enabled their analytical processing, cross-referencing and producing various statistical conclusions.

[1] The definition of corruption is contained within the frames of the project "Evaluation of the need to develop a program for monitoring of the corruption related court procedures in the Republic of Macedonia" a total of 24 felonies were included such as: bribery during elections and voting, fraud, fraud of consumers, unauthorized reception of presents, false receivership, causing receivership due to bad performance of work duties, causing damage to creditors, money laundry and other revenues of criminal nature, fraud when dealing with securities, revealing of business secrets, abuse of official position and authorization, fraud of official position, receiving bribery, offering bribery, illegal mediation, cover up of the origin of oversized acquired assets, revealing business secrets, abuse of state or military secrets, forgery of documentations, illegal collection or payment and illegal influence on witnesses.

Besides the monitoring, the interview and dialogues were also used as instruments. During the research, there were direct interviews with the judges from the principal courts that are dealing with the monitored corruption related cases; the interviews were performed based on semi-structured questionnaire.

1.4 Instruments of the research

1.4.1 Monitoring questionnaire

The monitoring questionnaire consists of 64 questions. It also allows the observers to put down notes on the flow of the procedure.

The content of the questionnaire covers all the stages of the criminal proceeding and it enables the obtaining of data on certain aspects and segments related to the subject of research such as:

- Court where the case is submitted, number of members of the court council, name and surname of the President of the Council;
- Date of the monitoring, duration of the hearing, which hearing in a row it is for the case monitored;
- Data on the defendant;
- Felony and description of the concrete criminal act;
- Felony timeframe, from the moment of the performance of the first such action until the moment it has been discovered;
- Has there been an investigation and if yes, how much did it last;
- Was there an order to undertake special investigation measures;
- How much time has elapsed from submission of the prosecution act to the first hearing / has the defendant submitted objection to the prosecution act;
- Was there a proper summoning of the persons whose presence is necessary for the main inquest;
- Data on the number of cases processed in absence or cases where the order for detention has been issued;
- Are there any orders for undertaking measures to ensure the presence of the defendant;
- Was the measure detention used, and if yes, what was the basis and duration of the detention;
- Data of the main inquest

- Reasons to postpone or interrupt the hearing of the main inquest;
- Has the court issued a penalty for the defendant or another person that offends the court or another person in the procedure;
- The course of the procedure of looking at the proofs in front of the court (with emphasis on the witnesses and the forensic expertise;
- Data on the verdicts, when was it announced, type of verdict and criminal sanction, has the court decided to confiscate property or other benefits arising from assets and property;
- Have the standards for fair and righteous trial been respected;
- How much time elapsed from the beginning of the court procedure until the passing of the verdicts;

1.4.2 Questionnaire on the interview with the judges

Within the program on monitoring corruption related court cases in the Republic of Macedonia, interviews with judges in charge of the monitored cases were **also** conducted. The interview with the judges focused mainly on the questions contained in the previously prepared semi-structured questionnaire, with an option to give open and extensive answers.

The survey included judges from the courts in Veles, Stip, Kocani, Strumica and Bitola. We received answers from 18 judges whose cases were monitored. Although we sent a request to perform such a survey also at the Principal Court Skopje I Skopje, we never received an answer from them so the judges from this court were not included in the survey.

In this occasion the Coalition “All for Fair Trials” would like to thank the openness and readiness for cooperation of the judges from the principal court where this survey was conducted and for their contribution to the research.

The Coalition regrets that it did not receive a return answer at the request sent to the Principal Court Skopje I to have the interview conducted there as well, especially since this court is very much active and present in dealing with cases from the sphere of organized crime and corruption.

The main objective of the survey with the judges was to get a full view of the perception, positions and opinions of the judges with regard to the four categories of questions which are 1) the condition and trends in the country when corruption is in question 2) institutional response of the bodies of criminal persecution 3) efficiency of the court procedure on corruption related criminal acts and 4) the behaviours of the defendant,

the defender and the witnesses in the course of the proceeding. A copy of the questionnaire can be found in Annex 1.

The answers and positions of the judges on certain questions offered during the interview are presented in certain parts of this report, depending on the subject matter that they touch upon.

2. COURT EFFICIENCY IN FIGHT AGAINST CORRUPTION IN THE REPUBLIC OF MACEDONIA

In all the countries founded on the principles of rule of law and division of the power into legislative, executive and judicial, the judiciary is the main carrier of the protective measure in the realization of the individual freedoms and rights of the individual and the citizen. The judiciary can fulfil this function and competency only if it is build upon and guided by the principles of constitutionality and legality, independence and objectivity both from institutional and functional aspect.

Besides these fundamental principles, the essential presumption on the functioning of the judiciary is its efficiency. The independence and efficiency of the judiciary have a central position in the efforts and activities directed towards the realization and the advancement of the human rights and freedoms at national and international level.

The improvement of the independence and efficiency of the courts and the more efficient fight against corruption is a key guideline foreseen by the European partnership that directly influences the admission of the Republic of Macedonia in the Euro-Atlantic integrations.

Hence, the 2010 report of the European Commission on the advancement of the Republic of Macedonia in joining EU, points out to a limited advancement in the judiciary sphere. The report points out to certain improvement of the efficiency of the judiciary because of the improved managing of their budget. However, the report points out that there are still concerns with regard to the independence and the objectivity of the judiciary, mostly due to the lack of implementation of the legal provisions in practice.[2]

2.1. Efficiency of the Judiciary in the Republic of Macedonia

In past years, the principal document based on which the judiciary reform was implemented was the Strategy on Judiciary reforms from 2004; on the basis of the strategy numerous new or amended laws were passed, all in order to achieve a higher degree of independence and improved efficiency of the courts. Among the most important laws are: the Law on Courts, especially the provisions that address the request on protection of the right to trial in a reasonable timeframe in front of the Supreme Court of the Republic of Macedonia; the Law on Court and Prosecution

[2] The Former Yugoslav Republic of Macedonia 2010 Progress Report, European Commission Brussels, 9 November 2010.

Council; the Law on Public Prosecution; the Law on Academy for Judges and Public Prosecutors; the Law on Administrative trials; as well as the changes to the Criminal Code and the new Law on Criminal Proceeding.[3]

The judiciary legal and legislative frame has been completed up to a certain level and it is largely compatible with international and European standards from this sphere. From institutional aspect, the most important breakthrough is the establishment of the specialized Department for fights against organized crime and corruption within the Public Prosecution of the Republic of Macedonia as well as the establishment of such a department within the Principal Court Skopje I Skopje.

Simultaneously, the strengthening of the institutional and organization capacity of the courts was also triggered; the automatic distribution of the cases was introduced; the professional and administrative staff in the courts was trained to use modern technology in the courts; public prosecutors and judges go though continuous education etc.

Efforts are made to enhance the principle of publicity and transparency in the work of the courts; the verdicts are announced on the internet sites of the courts after being censured in line with the requirements for protection of personal data of the parties involved and the other participants in the procedure in line with the new Law on Flow management of the Cases.[4]

Notwithstanding these legal improvements of the independent position of the judiciary and its efficiency, the reality gives out a different situation. It is worth mentioning the analysis implemented by the OSCE Spillover mission in Skopje in 2009, which resulted with defeating findings on what judges think of their own independence and the independence of the judiciary as a whole. The reasons behind the heavy concerns on the independence, according the responses of the judges, lies in the common phenomenon of influence exerted on the verdicts they pass. The judges expressed mistrust in the mechanism and instruments of protection, and thus the attempts of exerted influence in most cases remain unnoticed ad unpunished.[5]

The dissatisfaction and mistrust of the citizens in the judiciary is also evident. Apart from the public polls, a proof of that is the report of the Public attorney for 2009; the report stresses the court inefficiency and the excess duration of the processes before the courts as the most common reasons due to which citizens approached the public attorney to ask for help. Out of 4456 writs, 744 writs were related to the realization of the civic rights in front of the courts.

[3] Official Gazette of the Republic of Macedonia, no. 150 dated 18.11.2010

[4] Official Gazette of the Republic of Macedonia, number 171 dated 30.12.2010 to enter into force 6 months after its enactment.

[5] Analysis of the OSCE Spillover Mission implemented in cooperation with the Association of Judges of the Republic of Macedonia in December 2009.

Another factor that also influences the efficiency of the court in the Republic of Macedonia apart from the mentioned factors is the accumulated load of unsolved cases from previous years. This load weakens the capacity of the courts in dealing with the daily inflow of cases and to respect the right of a trial within a reasonable timeframe in the Republic of Macedonia.

This condition of the judiciary in the Republic of Macedonia is reflected in its capacity to provide proper protection of human rights and to efficiently fight corruption.

2.2 Phenomenology of corruption

Corruption represents one of the most widely spread forms of crime; it leaves serious and deep consequences that lead to erosion of the entire economic, political and social system. Corruption also breaches human rights and values and putrefies human decency. Corruption is present not only within the borders of one state, it is present globally and it destructive forces are especially strong in countries in transition and developing countries.

Therefore, the fight against corruption and organized crime is among the high priorities of the states and the agendas of the international and regional organizations, including the United Nations and the Council of Europe that have adopted many declarations and conventions in order to prevent and fight corruption as a special form of crime and an especially complex social phenomenon. These international organizations developed and established special measures of monitoring, reporting, documenting and treating corruption. Within these organizations, subsidiary and efficient systems for protection of human rights and freedoms were established.

In the Republic of Macedonia, numerous activities and measures have been undertaken in order to enhance the legal and institutional framework and to strengthen the capacity of the bodies tasked to detect, prosecute and pass verdicts on corruption related felonies. Still, the level of corruption in the Republic of Macedonia is high at the 62 place according the ranking of the corruption index of Transparency International for 2010. Macedonia and Croatia are both at the 62 place while behind them are the neighbouring countries such as Albania, Bosnia and Herzegovina, Bulgaria, Romania and Serbia.[6]

The Progress Report of the European Commission for 2010 points out that there has been improvement in the anticorruption policy but that still " the corruption remains dominant is many spheres and continues to represent a serious problem ". As far as the policies against corruption are concerned, it can be concluded that although the legal and institutional framework has been established in the fights against corruption, it is

[6]Transparency International Corruption Index:
http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

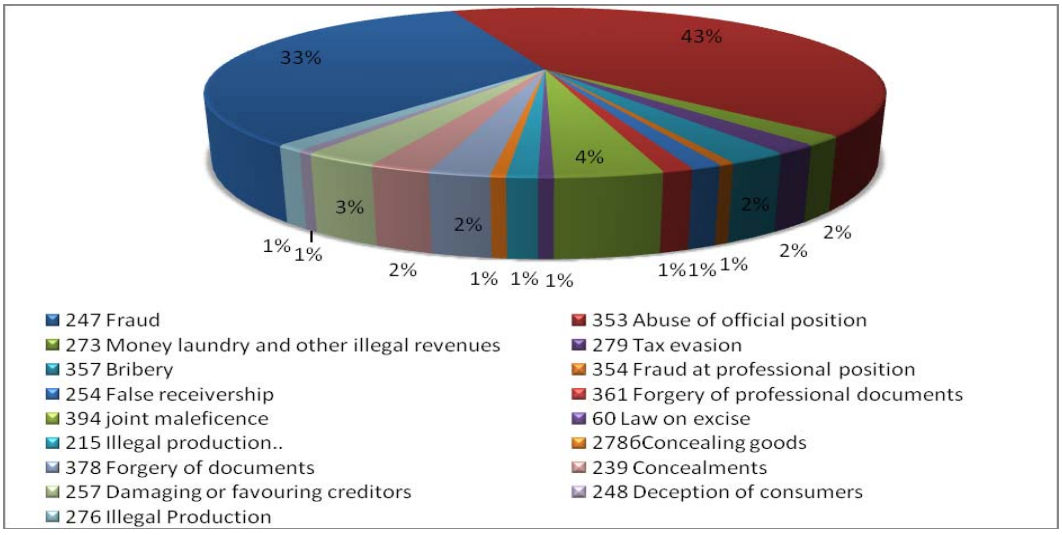
necessary to invest additional efforts to increase the number of convictions for felonies of high-level corruption.[7]

This report has no ambition to treat the problem with corruption in the country comprehensively; this report focuses on certain characteristics that come because of the empirical data obtained in the course of the research in the past 12 months.

2.2.1 Number and types of felonies

In the course of the research, a total of 154 corruption related cases were monitored. For some of the cases, at the same time there are ongoing procedures for felonies regulated by several articles of the Criminal Code, so the total number of the felonies included in the research is higher than the number of cases and it amounts to 175.

With regard to the types and frequency of the felonies, the results show that 43% or almost half of the monitored cases were for felonies – abuse of official position and authorization in line with Article 353 from the Criminal Code. According the frequency, the felony fraud is most frequent from article 247 from CC with 33% of the monitored cases. The chart presents the distribution of certain corruption related felonies according the frequency in the structure of monitored cases.



