JUDICIAL EFFICIENCY IN FIGHTING CORRUPTION

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

Skopje, January 2011

JUDICIAL EFFICIENCY IN FIGHTING CORRUPTION IN THE REPUBLIC OF MACEDONIA

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Content

List of most commonly used acronyms:

ECHR – the European Convention on Human Rights

ECHR – European Court for Human Rights

CPL – Criminal Procedure Law

PP – Public Prosecution

CC – Criminal Code

MI – Ministry of Interior

PC – Principal Court

CRM – Constitution of RM

PPP- Principal Public Prosecution

1. Introduction and Research Methodology

For a third subsequent year the Project "Corruption Trial Monitoring Programme in the Republic of Macedonia" is implemented in the Courts in the Republic of Macedonia.[1] Its realization is based on monitoring of a certain number of corruption related cases in the Principal Courts on the basis of which conclusions are drawn about the efficiency of the competent authorities in fighting corruption, as well as the respect of human rights and freedoms at the Courts during the criminal proceedings, freedom and rights that are guaranteed by the Constitution and by law.

1.1. Project Continuity

Corruption is phenomenon present in all the countries around the world regardless of the degree of social or political development of the country. It is almost impossible to determine the correct presence of corruption in the world because there is no reliable data to measure it, i.e. we are dealing with a type of criminal activity with extremely high gray area difficult to measure and monitor. The problems of its detection and verification occur due to the fact that in most of the cases the felons are people at high official positions, mostly in the bodies of the state authorities, public services and other public institutions and organizations, which decide on certain rights and duties of the citizens and the legal entities.

Starting from the serious detrimental consequences that corruption incurs on the system and its functioning, the Coalition "All for Fair trials" through this projects is striving to identify the weak links in the realization of the criminal justice when passing verdicts on cases dealing with corruption felonies, taking into consideration the entire criminal procedure in line with the CPL, as well as the principles of fair and righteous trial that are the pillars of the most important European legal acts.

The Project "Corruption Trial Monitoring Programme in the Republic of Macedonia" was initiated back in 2008. However, the origin of the project dates back to 2007 when a 6-month pilot phase entitled "Needs assessment – Development of Corruption Trial Monitoring Programme"was undertaken by the Coalition "All for Fair Trials" in cooperation with the NGO "Transparency – Zero Corruption". The pilot project

[1] For Principle Court Skopje I the research took into consideration data for the period from 01.01– 31.12.2010, whereas for the other courts the data was gathered for the period from 01.04.– 31.12.2010.

determined the corruption felonies[2], it also helped gather significant empirical materials that defined the direction to be taken for the future researches to be undertaken in the field of corruption; this pilot project helped several issues to be identified, most of which were related to the work of the prosecution bodies when working on corruption related cases.

The multi-annual continuity of the project enables creation of an in-depth analysis of the situation in this sphere; it enables us to gather insight of the judiciary capacity to deal with such corruption cases. It is also important that this continuity provides possibility for creation of comparative analysis; by comparing results from the annual reports we can note the progress of the work of the courts when dealing with cases that have elements of corruption.

Having in mind the above, it is quite clear what was the motive of the Coalition "All for Fair Trials" to continue monitoring the court cases of this nature in the course of 2010. The monitoring is completed with the conclusions of the determined condition as well as recommendations for strengthening the capacity of the courts, especially when we take into consideration that corruption as a damaging phenomenon to the society that has strong influence of the performance of the institutions.

1.2. Objectives of the research

The research has several objectives which are as follows:

I. Analysis of the results obtained from the monitoring of the court cases dealing with felonies involving corruption;
II. Detailed analysis of all the phases of the court procedure;
III. Determining the profile of the felons charged with corruption felonies;
IV. Determining the length of the court procedures and respecting the right of trial in a reasonable timeframe;
V. Analysis of the respecting of the fair and righteous trial standards; and
VI. Analysis of the penalty policy of the courts with respect to the corruption felons;

[2] With the definition of corruption 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.

The set objectives offer a partial answer to the question of court efficiency in dealing with corruption felonies. However, the comprehensive and superior achievement of the individual objectives and their interdependency will enable us to develop a realistic picture of the actual status and determining the next steps to improve court efficiency by respecting the guaranteed freedoms and rights.

1.3. Research Instruments

The research was conducted based on an instrument prepared in advance – monitoring questionnaire consisting of 64 questions. Apart from that, the monitoring team that consisted of lawyers with prior monitoring experience had an opportunity to submit their notes on the course of the procedure.

The content of the questionnaire includes all the phases of the criminal procedure and it was conceived in such a way that it provided information on the separate segments of the research object:

- 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 actions 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 hearing;
- 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 on the main hearing;
- Reasons to postpone or interrupt the main hearing;
- 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;

Apart from the questionnaire provided above, additional data for the research was also provided through direct interviews with judges from the principle courts.[3] The concept of the interviews was to include the entire procedure as well as to listen to the opinion of the judges in the quality of the monitoring that the Coalition has undertaken in this extra sensitive area. The interview consisted of four parts:

Part 1. Condition

1. Do you consider that corruption in the society is rising?
2. Have you noticed increase of the corruption related criminal cases?
3. Do you believe that the persecution bodies are successful in identification of corruption related cases?

Part 2. Procedure

4. What is the reason behind the fact that cases which involve larger number of defendants and due to that are qualified as cases of organized crime get closure of the case much sooner than the relatively more simple cases in the other courts?
5. According the experience of the Coalition, in past years there was a tendency of absenteeism of the defendants and the defenders (even the witnesses) in order to prolong the procedure. Is this still the case?
6. Which measures (in you opinion) need to be undertaken in order to shorten the duration of the procedure?
7. Is there a practice to issue measures of detention to ensure presence of the defendant and charging the expenses incurred due to the absence of the defender as stipulated in Article 316 and 317 of the Criminal Procedure Law and how often are they used?
8. Do you have at your disposal enough evidence for the cases?
9. Can you recall any obstacles or prolongation in cases where you requested certain evidence to be submitted to you?

[3] In 2010 court cases with elements of corruption were monitored in 8 principle courts in RM in: Bitola, Veles, Kavadarci, Kocani, Skopje I, Strumica, Tetovo and Stip (last year the principle court Ohrid was also included in the monitoring).

10. Have you noticed improvement in the criminal persecution after the usage of the special investigative measures?
11. Do you believe that the measure detention is used appropriately?
12. Are the other measures that aim to ensure presence used enough?

Part 3. Penalty Policy

13. Do you consider that the penalty policy is appropriate for this type of criminal actions?
14. Does the court practice show tendency of court cases within the legal minimums for the penalties and even irregular penalty reduction
15. How often the verdict also includes measures such as confiscation of property having in mind that the corruption cases almost always have an inherent element of illegal acquiring of material benefit?
16. What needs to be improved in general in order to improve the fight against corruption in the society?

Part 4. Monitoring and cooperation

17) How do you view the work of the Coalition "All for Fair Trials" and do you believe that the multi-annual monitoring of court cases and analysis resulting from it contribute to the improvement of the general situation in the judiciary system?
18) Do you have any comments regarding the monitoring team as well as the work of the Coalition "All for fair Trials"?
19) Proposals and advice for joint activities, workshops of the Academy of Judges and Public Attorneys and other type of activities.

2. Analysis of the results from the monitored corruption cases in 2010

Compared to the reports from the previous years, in 2010 the monitoring team registered conditions that point to improvements in certain areas, but at the same time there are weaknesses in the areas where previously the conditions noted a positive trend of improvement.

Emphasis is placed on the increased attention dedicated to the principle of completing court procedures in reasonable time frame; data points out to increased efficiency and shorter duration of court procedures. Only in rare cases there have been court proceedings in the absence of the defendant; as a rule, the court cases have been done in the presence of the defendant, i.e. the defendant had the opportunity to directly participate in his/her defense.