Compared to the previous year, it can be clearly noted that there is a trend of dominant presence of the felonies of abuse of professional position and authority and deception in the general category of corruption related felonies.[8]

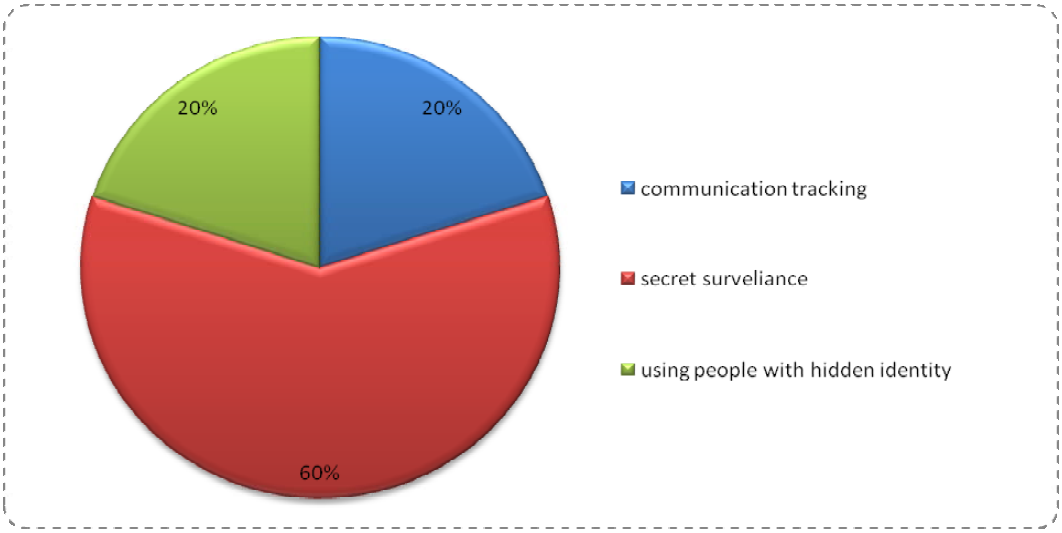
[7] The Former Yugoslav Republic of Macedonia 2010 Progress Report, European Commission Brussels, 9 November 2010

2.2.2 Profile of the perpetrators

The total number of perpetrators or defendants is 468 persons; 90 cases are held against single defendants, and the largest case consists of 36 defendants. From the data on the monitored felonies, we can conclude the following: most defendants are at the age between 36 and 55, mostly of Macedonian nationality, citizens of the Republic of Macedonia, with completed secondary and high education.

2.2.3 Use of special investigative measures

Due to the conspiracy nature of the felonies, special investigative measures are used during the procedure. Out of 154 monitored cases, special measures are used in 10 cases, from both Principal Court Skopje I, and the Principal Court Veles. During the research, three types of special measures were used: the most frequently used measure is secret surveillance with 60%, then communication tracking and using people with hidden identity used in 20% of the monitored cases.



2.2.4 Confiscation of property

Since corruption cases always carry with them the element of acquiring illegal material benefit and illegal enrichment, the fact that the measure confiscation of property is rarely used is surprising. With the changes of CC[9], for heavy felonies, the expanded

[8] Court Efficiency in Fighting Corruption in the Republic of Macedonia, "All for Fair Trials" coalition, Skopje, February 2010.

[9] Official Gazette of the Republic of Macedonia, number 114/09,

confiscation is also introduced that enables expanded confiscation not only of the property of the perpetrator but also the property of third parties that is acquired in the course of the five years prior to the execution of the felony. From the data obtained from the monitored cases, it can be concluded that the expanded property confiscation has been issued as a measure only once.

According the interviewed judges, the reason behind this is that confiscation additionally burdens and prolongs the criminal procedure because in order for the court to be able to issue this measure additional data on the property owned by the defendant needs to be obtained.

Recommendation: It is recommended for the courts to use a lot more the property confiscation measure and also the expanded confiscation measure for the corruption related felonies.

3. RIGHT TO FAIR AND PUBLIC TRIAL WITHIN A REASONABLE TIMEFRAME

Among the freedoms and rights guaranteed to every human being, of fundamental value and importance is the right to life and absolute prohibition of torture and inhuman and humiliating behaviours or punishment. These rights have special weight and the positive obligation of the state to provide protection to each individual even when those rights are breached by other people results from these rights exactly. In the criminal proceeding besides these rights, there are many other rights considered such as right to freedom and safety of the individual, right to private life, freedom of expression, prohibition of discrimination and other, but still those were not subject of the analysis and observation.

The focus of this analysis is placed on the implementation of the international standards and principles regarding the right to fair trial in reasonable timeframe and efficient remedy to protect it. The process rights and guarantees that result from these fundamental rights are analyzed based on international and domestic legislation and empirical data obtained from the monitoring of the criminal cases from the sphere of corruption.

3.1 International legal frame

The right to fair trial within a reasonable timeframe is foreseen with the International Covenant on Civil and Political Rights, which addresses the right of the defendant to a trial without unnecessary delay. In Article 14 from the International Covenant on Civil and Political Rights it is emphasized that "Each person has right to fair and public trial in front of a competent, independent and objective court founded by law which decides on the eligibility of the grounds of the criminal charged against him/her…"

The European Convention on Human Rights and the regional protection mechanism that it established in the form of the European Court for Human Rights, guaranteed the right of fair and public trial within a reasonable timeframe in Article 6, paragraph 1 from the Convention, which foresees "When determining … any criminal charges against the individual, each individual is entitled to …. Hearing in a reasonable timeframe by and independent and objective Court founded by law. "

Article 6, paragraph 2 and 3 from the European Convention on Human Rights foresees special rights of the defendant in the criminal proceedings, such as presumption of innocence, right to preparation of the defence, right to defender and legal assistance, right to interpreted free of charge etc.

The content and principles of the guaranteed rights in Article 6 are continuously developed and upgraded through the jurisprudence of the European Court for Human Rights. Among other, this right results from the positive obligations of the states in the sense that each state needs to organize its own legal order in a way to enable courts to fulfil the criteria that result from article 6 of the ECHR, including the right to fair trial within a reasonable timeframe.

3.2 Domestic Legal Frame

The principle of fair trial in reasonable period is also incorporated in the Macedonia legislation; it is addressed in the Law on Courts and the Law on Criminal Proceeding. Article 6 from the Law on Courts stipulates: "the right to equal access to court in order to protect his/her rights and the legally founded interest is guaranteed to everyone". The guarantee of the right to fair trial in reasonable timeframe is contained in the second paragraph of this article and it stipulates that "when deciding on the civil rights and obligations and when deciding on the criminal responsibility, everyone has a right to fair and public trial within reasonable timeframe in front of independent and objective court founded by law ".

The right to fair trial is guaranteed with Article 5 of the law on Criminal Proceeding which stipulates: "the person convicted of a felony has a right to fair public trial in front of independent and objective court in contradictory procedure to be able to deny charges against him/her and propose evidence for his/her defence".

With the changes and amendment to the Law on Courts[10] a special measure was introduced to protect the right to trial in reasonable timeframe in front of the Supreme court of the Republic of Macedonia; this is explained in more detail in Part 4 of this Report.

3.3 Right to fair trial

In its legal nature, the right to fair trial guaranteed with article 6 from the ECHR is of process-legal nature and as such it is clearly distinct from the other substantial and material rights guaranteed by the ECHR. Among the myriads of rights and principles that result directly from the essence and the nature of fair trial, the key ones are: right to access to court, right of a trial by an independent and subjective court established by law, right to a public trial, right to a trial in a reasonable timeframe or trial without unnecessary delay; right to contradictory procedure and principle of equality of process defence means; right to a court verdict supported by arguments and other rights.

[10] Official Gazette of the Republic of Macedonia number. 58/2006; 62/2006 and 35/2008.

The essence of the principle of fairness lies in the actions of the courts that are not to be randomly of arbitrarily. The evaluation of fairness can not be generalized; it needs to be done each time depending on the circumstance of the concrete case and to take into consideration the procedure as a whole.

3.3.1 Presumption of innocence

One of the key principles of fair trial is the presumption of innocence as stipulated in article 6, paragraph 2 of the European Convention of Human Rights that is affirmed in our penalty and process law. In essence, it expresses the maxim according to which the person charged with a felony is considered innocent until it guilt is proven by law.

From the analysis of the monitored cases it can be noted that there was a certain number of instances with spectacular arrests, the suspects were handcuffed, and the arrest was recorded by the TV stations that directly jeopardized the principle of assumption of innocence. This not only breached the principle of assumption of innocence, at the same time it had an inappropriate influence on the objectivity of the court.

Therefore, we need to emphasize that the jurisprudence of the European Court for Human Rights constantly evaluates the strengthening of the presumption of innocence and the expansion of the positive obligations of the stet. The state is required in its legislation to set normative on the conditions and to provide normal and responsible functioning of the media.

3.3.2 Equality of the process means

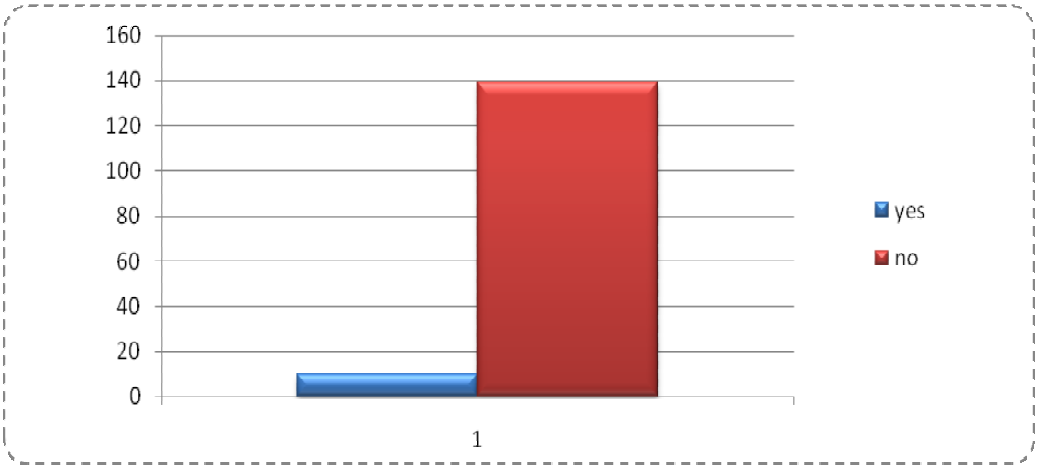
The principle of equality of the process means has as an objective to establish the process equality between the parties, which is of special importance in the criminal proceeding because of the public prosecutor as a state body and its authority and competencies against the defendant and his/her defender. In this sense, the process and legal equality of the parties also means duty of the court to provide an opportunity of each party to present their position regarding the claims and suggestions of their opponents.

This principle includes the right to personal participation of the parties in the procedure, the right to point out their positions with regard to the factual and legal issues, to propose evidence to participate in their interpretation and to state their position regarding the evidence presented by the opposite party.

3.3.2 Right to attend the hearing

The personal attendance of the defendant is a *sine qua non* for realization of the right to a fair trial. It represents an essential presumption on the realization of all the other process rights that come as a result from the right to fair trial. In line with the Law on Criminal Procedures, the defendant can denounce this right under precisely determined circumstances in a non-ambiguous manner.

From the total number of monitored case, in only 6,7% of the cases the hearing was performed in absence of the defendant. In the cases where the trials were in absence of the defendant, in some 80% the reason was unavailability of the defendant, while in 20% it was escape of the defendant. Data shows that courts treat the trial in absence of the defendant as an exception.

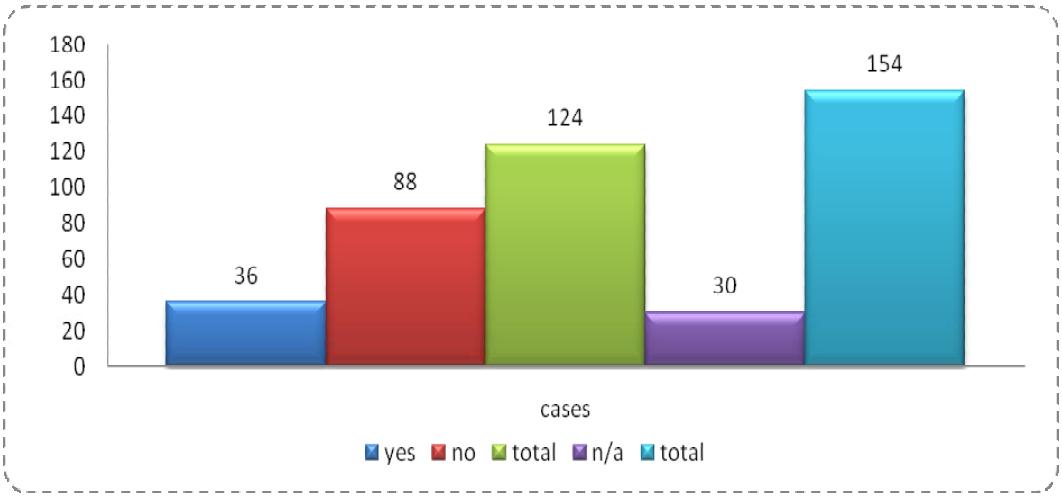


3.3.3 Right to defence

The defendant in our penalty legal system has at his/her disposal an array of process guarantees and competencies that need to enable him/her an efficient realization of the right to defence. Besides the right to engage a defender or to have one designated to him as official duty if the defendant can not bear the expenses related to it, including the right to submit an objection to the prosecution act, the right to access and the right to view the writes and other materials of the case in order to prepare the defence, the right to interpreter and the other process rights that are in line with the provisions from Article 6, paragraph 3 of the European Convention on Human Rights**.**

The defendant in the criminal proceeding needs to have enough time and possibility to prepare the defence. The Law on Criminal Procedure foresees several time lines and actions in order to realize this process guarantee.

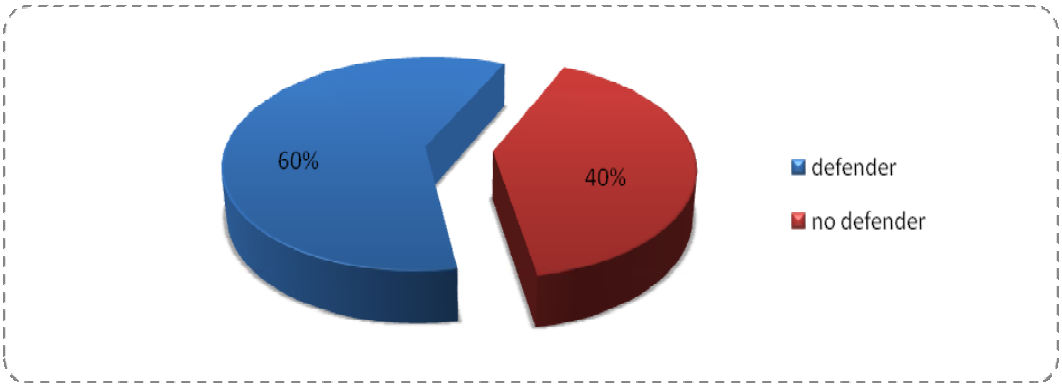
The empirical data gathered in the past year during the research shows that the right to submit an objection to the prosecutor's act was used in 36 cases from the 124 cases for which data was collected. This points out to the weak usage of this institution.



3.3.4 Right to defender

The right to defender is an important guarantee of the process equality of the parties in the procedure both in cases where the defence is obligatory, as well as in the cases where the defendant has engaged a defender voluntarily.

The results from the research show that out of 468 accused individuals, 279 accused had a defendant who represent 60% of the total number of monitored case, compared to the 40% or 189 defendants that did not have a defender in the course of the procedure.

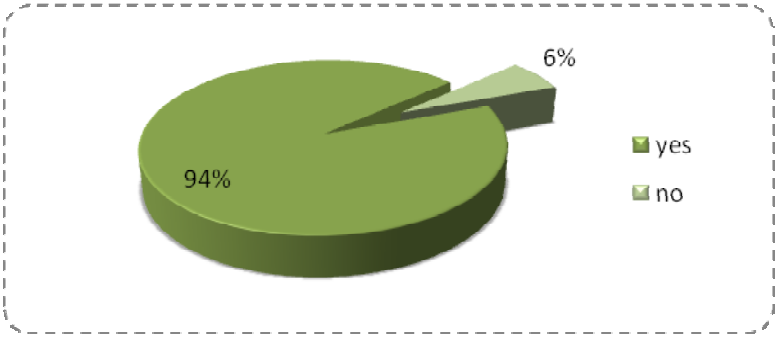


3.3.5 Right to examination of witness or forensic expert

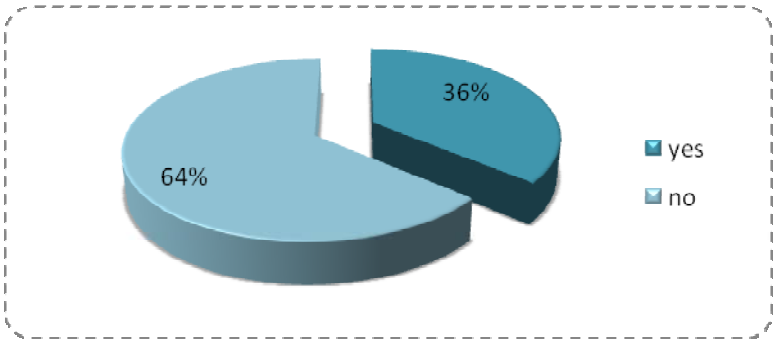
The principle of equality of the process means between the parties does not mean that the defender is guaranteed the right of having each witness that he/she proposes to his/her defence to be allowed to testify. The essence of this process guarantee is that the defendant is given an opportunity to exam the witnesses of the prosecution.

The data obtained in the course of the research points out that this right is generally respected and that conditions are provided to realize the principle of equality of the process means between the defendant and the authorized prosecutor.

This conclusion is supported by data according to which in 94% of the monitored hearings, the statements of the witnesses are given in presence of the defendant, which meant that he/she had an opportunity to ask questions either directly or through his/her defender.

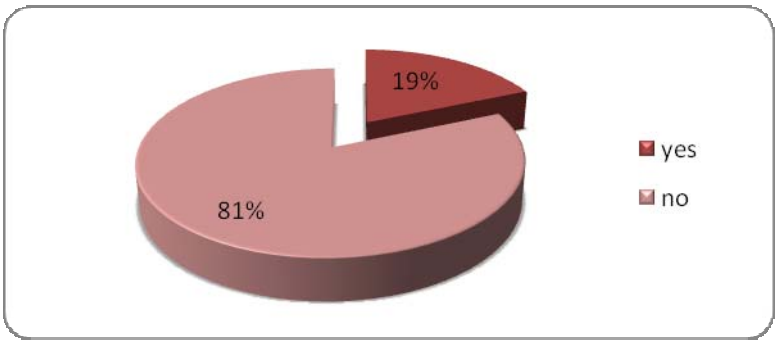


In 36% of the cases when the minutes from the statement of the witness were read, the statement of the witness was also taken in presence of the defendant.



The right of the defendant to listen to the witness of the prosecution is especially relevant when it comes to more severe forms of organized crime where measures for witness protection are undertaken; in 59% of the monitored hearings, the measure of witness protection was used.

The key issue when ensuring the process equality of the parties in the criminal proceedings in such cases is whether the defendant and the defender have had the opportunity through the court to interrogate the witness under protection. Of a huge concern is the fact that there is a very low percentage or 19% of the cases when the courts provided the opportunity for the defender/defendant to interrogate the protected witness.



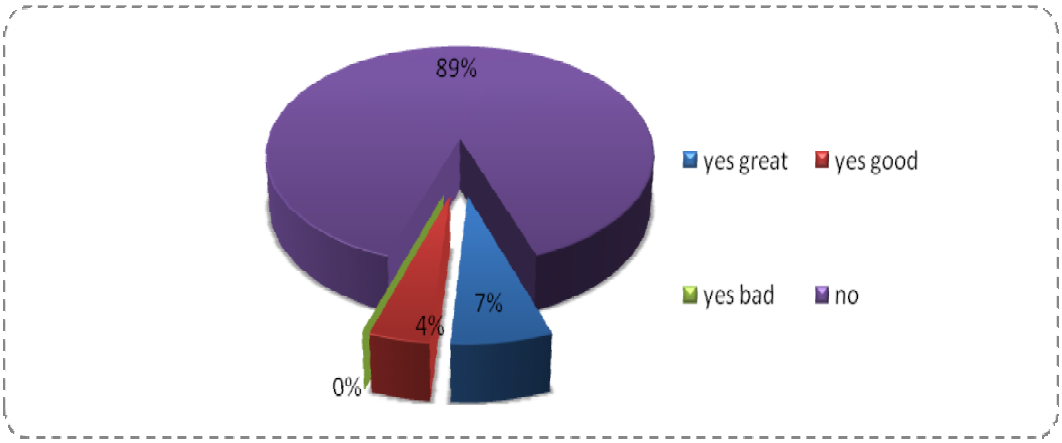
The standards built through the jurisprudence of the European Court for Human Rights are very clear on this question and point out that the defendant needs to be offered the possibility to ask questions to the witnesses, and if that is impossible due to safety issues, the possibility is to be provided to the defendant's defender.

Furthermore, the court is also required to especially respect this principle when appointing a forensic expert ex officio. Since in most cases the forensic expertise in the corruption related criminal felonies is in favour of the charged, the court needs to make sure that a forensic expert testifying in favour of the defence is also given a chance to testify, when required by the defence.

3.3.5 Right to an interpreter

In line with the LCP, the defendant can produce the defence in his/her mother tongue. The witnesses are also entitled to the same right. In course of the hearings of the monitored corruption related felonies, in 11% of the cases an interpreter was provided for the witness in a language that he/she understood.

The chart below shows if translation was provided and also shows the quality of the provided translation.



In line with the jurisprudence of the European Court for Human Rights, this right does not imply that translation of all writs and documents from the procedure is to be provided. According the Court, the right to an interpreter needs to enable the defendant to have such an understanding of the case so that he/she can defend him/herself and so that he/she would be able to state in front of the court his/her version of the alleged felony.

3.4 Right to a trial in a reasonable timeframe

The right to trial in a reasonable timeframe denotes the right to a prompt and expedite justice. When assessing if the criminal procedure is in line with the standard of having a trial in a reasonable timeframe, a preliminary question to be answered is to determine the duration of the timeframe that will be considered as legally relevant period. Generally, the procedure is considered as initiated when the person finds out about the criminal charges raised against him/her.

In line with the practice of the European Court for Human Rights the initiation of the criminal procedure is timely placed ahead of the raising of the charges. Therefore, the start of the procedure is the moment when the individual is informed that he/she will be accused or that there are founded doubts that he/she has committed a criminal act, or that is the moment when the individual is deprived of freedom or when a preliminary investigation is initiated against him/her.

The final limit of that period is the moment when the decision is passed. The criminal procedure ends with the passing of the verdict at an ultimate instance which can include procedures from regular as well as irregular legal remedies**.**

3.4.1 Criteria to evaluate the duration of the procedure

The European Curt for Human Rights takes into consideration the following criteria when evaluating if there is a breach of the right to a trial in a reasonable timeframe:

1. Complexity of the case – this criterion is with regard to the complexity of the case, both in terms of facts and in terms of the legal issues.
2. Behaviour of the defendant – has the defendant with his/her behaviour contributed to the prolongation of the procedure? The defendant is not expected to withhold from undertaking process actions that are available to him/her.
3. Behaviour of the authorities i.e. the court and the public prosecution – the obligation of the state authorities to undertake all activities necessary for an efficient and expedite closure of the procedure.
4. The meaning of the procedure outcome to the defendant – additional criterion evaluate by the Court in Strasbourg and it relates to the special circumstances of the defendant and the need to decide on the criminal charges **with** urgency. For example, in case when the defendant is in detention and at the same time is suffering from a serious illness.

3.4.2 Factors that influence the duration of the procedure

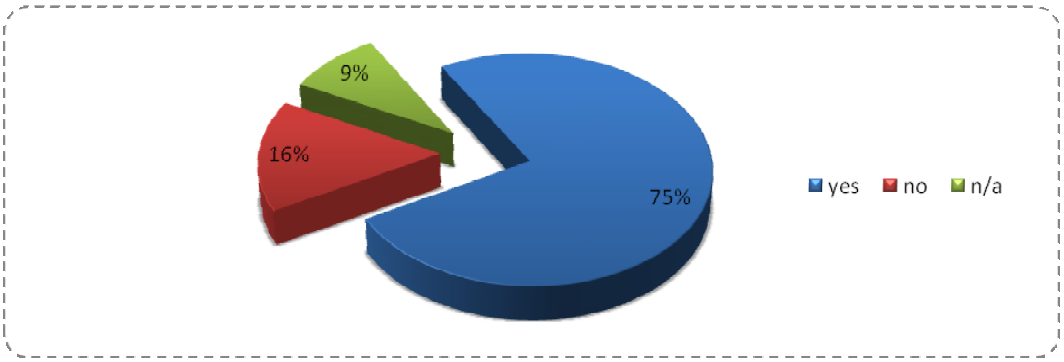
3.4.2.1 Initiation of the criminal procedure

The criminal procedure for the corruption related cases is initiated by the public prosecutors and its course and duration can depend on the active or less active role of the public prosecutor. Hence, the evaluation of the duration of the procedure needs to also include the behaviour of the public prosecutor. From the available data from the research, we were not in a position to obtain information on the time that passed from the moment of submitting the charges until the passing the decision by the public prosecutor (charges rejected, investigation interrupted or stopped or a prosecution act has been initiated).