Another note is on the penalty policy used on the perpetrators of corruption felonies i.e. occurrences when the penalty is too mild. In most cases the penalties are in the frames of the legal minimum, which is contradictory to the intentions for more

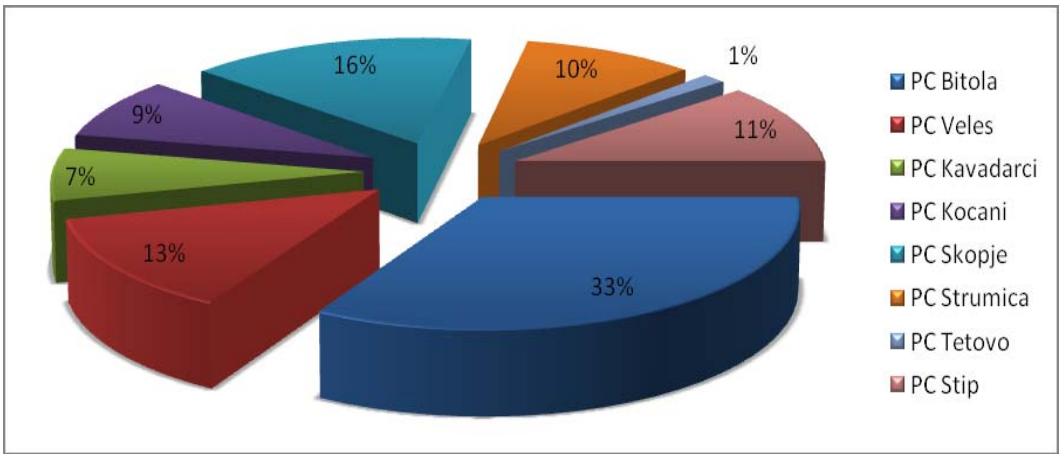
serious protection of the goods that are to be safeguarded with these criminal acts at the same time putting in jeopardy the general and special prevention of the penalty.

The motive for undertaking a corruption related criminal act is the material gain, so the contra-motive should work towards confiscation of the illegally acquired assets and even expanded confiscation of the material goods and assets. The monitoring team determined inconsiderable usage of these instruments, especially the expanded confiscation. In future, the situation needs to change by having a more frequent usage of the penalty measure – confiscation of the illegally gained material goods, especially by intensified usage of expanded confiscation.

The Republic of Macedonia 2010 Progress Report of the European Commission points out that progress has been made with respect to the anti-corruption politics, but it also point out that corruption remains a widely spread phenomenon in many spheres and it continues to represent a serious problem. [4]

2.1. **General information on the monitored cases**

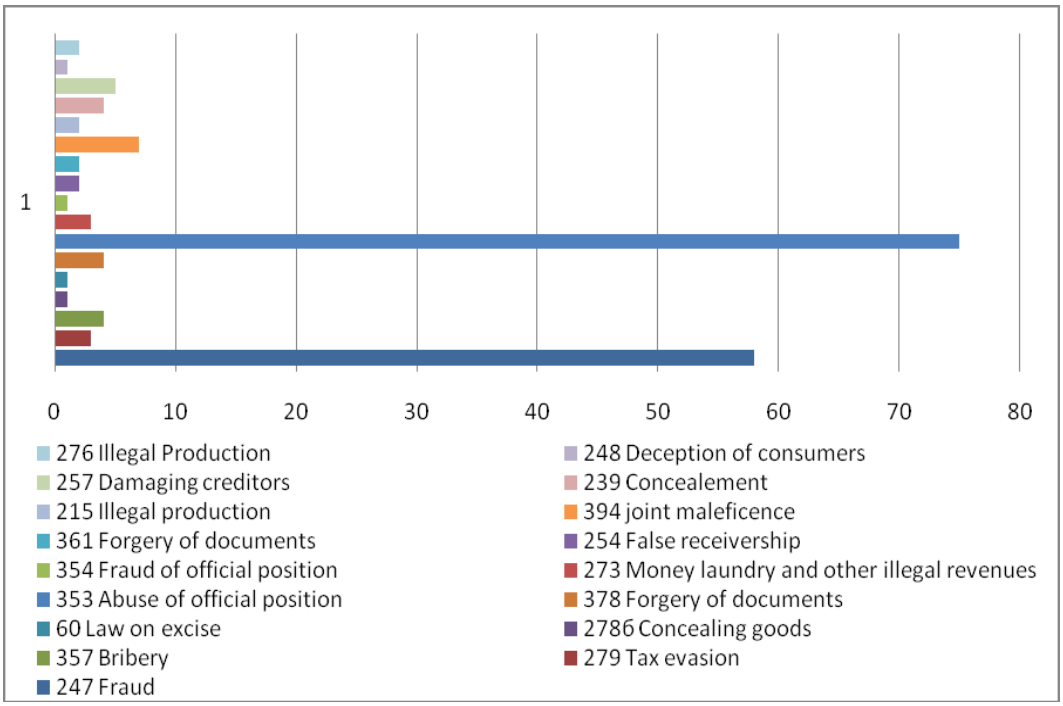
- **Number of monitored cases per principal court**