Recommendation: In future it is recommended to include data on the timeframe from submitting the criminal notice until pressing the charges that are relevant to the evaluation of the conduct of all the actors in the criminal proceedings**.**

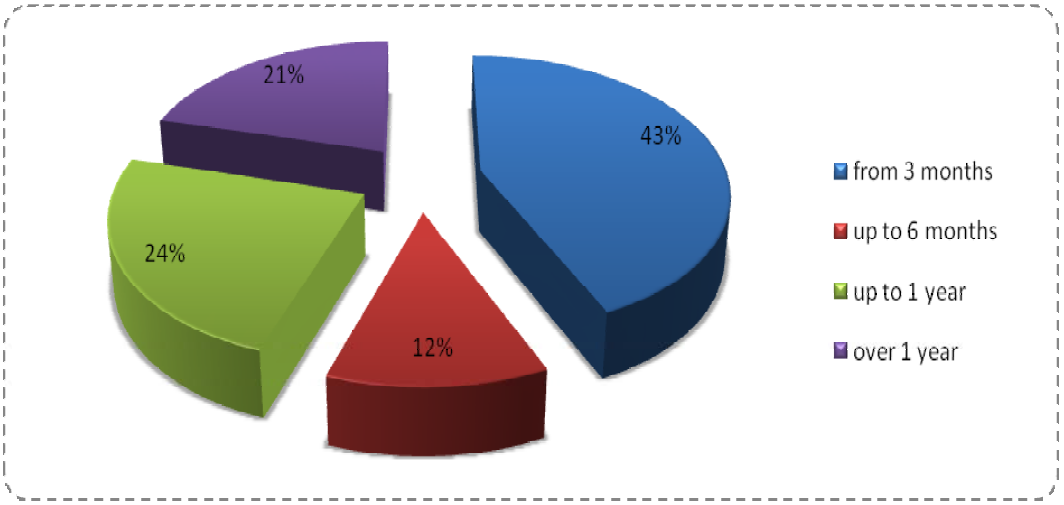
3.4.2.1 Investigation and its duration

From the results of the research we can conclude that the research was conducted in a considerable number of monitored cases, or 75% of the total number of monitored cases.



The duration of the investigation does not have a time limit, but in line with the provisions of the LCP, if the investigation is not completed within 90 days, the investigating judge is obliged to inform the President of the Court of the reasons due to which the investigation has not been completed; then, as needed, the President of the Court can undertake measured to bring the investigation to a closure.

The data from the research show that in most cases, or 43% of the monitored case the duration of the investigation was three months, in 12% of the cases it was 6 months and in 24% of the cases the investigation went on for an entire year, and furthermore, in 21% of the cases it exceeded one year.



According to the previous experience, the investigation was very often pointed out to be one of the main reasons for prolongation of the procedures.[11] This is also in line with the opinion and positions of the surveyed judges who believe that the abridging of the entire procedure, from detection of the felony until the passing of the verdict, will be

[11] Strategy on Reform of the Penalty Law, Ministry of Justice, 2007

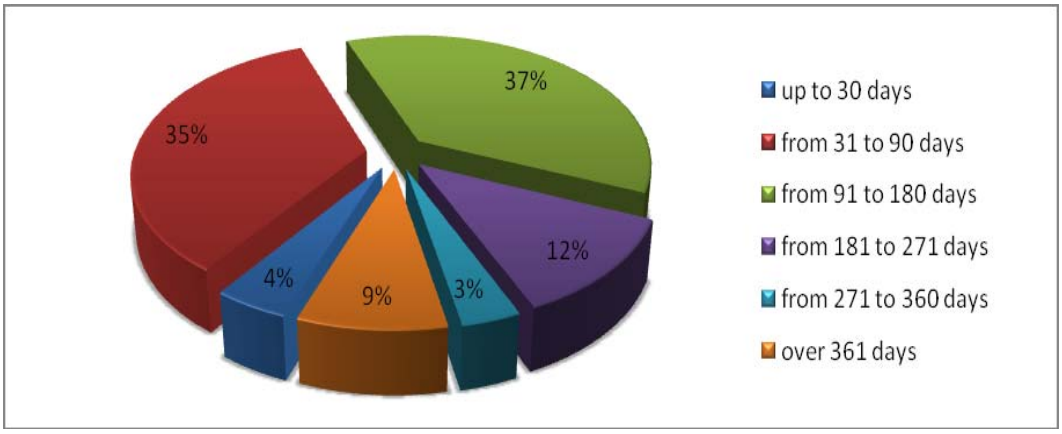
best accomplished if the investigation is implemented quickly and if it is of good quality; this would solve also the issue of gathering evidence during the main inquest.

The biggest novelty introduced with the reforms of the penalty process legislation is the elimination of the court investigation and its transfer under the authority of the public prosecutor.

Recommendation: It is recommended in future the monitoring of the procedures for felonies from the sphere of organized crime and corruption to be expanded and to include the investigation, with a special emphasis on how the transfer of the investigation to the public prosecution would influence the efficiency and rapidity of the criminal procedure.

3.4.2.3 Initiation of the main hearing

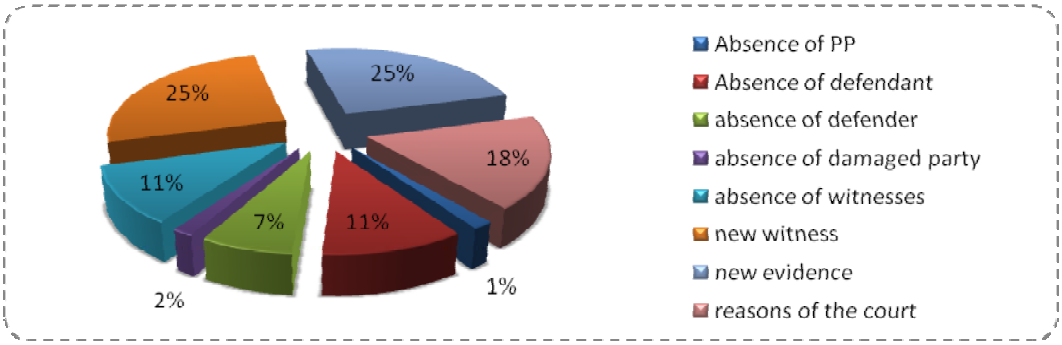
The time from the submission of the prosecution act until the scheduling of the first hearing of the main inquest can serve as an indicator of efficiency of the courts and it can influence on the length of the procedure. According the results from the research, in only 4% of the cases the hearing started in less than 30 days, while **in a considerable number of cases - 73%, the time frame is between 30 and 180 days.** In rest of the cases, the time to start the first hearing exceeds 180 days, out of which in **9% of the cases it exceeds 361 days or a year.** The obtained results are presented in the graph below.



From the aspect of having the trial in a reasonable timeframe, the long period of idleness of the court from the submission of the prosecution act until the scheduling of the first hearing for main inquest, does influence the length of the procedure and it can not be justified by any procedural rules, organizational changes, larger inflow of cases or other objective factors.

3.4.2.4 Reasons leading to delay of the hearing

The most common reason that leads to an excessive duration of the procedure is the postponement of the main inquest hearing. In line with the Law on Criminal Procedure, if the main inquest can not start due to the absence of some of the participants in the procedure, or it can not be completed in a single hearing, the court will postpone the main inquest. The observers registered and documented not only a practice of frequent delay of hearings, but also the reasons that lead to it, in order to identify appropriate remedies to eliminate these reasons and to achieve increased efficiency in the work of the courts, the research brought us to the following main reasons that resulted with postponing of the hearings:



From the analysis of the data we can conclude that absence of the participants in the procedure results with frequent postponement of the hearings. In 25% of the monitored cases the postponement of the hearing came as a result to summon new witnesses or due to the need to gather material evidence. This means that if the investigation procedure provides all the needed material evidence, and if all the witnesses are provided, the number of postponed hearings will be considerably decreased.

Furthermore, research showed that the absences of the defendant, as well as absence of witnesses lead to rescheduling of the hearing in 11% of the cases. Thus, the empirical data rejected the presumption that it is mainly the defendants and their defenders that prolong the procedure by not showing up at the scheduled hearings.

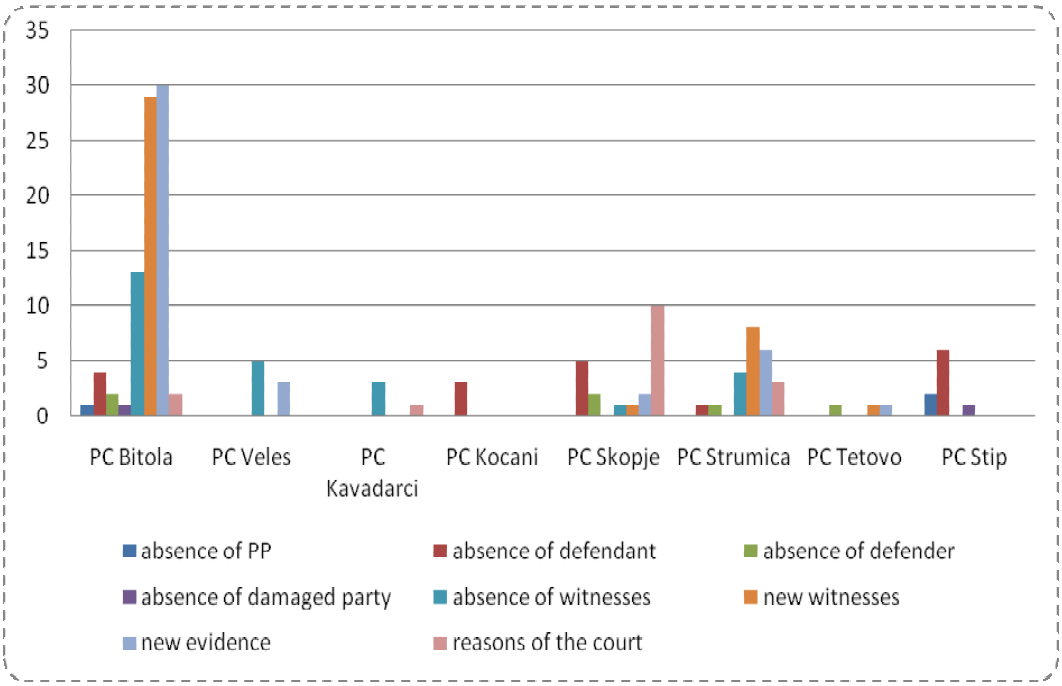
A worrying fact is that a high percentage or 18% of the causes are registered under *reasons of the court* but these reasons are not clearly dissected in the data obtained with the monitoring. On the other hand, the number of incident where the main hearing was postponed due to the absence of the public prosecutor is very low – that occurred in only 1,6% of the cases. The occurrences where postponements of the hearings happen due to reasons of the court or reasons of the authorized prosecutor need to be minimized, and that is one of the guarantees that the right to a trial in a reasonable timeframe is realized.

Recommendation: It is recommended to clearly define the reasons that lead to postponement of the hearings, and for which the courts are held responsible, in order to enable further detailed analysis of their influence in the length of the criminal procedure.

Another conclusion that can result from the findings that the hearings are often postponed due to reasons of the court is that it is necessary in improve the capacity of the judges, both in planning and managing time and cases as well as managing the evidence procedure.

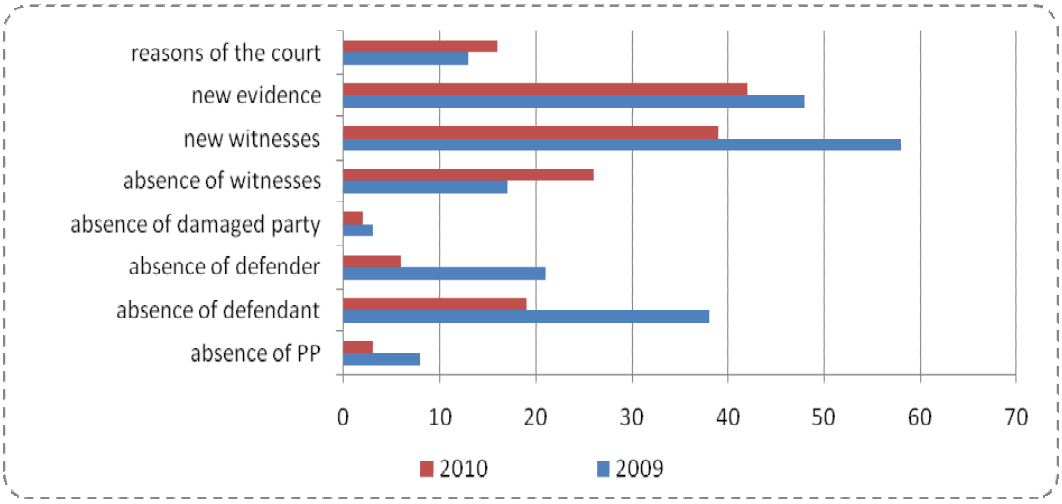
Recommendation: Further strengthening and improvement of the capacity of the judges is recommended in planning and managing time and cases as well as the evidence procedure, as well as introducing new working methods that would enable complete usage of the available material and human resources in the jurisprudence and providing a fair and expedite criminal procedure.

When compared per court, results from the research show that most of the postponed hearings occurred in the Principal Court in Bitola, due to absence of defenders and witnesses, while in the Principal Court Skopje I in Skopje, which is dealing with organized crime, most of the postponements come as a result of causes of the court.