In 2010 the Coalition monitoring team monitored 154 corruption cases processed at the Principal courts in the Republic of Macedonia. Most of them were from the Principal Court in Bitola, 33,12% or a third from all cases. In Tetovo there were only 2 cases or 1,3%. The other courts are grouped in two subgroups from 11% to 17% (Stip, Veles, and Skopje) and from 7% to 10% (Kavadarci, Kocani and Strumica).

[4] The Former Yugoslav Republic of Macedonia 2010 Progress Report, European Commission Brussels, 9 November 2010, page. 58

➢ **Criminal act that initiated the procedure**



In the course of the research, 154 court procedures were monitored and it was noticed that in some cases the court proceedings were conducted under several articles of the Criminal Code; as a result the total number of felonies included in the monitoring is 175.

With regard to the monitored felonies we can conclude that the most commonly present felony is the one from article 353 from the CC – abuse of official position and authorization, and it was present in 75 out of the 175 monitored cases. In other words, 40% of the court procedures have been initiated due to it, and it was subject of 50% of all the monitored court procedures. The second place is for article 247 of the CC – and that is the criminal act – fraud; this was the initiator of 58 cases. The remainder of cases have been initiated by other felonies; the felony – joint maleficence from article 394 of the CC is present in 7 cases, the felony causing damage or granting benefits to creditors from article 257 of the CC is present in five cases, the bribery is present 4 times, article 357 from the CC, forgery of documents - article 378 from the CC and concealment - article 239 from the CC. The felonies such as tax evasion - article 279 from the CC and money laundry and other revenues acquired illegally – article 273 from the CC are present three times. Twice are encountered the felonies false receivership, article 254 from the CC, forgery of professional ID – article 361 from the CC, illegal production and sales of drugs, psychotropic substances and precursors - article 215 from the CC and

illegal production - article 276 from the CC. Only in one case there was the felony – concealing of goods that are subject to smuggling and customs fraud – article 278 b from the CC, article 60 from the Law on excise, fraud of professional position, article 354 from the CC and deception of consumers - article 248 from the CC.

From the above, we can note that the felony – abuse of official position and competencies dominate in every aspect and out of the 175 prosecuted felonies these were present in 133 or 85% of the cases.

If we compare the results from last year's research,[5] we can conclude that with regard to the predominant felonies the situation is pretty much the same, i.e. out of 110 monitored cases, 68 were initiated due to the felony abuse of professional position and competency, while 32 were for the felony fraud.

From the monitored cases, the largest number of felonies are present in the cases processed by the principal court Bitola – 51 felony, right after that is the Principal court Skopje with 47 felonies. Although in quantity they seem similar, in quality there is huge difference between these two courts. If we compare which are the most frequent felonies we will come to a conclusion that the PC Bitola the fraud is present in 25 procedures, while in PC Skopje I the fraud can be encountered in only three procedures. With regard to the felony – abuse of professional position and competency, in PC Bitola it was encountered in 20 cases and in PC Skopje I in 18.

In the Principal Court Bitola, the other monitored cases were on felonies such as: damaging or favoring creditors (in four cases), deception during professional service (one case) and deception of consumers (one case). In the Principal Court Skopje I there is a more versatile situation of prosecuted felonies (besides fraud and abuse of professional position and competency) there are also instances of: tax evasion (two cases), receiving bribery (four cases), concealing goods that are subject to smuggling and customs fraud (one case), article 60 from the Law on Excises (one case), forgery of documents (four cases), money laundry and other illegally acquired revenues (three cases), joint malefice (seven cases), illegal production and sales of drugs, psychotropic substances and precursors (two cases) and illegal production (two cases). When comparing we need to make note of another fact, namely the Principal Court Bitola had 51 court procedures for a total of 51 felonies related to corruption, so each proceeding was for a single felony. On the other hand, in the Principal Court Skopje I the totally monitored 25 court proceedings dealt with 47 felonies as some of the cases included several felonies.

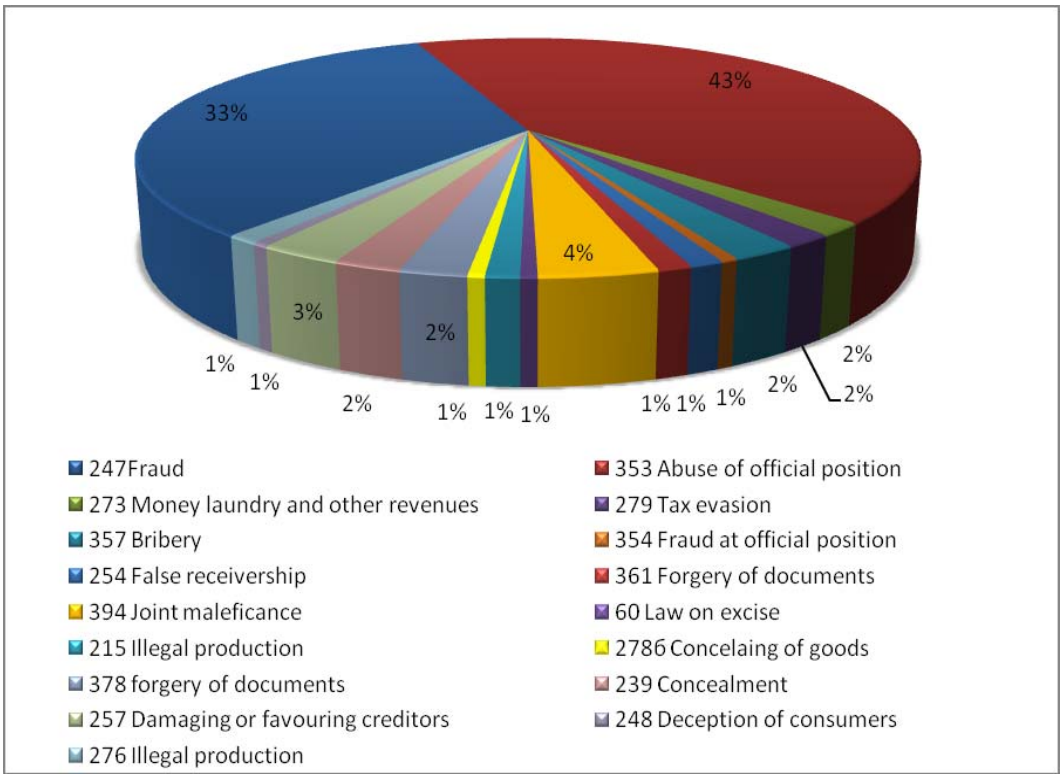
In the Principal Court Veles cases for a total of 20 felonies were monitored and these were: abuse of professional position and competency (ten cases), fraud (eight cases), tax evasion (one case) and forgery of official documents (one case). Very similar situation can be found in the Principal Court Stip – cases for 17 felonies: abuse of professional position and competency (nine cases), fraud (three cases), concealing

[5] We monitored 110 cases (for nine different felonies), Court Efficiency in fighting corruption in RM, Coalition "All For fair Trials", Skopje February 2010, page 9

(three cases), false receivership (one case) and damaging or favoring creditors (one case).

In the Principal Court Strumica the monitoring covered cases that dealt with 15 felonies, which are: abuse of official position and authorization (six cases), fraud (eight cases) and false receivership (one case). Similar is the structure of the monitored cases in the Principal Court Kocani, i.e. abuse of professional position and competency (ten cases), fraud (one case) and concealing (one case). The monitoring in the Principal Court Kavadarci was for cases dealing with 11 felonies: abuse of professional position and competency (one case), fraud (nine cases) and forgery of profession documents (one case). Finally the monitoring at the Principal Court Tetovo was for felonies: abuse of professional position and competency (one case) and fraud (one case).