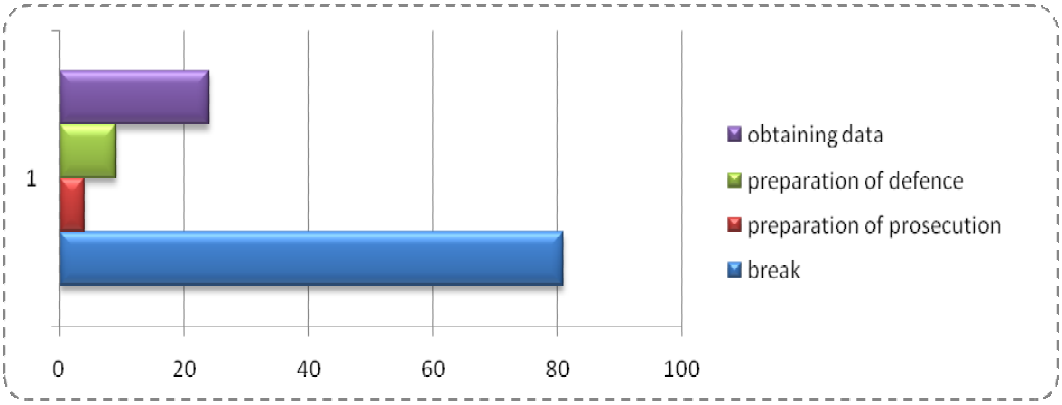
Finally, in order to gain a good picture of the court efficiency in dealing with corruption related felonies, a cross-referencing and comparison of the data obtained in 2009 and 2010 was also performed.

Based on the data shown below, we can conclude that **there is a trend of decrease of almost all reasons because of which the hearings of the main inquests are postponed, which can result with abbreviation of the length of the entire procedure**.



3.4.2.5 Reasons for recess of the main hearing

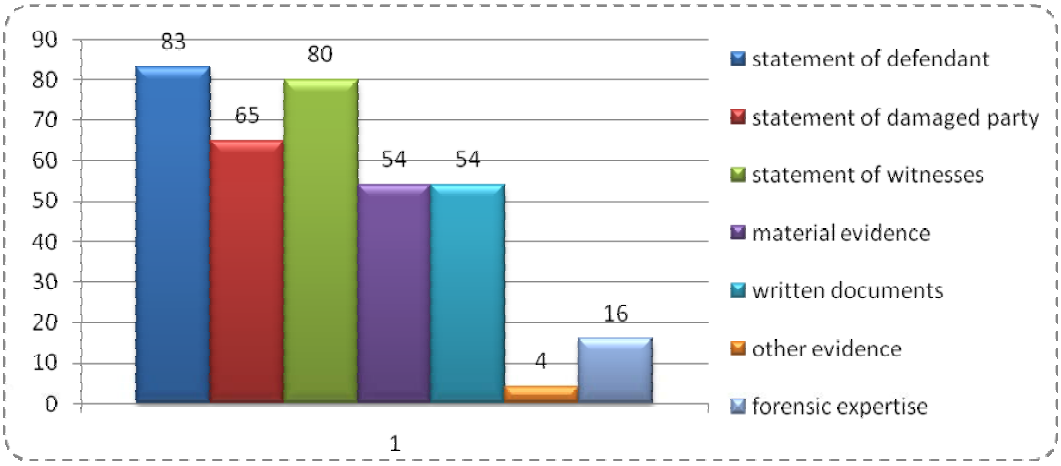
One of the factors that influence the excessive length of the criminal proceedings are the frequent recesses of the main hearings; among the most common reasons are the breaks and the gathering of evidence that were not completely provided and presented in the previous proceeding; the next reason is the preparation of the defence and the prosecution.



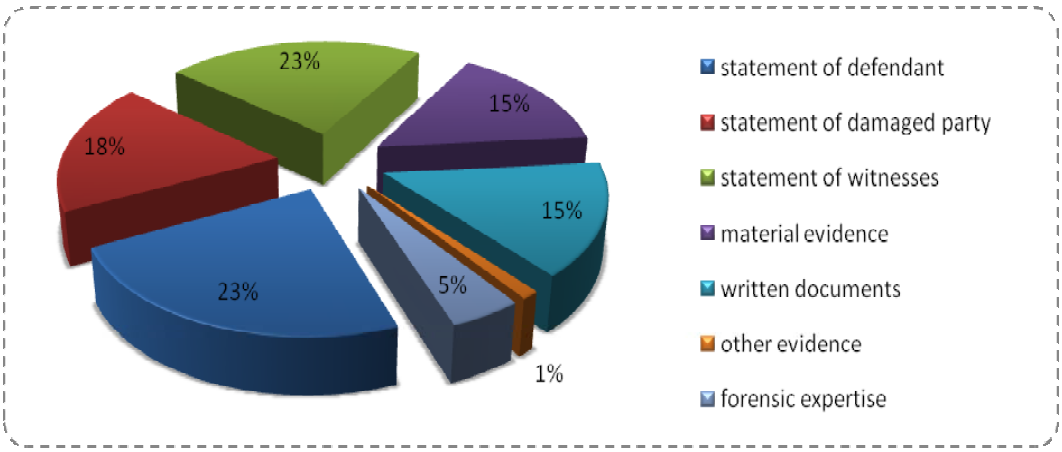
3.4.2.6 Evidence and evidence procedure

There are several types of evidence that are used in the criminal proceedings depending on the nature of the criminal act, the circumstances and the course of the previous proceeding, that determine the reliability of the legally relevant facts.

In the monitored cases, the evidence procedure mainly consisted in going through verbal evidence such as statements of the defenders and the witnesses, and these were present in 80 and 83 hearings respectively, after which are the statements of the damaged party, present in 65 hearings. The documentary material evidence or written evidence is used in 54 hearings. The forensic expert's opinion as a proof is used in 16 hearings.



The distribution of the used evidence in the course of the procedure, in percentage, shows that the statement of the defendant and the witnesses is present with 23%, after which follows the statement of the damaged party with 18%, the documentary evidence and written evidence with 15% and the forensic expertise with 5%.



In the context of the evidence procedure, it is interesting to note that according the jurisprudence of the European Court for Human Rights, there can be a breach of the right to a trial in a reasonable timeframe, if the court misses to determine a dead line for forensic opinion or deadline for submission of the forensic experts opinion, and if that circumstance is the one leading to the extensive delay of the procedure.

3.5. Right of freedom and safety of the individual

The penalty process legislation in the Republic of Macedonia contains process guarantees to protect the right of freedom and safety of the individual; these guarantees are synchronized with the international standards and principles contained in Article 9 from the International Covenant on Civil and Political Rights and Article 5 from the European Convention on Human Rights.

For this analysis the most relevant are the provisions from article 5, paragraph 3 from the European Convention, which stipulates that "Everyone has right to freedom and safety of the personality. Each individual that is arrested or incarcerated in line with the provisions from paragraph 1 c from this article … is entitled to a trial within a reasonable timeframe or to liberation from detention until the completion of the trial. The liberation can be conditioned with guarantee to show up in court for the trial".

Article 6 from the LCP stipulates that the individual, against whom there is a procedure raised, is entitled to be taken in front of a court in a reasonable timeframe and to be tried without unjustified delay. Furthermore, the court is obliged to implement the procedure without delay and to prevent every abuse of right that the persons involved in the procedure are entitled to.

The Law on Criminal Procedure foresees a wide list of measured to provide the presence of the defendant and successful flow of the criminal procedure (article 185-199) the practice of the courts in Macedonia until now with regard to the use of the measure of providing presence of the defendant is burdened with a lot of weaknesses and flaws. This is mainly with regard to the detention, which is evidently the most often used measure. Most of these measures tamper with the freedom of the individual and these fully or partially restrict the right to freedom of the individual.

3.5.1 Detention

Detention is the heaviest measure used to provide the presence of the defendant because it directly influences and restricts the right to freedom of the individual. Hence, the law requires a procedure that would enable the defendant to stay in detention as shortly as possible.

The process guarantees of protection in case of depriving from, or limiting the freedom of the defendant are manifested in different ways, especially by using detention as a last resort (utima ratio) when the objectives cannot be achieved with the issuing of another

measure; the legal determination of the conditions i.e. the cases when detention must or may be issued as a measure; clear and detailed explanation of the reasons for the issuing of the measure detention in each separate case; legal limitation of its duration etc.

3.5.1.1 Providing arguments supporting the reasons for detention

The analysis from this sphere points to many flaws that occur when the detention is used as a measure in practice. Detention is used up to a large extent without being supported by appropriate detailed argumentation, for each individual case. The court decision that issue or decide on prolonging of the detention, mainly quote legal provisions and the same lack appropriate supporting arguments.[12]

The need from supporting arguments expanding the reasons for the detention and its duration is especially emphasized in the preceding law of the European Court for Human Rights. This position of the court is clearly stated in the case of Castravet versus Moldavia.[13] In this case the Court determined that in the decisions for detention of the applicant and the decisions to prolong his detention, the domestic courts mainly were relying on paraphrasing the reasons for detention as foreseen in the Law on Criminal Proceeding, without further explaining how are these reflected and used in each concrete case.

In line with the findings of the Court, the presenting of the legal provisions regulating the criminal procedure in Moldavia, without giving further arguments on why in the specific case it is necessary to issue the measure detention, is a breach of Article 5(3) from the Convention.

Recommendation: When issuing the measure detention, it needs always to be supported with arguments explaining why in the specific case the measure is issued, and not to leave it to the plain paraphrasing of the legally foreseen grounds. The duration of the detention is to be as minimal as possible.

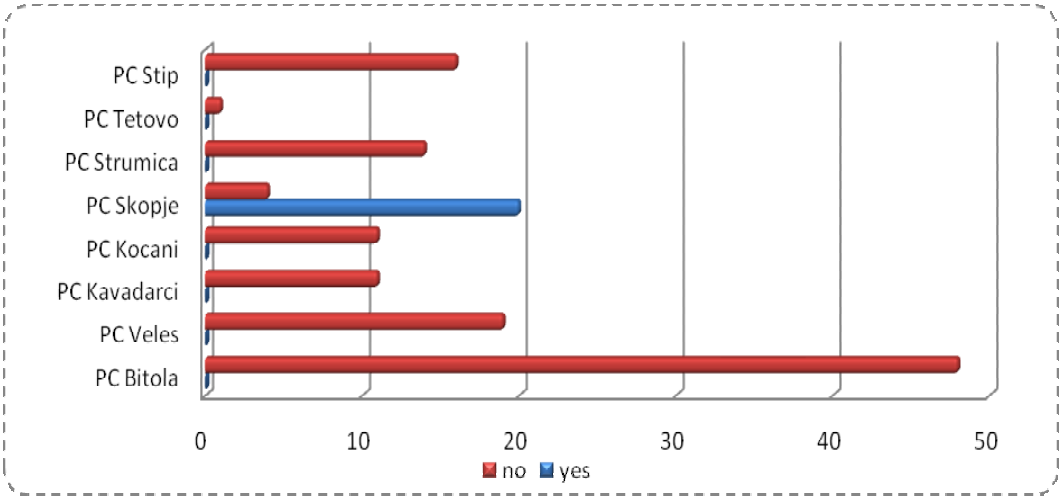
When issuing this repressive measure, the defendant is deprived of freedom and with this the bodies of criminal prosecution have access to the defendant. Thus, the measure detention enables a more efficient realization of the objective for which it is issued compared to other measures. Up to a certain measure, we can conclude that the detention has a "positive" influence on the length and efficiency of the court procedure.

Still, the efficiency of the measure detention and its direct contribution towards the increase of the entire efficiency and promptness of the criminal procedure needs always

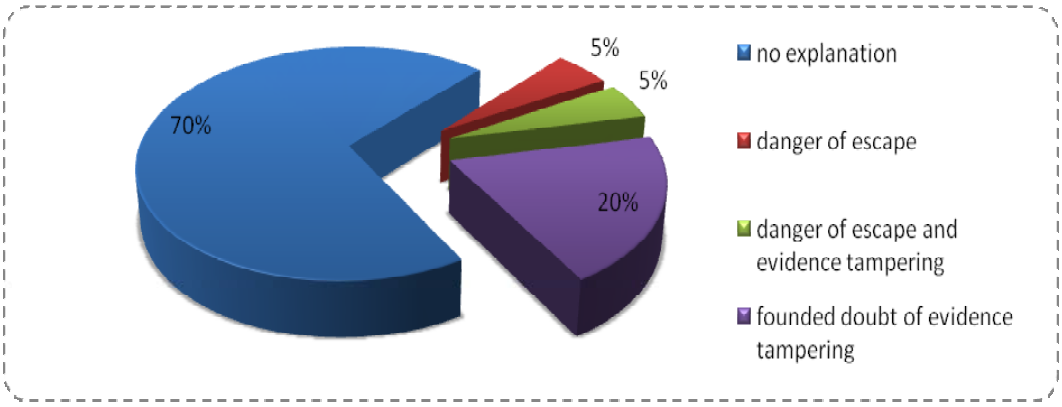
[12] See: Analysis "Detention prior to trial" – March 2008 and Manual for Applying the Measure Detention – January 2009, issued with the support of the OSCE Spillover Mission in Skopje.
[13] *Castravet v. Moldova, Judgment,para* 34-36.

to be evaluated and balanced against its repressive and slightly inhuman character in relation to the defendant. At the same time, we should not neglect the financial implication that this measure has as a burden on the state budget and the system of criminal and legal protection.

The research has shown that the measure detention was issued in 20 cases. It is interesting to note that it was issued only by the Principal Court Skopje I Skopje, when dealing with felonies from the sphere of organized crime, and it was issued to 218 defendants, or almost half of the total number of 468 defendants.



In 70% of the cases, the observers did not have insight and did not have data on the reasons for the detention. On the bases of the available data, it results that most frequent reason for issuing this measure is the existence of a founded doubt that the defendant will tamper with the evidence 20%, while in 5% of the cases the danger from escape and tampering with evidence, connected with danger of escape.

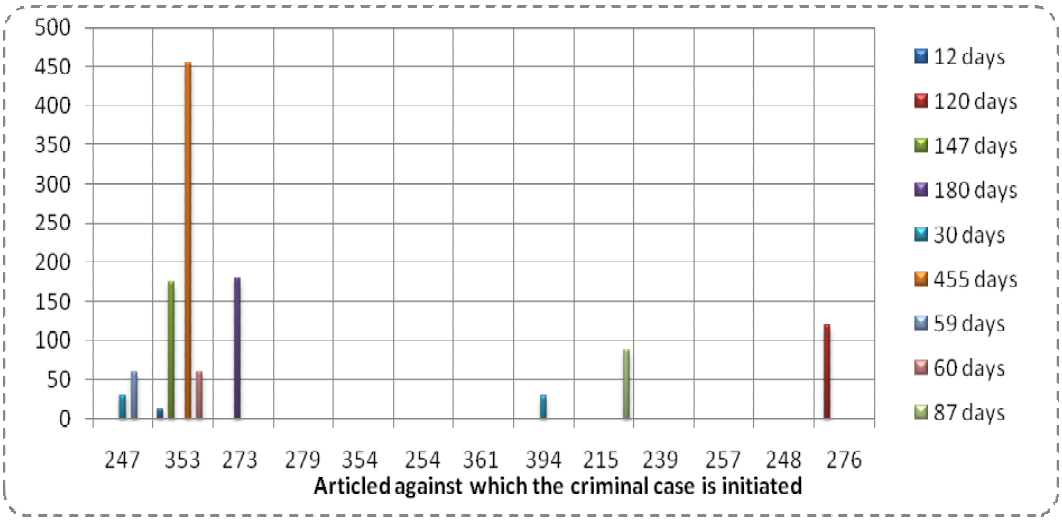


According the positions stated by the interviewed judges, the detention is issued as a measure within the legally determined conditions and timeframe, and other measures that are applied in order to provide the presence of the defendant, the most often issued measure is the one of confiscation of ID.

3.5.1.2 Duration of the detention

In line with article 198, paragraph 2 from the LCP: "The duration of the detention must be as short as possible. The duty of all bodies involved in this criminal procedure and the bodies that offer the legal assistance is to treat this case with special urgency, when the defendant is in detention".

Results from the research show that the shortest duration of the detention is 12 days while the longest is registered for the case where the felony is abuse of official position and it was with duration of 455 days.



From this, we can conclude that the detention as the heaviest measure, which deprives the defendant from freedom, in most cases, was with length of over 180 days, the average being calculated at 114 days.

The Jurisprudence of the European Court for Human Rights does not give a direct answer to the question, what is reasonable duration of the detention. The Court only evaluates the legal grounds and the justification of the detention, and its duration based on the criteria established, such as the duration of the detention, the nature of the felony, the foreseen penalty, the behaviour of the defendant etc.

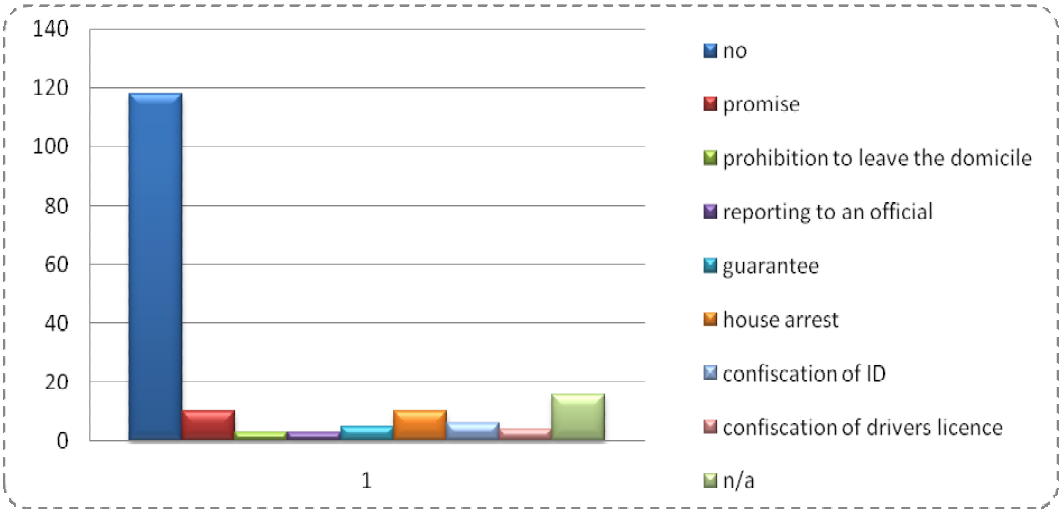
The practice of the court in Strasbourg shows that the domestic courts are expected to show bigger efficiency in dealing with criminal cases when detention is issued as the

most difficult measure restricting the freedom of the defendant. This is especially valid for the cases where due to serious health issues of the defendant (HIV positive) the uncertainty of the outcome has a special negative effect.[14]

3.5.2 Other measures of securing presence

Courts rarely use provisions form the penalty process law with regard to the other measures for successful implementation of the procedure. This conclusion is supported with the results from the monitoring of cases from the sphere of corruption implemented in the course of 2010.

Out of 154 cases, in 36 cases were issued other measures to ensure presence of the defendants. Among these, most frequent is the measure promise that the defendant will be available to the court and the house arrest, issued in 10 cases; the confiscation of ID and drivers license was issued as a measure in 6 and 4 cases respectively; In 5 cases the guarantee was issued; and in three cases the measure used was prohibition to leave the domicile and obligation to report to an official.



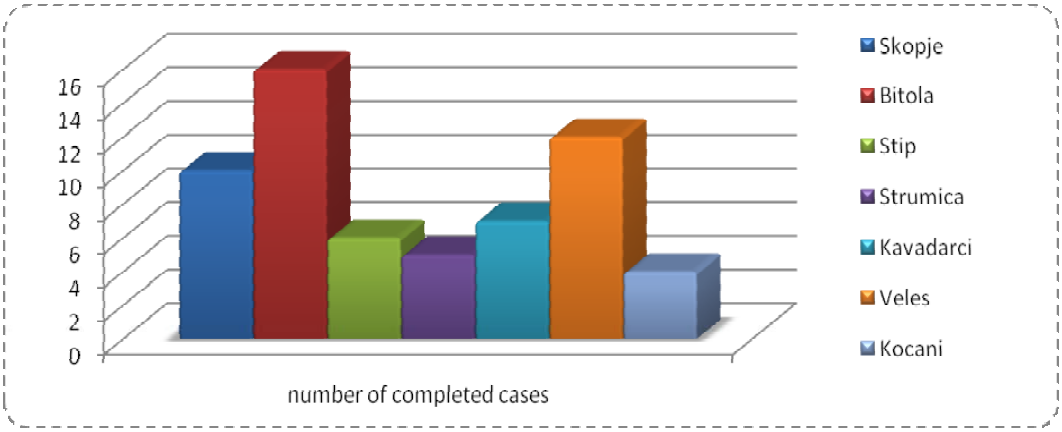
In essence as well as compared to the detention, these measures are more human, do not lead to direct limitation of the freedom of the defendant, but they imply imposing prohibitions, limitations and obligations and have a certain time duration and amount..

Recommendation: Due to the character and the lesser degree of violating human rights, it is recommended to use more frequently the other measures to provide the presence of the defendant, and depending on the circumstances when possible to combine and apply as alternative of the detention the house arrest.

[14] Case v. United Kingdom, Judgment 1992, Series A.

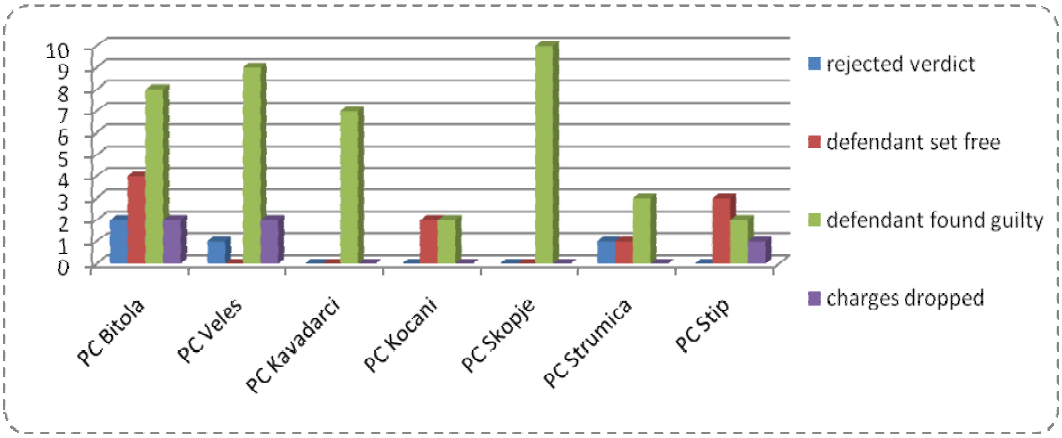
3.6 Completed cases and passed verdicts

According the data obtained from the research, out of 154 monitored cases, 60 cases were completed with the first-degree procedure in front of the principal courts. Out of these, most cases were completed in the Principal Court in Bitola a total of 16, then Veles with 12, Skopje I with 10 completed cases and all the other courts with less than 10.



According the type of the verdict, out of 60 cases in 41 cases the defendant was proclaimed guilty, in 10 cases, the defendants were set free, in 4 cases rejection verdict was passed and in 5 cases the charges were dropped.

On the graph below, we can see the distribution of the 4 types of verdicts per court; it is evident that most verdicts where the defendant is found guilty are passed in the Principal Court in Skopje I, 10, then in Veles – 9, in Bitola – 8, after which the other principal courts follow. The Principal Court in Bitola has passed the largest number of verdicts to set free the defendant i.e. 4, after which Stip and Kocani follow. This type of verdict was never passed in the Principal courts of Skopje, Kavadarci and Veles.

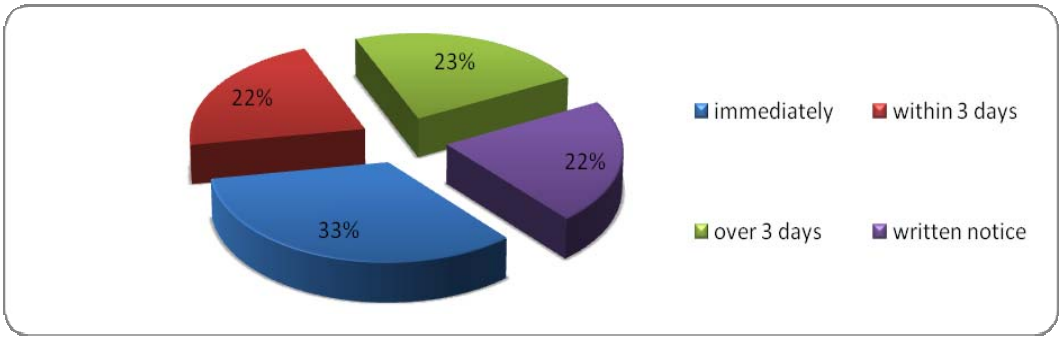


As part of the survey, the judges were asked about the penalty policy and if the penalties issued for corruption related felonies were strong enough. Most judges consider that the foreseen penalties for such felonies are too high and therefore there is a tendency to issue penalties that are within the legally determined minimum.

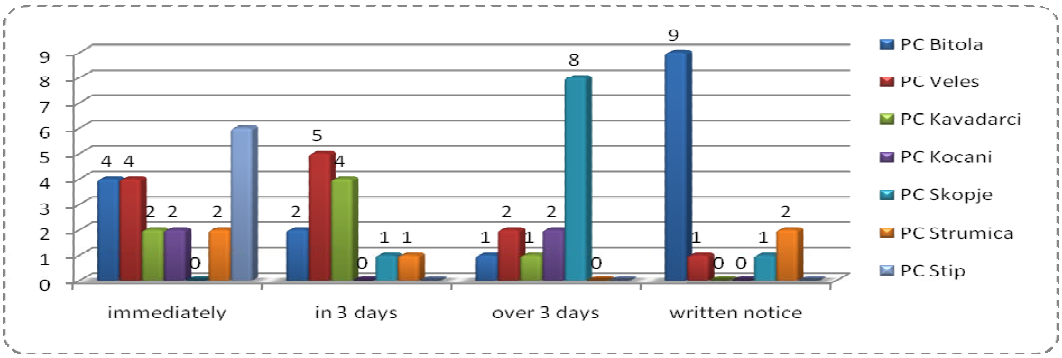
3.6.1 Producing and announcing the verdict

The duration of the procedure, also counts in the time needed to document the producing of the verdict and its announcement. In line with the LCP, the verdicts in the criminal proceedings need to be produced within 8 days or within 15 days in instances of more complex cases from the day of their announcement. The verdict is announces immediately after it is passed.

In the graph below we can see the timeframe within which the verdict has been announced. In 33% of the cases it was announced immediately, and in 22% it was announced within three days, while in 23% it was announced within a timeframe exceeding 3 days or it was submitted as a written notice.



When compared, the practice of the principal courts shows that in the Principal Court Bitola and in the Principal Court Skopje I there is tendency to announce the verdicts in a timeframe exceeding 3 days or it is done with written submission of the verdict, which is understandable if we have in mind the weight and the complexity of the cases that they deal with.



3.7 Positions of the judges regarding the length of the procedure

The survey of the judges among other things tried to capture their positions regarding the length of the procedure when dealing with corruption related felonies, as well as to identify reasons which in their opinion and experience, lead to excessive and irrational duration of the court procedures.

In that sense, the fact that the duration of the procedure for the more complex cases processed by the Department for Organized Crime and Corruption at the Principal Court Skopje I Skopje, where a larger group of defendants are involved, is faster and shorter compared to the proceeding on other cases processed by other courts in the state. All judges, with exception of the judges from this specialized department, agree that this situation is due to the fact that for these cases the defendants are easily accessible to the court dealing with the case since this department issues the measure detention far too frequently. This is not the case with the other monitored courts, which as courts of first degree, in line with the legal competencies, are burdened with a large number of cases from the sphere of general crimes.

The judges locate the reasons that influence the duration of the procedure and its prolongation in the constant process decisions; in practice the defendants, their defenders (even witnesses) prolong the procedure by not attending hearings, there are problems with submission of subpoenas, lack of evidence in the pre-criminal and investigation procedure, raising charges that are not complete and are not fully supported by evidence, as well as difficulties that arise when evidence needs to be provided and submitted by other bodies and organizations.

According the statements of the judges, they rarely apply the legal solutions that have as an objective to provide a regular flow or speed up of the procedure, such as covering incurred costs due to the absence of the defender or issuing a fine to the defenders (Articles 316 and 316 from LCP), who with this behaviour try to influence on the length of the procedure by not appearing on all scheduled hearings.

Recommendation: it is recommended courts to apply legal solutions more frequently in order to provide presence of the parties, regular flow and speeding up of the criminal procedure.

3.8 Conclusions from the monitoring of the length of the procedure

In line with the international standards, the length of the procedure denotes the time elapsed from the moment the charges are made known or the moment of depriving the defendant from freedom, until the passing of the verdict, and in some cases, it also accounts for the time used for the procedure following legal remedies and execution of the verdict.

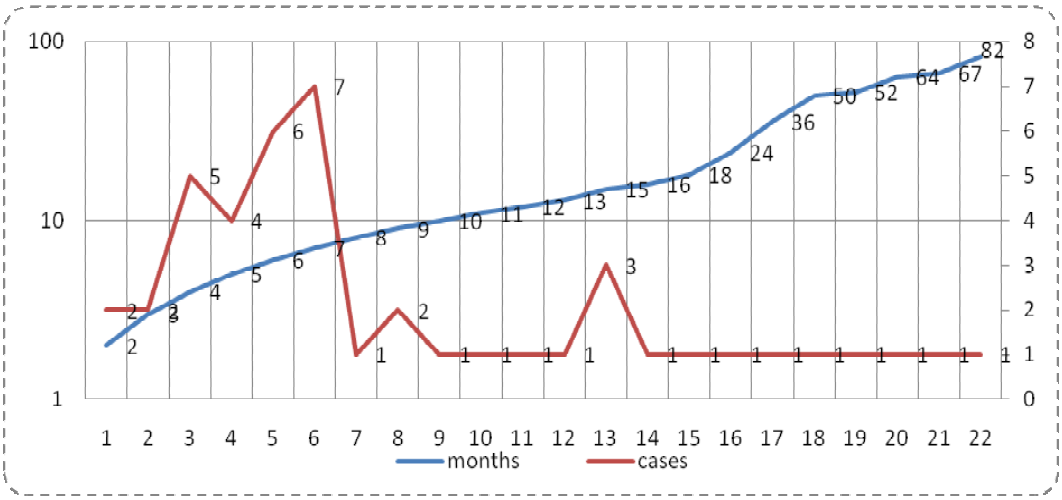
In that sense, when analyzing the available empirical data from the monitoring, the conclusions and evaluations on the length of the criminal proceeding and its stages, the starting point is the moment of the submission of the prosecution act and the initiation of the investigation, until the passing of the verdict. In some cases, the procedure on some of the monitored cases was still not completed.

On the bases of the above, the following conclusions have been extracted:

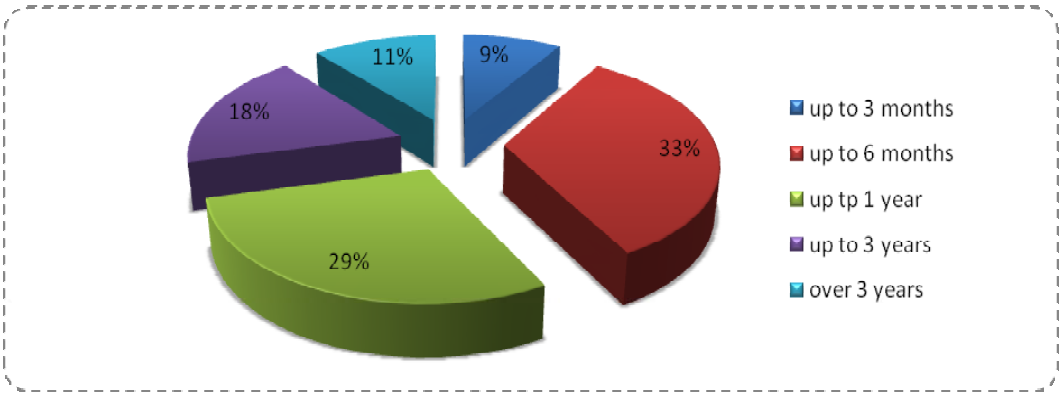
The average duration of the investigation in the monitored cases is 11 months, the longest one 57 months or 4 years and 7 months, and it was under the authority of the Principal Court in Veles, and this cannot be accepted as a reasonable duration of a first stage of the criminal proceeding,

The average duration of the hearings of the main inquest is 19 months.

Data from the research show that the time elapsed from the commencement of the procedure until the release of the fist degree verdict is between 1 and 82 months.



Out of the total number of verdicts, only in 9% of the cases the procedure was with duration of up to three months, in 33% of the cases the verdict was passed within 6 months, which is mainly due to the relatively complex character of the cases. In 29% of the cases the verdict was passed within a year, in 18% it was passed within 3 years, and in 11% of the cases the first degree procedure lasted 3 years.



From the aspect of length of the procedure, we can conclude that all principal courts included in the research have showed improved efficiency and they are currently working on criminal cases initiated in 2009 and 2010.

The longest procedure among the monitored cases is 82 months or 6 years and 10 months, which is a considerable time for a procedure. This was a case processed by the Principal court Veles for the criminal action abuse of official position and competency as stipulated by article 353 from the Criminal Code, for which the procedure has been completed.

Apart from this case, the data shows that in the Principal Court Veles there are two cases where the procedure was with duration of 67 months and 36 months respectively, in the Principal Court in Stip there is a case for which the procedure went on for 64 months, and in the Principal court in Kocani there are two cases where the procedure went on for 50 and 52 months respectively, counting from the submission of the prosecution act until the first degree verdict.

Some alarming data points out to eight cases, processed by the principal courts in Bitola, Veles, Kocani and Stip, where the first degree procedure started in 2005 and 2006. Even more alarming is the case in the principal court in Bitola that dates back from 2003, with longest duration of the procedure which is still not completed.

Without doubt there is a trend of improvement of the efficiency of the courts in processing corruption related felonies. Still, there are cases that do not correspond to the standards of reasonable duration of process, and when we take into consideration that they are at the stage of the first instance procedure which will most likely be followed by irregular and regular legal remedies, the procedure as a whole would definitely be evaluated as irrationally long.

In line with the jurisprudence of the Court in Strasbourg, regardless of the complexity of the case or the large number of defendants and witnesses, that can also lead to delays, or the reforms in the system, the domestic authorities are obliged to undertake appropriate changes of the legal regulations, the procedural rules and organizational measures with which they will keep these delays to a minimum and will completely realize the right to a trial in a reasonable timeframe.

4. SPECIAL PROCEDURE ON PROTECTION OF THE RIGHT TO A TRIAL IN A REASONABLE TIMEFRAME

A new legal mechanism is introduced with the changes in the Law on Courts from 2008[15], i.e. the special measure on protection of the right to a trial in a reasonable timeframe in front of the Supreme Court of the Republic of Macedonia.[16]

The Supreme Court of the Republic of Macedonia seriously embraced the new legal competency and made efforts to synchronize their actions when deciding on the excessive duration of the court procedures with the standards and principles that result from the Article 6 from the European Convention on Human Rights and the jurisprudence of the European Court for Human Rights in Strasbourg. In view of this, a special department for protection of the right of trial in a reasonable timeframe was established within the Supreme Court of the Republic of Macedonia; the department consists of three first instance councils and one appeal council.

4.1 Data on the requests and passed decisions

The procedure on protection of the right to a trial in a reasonable timeframe is initiated by submitting a request; the request can be initiated by every individual who considers that the competent court has breached the right to a trial in a reasonable timeframe, at the latest 6 months after passing the verdict. The request can be submitted in the course of the proceeding i.e. while the procedure is still within the competent court.

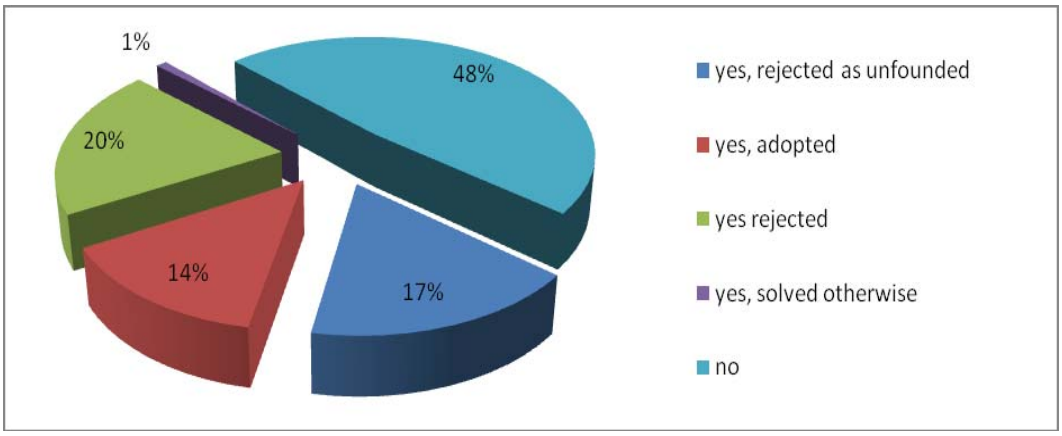
From the moment this legal remedy was introduced and until November 2010, the Supreme Court of the Republic of Macedonia has received a total of 780 requests for protection of the right to a trial in a reasonable timeframe, out of these **620 requests were decided upon** which points out the high degree of efficiency in passing decision on such requests.

Out of the 620 requests for which decisions have been issued, for 201 the request was rejected as unfounded, 166 requests were approved, 242 requests were rejected while 11 requests were resolved in another manner, i.e. by merging the requests to other cases.

[15] Official Gazette of the Republic of Macedonia, number 58/2006 and 35/2008.

[16] This revoked the previous legal remedies that proved to be inefficient and incomplete, after requesting that the protection of the right to a trial in a reasonable timeframe is a matter of a higher instance court. Depending on the stadium of the procedure, there requests are processed by the Appeal Courts to the Supreme Court of the Republic of Macedonia.

The percentage structure of the requests for which decisions have been issued shows that in half of the cases or 48% the request was rejected as unfounded, in 20% of the cases it is rejected and in a smaller percentage of the cases, 14% it is adopted and the breach of the right to a trial in a reasonable timeframe has been detected.



When acting on this legal remedy, the Supreme Court of the Republic of Macedonia is obliged to pass a decision within 6 months from the submission of the request.

When deciding, the Supreme Court applies the same criteria used by the European Court for Human Rights when evaluating the reasonability of the length of the procedure: the complexity of the case, the behaviour of the defendant and the behaviour of the court processing the case.

In other words, the Supreme court needs to evaluate if the requestor has contributed with his/her behaviour to postpone the procedure, if the lower instance courts processed the case with due attention without recesses and unnecessary prolongations, whether the courts showed activity in the procedure and undertook action within the frames of the deadlines foreseen in line with the Law on Courts and the Law on Criminal Procedure etc.

Recommendation: it is recommended that the Supreme Court of the Republic of Macedonia when deciding on the request for protection of the right to a trial within a reasonable timeframe, should take another criteria into consideration besides the mentioned three and that is the subjectivity criteria according to which the court will decide on the reasonability of the procedure in the light of the meaning of the breached right of the requestor and his/her condition.

4.2 The specific features of the decision with which the breach of the right to a trial in a reasonable timeframe is determined

With passing the decisions that acknowledge the breach of this fundamental human right the Supreme Court of the Republic of Macedonia determines that the courts did not found the procedure on the principles of a trial in a reasonable timeframe and have breached the right of the requestor as guaranteed in Article 6, paragraph 2 from the Law in Courts and Article 6, paragraph 1 from the European Convention on protection of human rights and basic freedoms.

This means that unlike the other court procedures where the judges rarely call upon the European Convention on Human Rights, or do not call upon it at all, in the procedure referring to the right to a trial in a reasonable timeframe in front of the highest court instance, not only that there is a direct application of the Convention, but also of the principles built through the right of precedent in the Court of Strasbourg.

Of special importance is the fact that the decisions passed by the Supreme Court on these requests, up to a large degree resemble with the decisions of the European Court for Human Rights in terms of their structure, style, argument display, circumstanced and use of law.

In cases when the breach of the right to a trial in a reasonable timeframe is determined, the Supreme Court of the Republic of Macedonia adopts the request, determined the fair compensation for damage when requested, and if the procedure is still on going in front of the court, the Supreme court determines a dead line within which the Court needs to complete the procedure.

In 2010, the Supreme Court of the Republic of Macedonia in 50 cases determined the breach of the right to a trial in a reasonable timeframe, apart from the compensation for damage, also commission the court to complete the procedure within a certain timeframe depending n the complexity of the case and the stage at which the procedure was at the moment of request, and this deadline was set in most case within three to six months from the issuance of the final decision.

The compensation for damage for the caused damage issued by the Supreme Court is between 10,000 and 60,000 denars and it is paid from the court budget within three months from the day of the passing of the final decision.

The unsatisfied party can submit an appeal against the decision of the first instance court of the Supreme Court of the Republic of Macedonia to the second instance court in the Supreme Court, within 8 days counting from the moment the decision was received.

4.3 Approximation with the standards foreseen by the European Convention for Human Rights

The Supreme Court of the Republic of Macedonia is obliged to pass the decision in the procedure on protection of the right to a trial within a reasonable timeframe in line with the national legislature and on the basis of the rights and principles regulated with the European Convention on Human Rights and the judicial practice of the European Court on Human Rights.

The question posed here is whether these legal solutions offered with regard to this procedure and the decision passed by the Supreme Court which acknowledges the breach of law due to the excessive length of the court procedure, actually incorporated the essential elements that influence the effectiveness of the legal remedy with regard to the right to a trial within a reasonable timeframe, and if these are in line with the principles built through the jurisprudence of the European Court for Human Rights.

In essence, the procedure in front of the Supreme Court fulfils the basic conditions and international standards on protection of the right to a trial within a reasonable timeframe still, in order to have a better fact supported analysis and evaluation, other elements need to be taken into consideration as well.

One of these elements is **the length of the procedure on this legal remedy.** The procedure in front of the Supreme Court of the Republic of Macedonia is in the time interval between 1 and 23 months which surpasses the legally foreseen timeframe and does not correspond to the standards established with the jurisprudence of the Court in Strasbourg.

Recommendation: it is recommended the duration of the procedure in front of the Supreme Court of the Republic of Macedonia to be within the legally foreseen timeframe of 6 months; if necessary that should be accomplished by undertaking appropriate systematic and organizational changes that would satisfy the requests foreseen in Article 6 from the European Convention on Human Rights.

Recommendation: it is recommended apart from the merit-based decision making of the Supreme Court of the Republic of Macedonia on requests to protect the right to trial within a reasonable timeframe, to introduce appropriate legal and process solutions that would enable a quicker decision making process for these requests by using so called pilot decisions, using the example of the European Court for Human Rights.

Another key issue is the one related **to the height of the fair compensation for damage, which** in line with the specific decisions passed by the European Court for Human Rights, determines the position and the status of victimization of the requestor complaining against the extensive duration of the court procedures. This issue among other is stressed in the decision for the case Shurbanoska versus the Republic of Macedonia, where among other this, a point is made of the correlation and the need to synchronize

the height of the compensation for damage issued by the domestic courts compared to the compensation for damages issued by the Court in Strasbourg.[17] In the concrete case, the procedures in front of the domestic courts went on for almost two decades, or more precisely over 17 years, and the Supreme Court issued the fair compensation for damage in the amount of 4,000 euros for all three requestors. Although the amount was still not paid to the requestors from the court budget, the Court assessed that in the concrete case, with decision of the Supreme Court they were provided with fair and appropriate compensation for damage.

Of same importance is the issue of actual **execution and payment** of the fair compensation as decided by a decision passed by the Supreme Court of the Republic of Macedonia. Because of the practical problems that occurred regarding the payment of the contribution from the court budget, further legal interventions were implemented.

With the latest novelty in the Law on Courts[18] this mechanism is enhanced and new concrete measures are introduced and deadlines for the court budgetary council with regard to the payment of the awarded contribution for damage. Still, it remains to be seen how these legal provision will function in practice and what will be the effect from them.

With regard to the execution of the decision of fair contribution, a very interesting occurrence is the recent case Gaglione and others against Italy[19] where the ECHR determined that there is breach to the right of a trial within a reasonable timeframe an the right to ownership, and the verdict is still not final, the specific thing about this case consists in the fact that it refers to the length of the performed procedure for payment of the fair contribution to 475 applicants, that was awarded to them by the domestic courts for determined breach to the right to a trial within reasonable timeframe the so called Pinto law. The delay in payment of the contribution was between 9 and 49 months and for a considerable 65% of the applicant the delay was 19 months. Although the Court did acknowledge that the payment of the contributions to the applicants could have caused a standstill of the work of the Italian authorities, the court believes that the delay of the payment should not exceed 6 months (Cocchiarella v. Italy).

[17] Case Shurbanoska versus the Republic of Macedonia, Decision 3665/03 dated 31 August 2010.
[18] Official Gazette of the Republic of Macedonia, number 150 dated 18.11.2010.
[19] Gaglione and Others v. Italy (Application No. 45867/07) 21.12.2010.

5. RIGHT TO AN EFFICIENT REMEDY WITH REGARD TO THE RIGHT TO A TRIAL WITHIN A REASONABLE TIMEFRAME

The right to an efficient remedy in front of the domestic authorities is guaranteed with article 13 from the European Convention for human rights, which foresees: "Each person whose rights and freedoms as determined in the Convention, are breached, is entitled to an efficient legal remedy in front of the national authorities, regardless of the fact that the breach was performed by individual that act in official position". In the context of this analytical report, the subjects analyzed are the legal remedies with regard to the excessive length of the procedure.

In essence, this article directly points to the obligation of the state to provide protection of the human rights and freedoms mainly within the domestic legal system and emphasizes the subsidiary nature of the protective mechanisms established with the Convention.

With the verdict in the case Kudla versus Poland,[20] the European Court for Human Rights made essential changes to its precedent law in line with which for a long time it considered that the breach of the right to a trial within a reasonable timeframe absorbs the right of efficient legal remedy regarding the length o the procedure.[21] With this verdict, motivated by a huge number of requests related to the over extensive duration of the procedures, the Court determined that the lack of an efficient legal remedy in the domestic jurisprudence needs to be treated as a separate issue.[22] According the jurisprudence of the ECHR, the legal remedies in order to be efficient, need to be realistic and effective and not theoretical and illusory.

With the verdicts in the cases Pinto versus Italy, Lukenda versus Slovenia and others, the ECHR set the criteria of the efficiency of the legal remedy regarding the right to a trial within a reasonable timeframe. The court specially treats the cases where there are structural problems in the system of the state, problems that generate the irrationally long court proceedings and where there is no appropriate remedy to ensure protection. In such cases, the court in the decision points out to the states to undertake legal or institutional measures to surpass the systemic problems.

[20] See Kudla against Poland, Verdict dated 26.10.2000.

[21] See Pizzetti against Italy, verdict dated 26.02.1993, Series A, number. 257-C, Giuseppe Tripodi against Italy, no. 40946/98, 25.01.2000 not published in a report and Bouilly against France no. 38952/97, 7.12.1999.

[22] See Kamasinski against Austria, verdict from 19.12.1989, Series A, number 168.

According the criteria determined by the Court, in order to have a good remedy it is crucial that appropriate compensation for the damage caused with the extensive length of the procedure is issued, however, at the same time the remedy needs to provide acceleration of the procedure. Apart from these basic elements, the height of the compensation and the payment of the compensation are also of importance.

The elements determining the efficiency of the legal remedy are covered with the special procedure on protection of the right to a trial in a reasonable timeframe that is led in front of the Supreme Court of the Republic of Macedonia. Still, the evaluation of its efficiency can not be abstract and theoretical; it needs to be concrete and to refer to each case separately. The effectiveness of the remedy depends if it enables realistic realization of this right in practice.

Recommendation: It is recommended that appropriate institution mechanisms are to be established to follow the execution of the decisions of the Supreme Court of the Republic of Macedonia, in order to provide its appropriate realization of the right to a trial within a reasonable timeframe and its effective legal protection.

6. RECOMMENDATIONS

Based on the empirical data obtained from the research and the determined conditions, and in order to improve the efficiency in the realization and the protection of the human rights and freedoms in the procedures dealing with corruption related felonies, the following recommendations are issued:

In order to improve the court efficiency:

1. New organizational improvements are to be introduced as well as modernized working methods, in order for the courts to decrease or completely eliminate the cases that are lagging behind, through a so called quick flow and supervision of the cases that lag behind, and defining priority in the order of resolving cases and other measures.
2. The AKMIS system currently present in the jurisprudence, to be regularly used to generate and process unified and comparable data and parameters which are relevant to assess the length of the procedure in the courts.
3. Further strengthening and advancement of the capacities of the judges in the planning and managing of their time, their cases and the evidence procedure, as well as introducing new working methods that will enable full usage of the available substantive and human resources in the jurisprudence for providing a fair and expedite criminal proceeding.
4. To introduce an obligation to the courts, at least once a year to make a summary and publish the data on the average duration of the court procedure and the data on the number and length of the procedure for the active cases as well as the cases that are lagging behind.
5. The decisions that issue the measure detention always need to specify the reasons due to which in the concrete case the measure is issued, and not to lave it to the pure paraphrasing of the legally foreseen grounds. The duration of the detention to be as short as possible.
6. Having in mind the character and the different degree of violation of the human rights, it is recommended that the other measures for ensuring presence of the defendant are to be used more, and depending on the circumstanced and when it is possible they should be combined and used as an alternative to the detention and the house arrest.

7. It is recommended that the courts use the legal solutions that ensure the presence of the defendant, contribute to the regular flow of the procedure and the acceleration of the criminal procedure, more often than they do now.
8. The courts are to use the measure confiscation of property and expanded confiscation a lot more for the criminal cases from the sphere of corruption.
9. The duration of the procedure in front of the Supreme Court of the Republic of Macedonia to be within the legally foreseen timeframe of 6 months and if necessary, systematic and organizational changes are to be undertaken to satisfy the requests foreseen in Article 6 from the European Convention on Human Rights.
10. The Supreme Court of the Republic of Macedonia, when deciding on the requests for protection of the right to a trial within a reasonable timeframe, to add to the existent three criteria by taking into consideration the subjective criterion, according to which the court will evaluate the reasonability of the length of the procedure in the light of the meaning of the violated right of the defender and his/her condition.
11. Apart from the merit-based decision of the Supreme Court of the Republic of Macedonia in the request to protect the right to a trial in a reasonable timeframe, new legal and process solutions need to be introduced to enable quicker and more expedite resolution of these requests by accomplishing a leverage and using "pilot solution" as per following the example of the European Court for Human Rights.
12. Appropriate institutional mechanisms are to be established to follow the execution of the decision of the Supreme Court of the Republic of Macedonia, in order to provide appropriate realization of the right to a trial within a reasonable timeframe and its effective legal protection.

In order to improve the monitoring:

13. It is recommended that the research includes data on the time elapsed from the submission of the criminal notice until the pressing of the charges, which are relevant to the evaluation of the behaviour of all actors involved in the criminal procedure.
14. In future it is recommended the monitoring of the procedures for the felonies from the sphere of organized crime and corruption to be expanded and to cover the investigation with a special emphasis on how the transfer of the investigation under the competency of the public prosecution influenced the efficiency and speed of the criminal proceeding.

15. To clearly differentiate the reasons that lead to delay of the hearings of the main inquest when the responsibility for the delay falls on the courts, in order to fully analyze their influence on the duration of the criminal procedure.

16. To have a special empirical research and analysis of the number of executed decisions of the Supreme Court of the Republic of Macedonia which stipulates fair compensation for caused damage by breaching the right to a trial within a reasonable time frame, and the amount to be allocated from the court budget for this contribution.

17. Efforts are to be made to have all the data gathered through the monitoring and empirical researches of the "All for Fair Trials" Coalition from past years linked, cross-referenced and compared on the basis of the existent and other criteria. Such an analysis of the existent data could enable drawing conclusions on certain trends and tendencies of the corruption in the state and the realization and protection of human rights and freedoms in the criminal procedure on acts from the sphere of organized crime and corruption.

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