If we get the data i.e. the number of monitored cases and felonies and analyze them according appeal areas, we can conclude that the largest one was the Skopje Appeal area where 56 cases were monitored for a total of 78 felonies (in the Principal Courts in Skopje, Veles and Kavadarci); in the Bitola Appeal area there were 51 monitored cases for 51 felony (all at the Principal Court Bitola), Stip Appeal area is at the level of the previously mentioned with 45 total monitored cases (the Principal Courts Stip, Strumica and Kocani), whereas the Gostivar Appeal area had only 2 cases being monitored (in the Principal Court Tetovo).

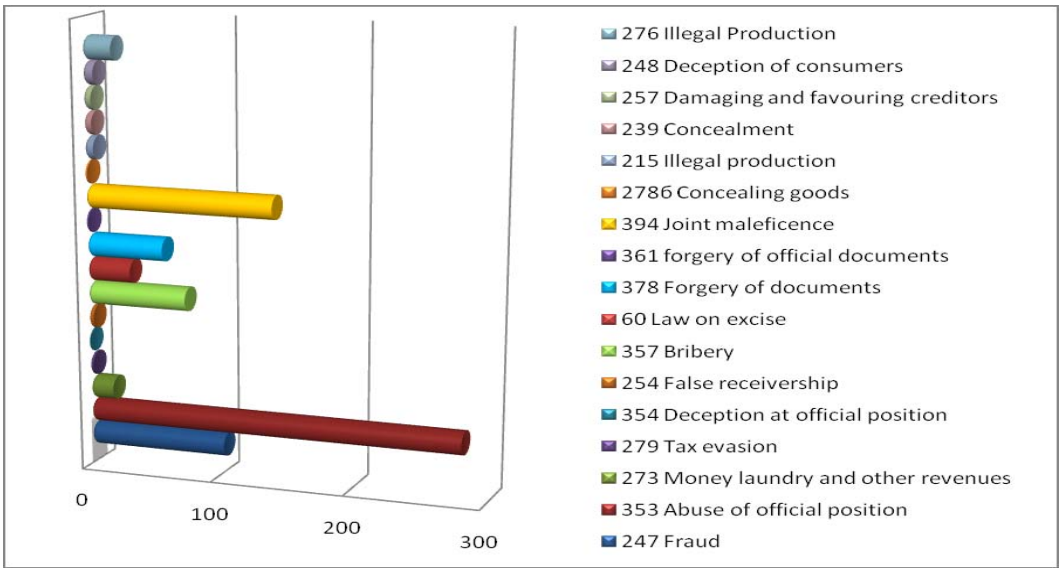


From the total of 24 felonies that were included in the definition of corruption contained within the framework of the Project "Corruption Trial Monitoring Programme in the Republic of Macedonia" the 2010 monitoring covered 17 felonies. Two felonies absolutely dominated in the research – abuse of professional position and competency and fraud. We already reported that the 175 criminal acts for which there was a proceeding accounted for 133 acts. i.e. the 154 monitored cases are encountered in 133 cases. This imposes on us another conclusion which is that the other corruption felonies (contained in the research) are in reality rarely performed or the operational skills of the persecution bodies enable efficient fighting with only the mentioned two corruption felonies – abuse of professional position and competency and fraud.

2.2. Features of the felons of the corruption felonies

- **Defendants per felony**

With the research we monitored a total of 154 cases of corruption related felonies; in these 154 cases there were a total of 468 defendants. At this point it would be interesting to note that in even 90 cases there was just one defendant, in 38 cases 2 individuals were in the role of defendants, and then as the number of defendants increased, the number of cases decreased. The largest case is the one comprised of a total of 36 defendants. This leads us to the conclusion that the corruption felonies are in most cases independent acts, or acts of two perpetrators joining in performing the felony in order to maintain the conspiracy of the felony but also to enable continuation of the criminal activity.

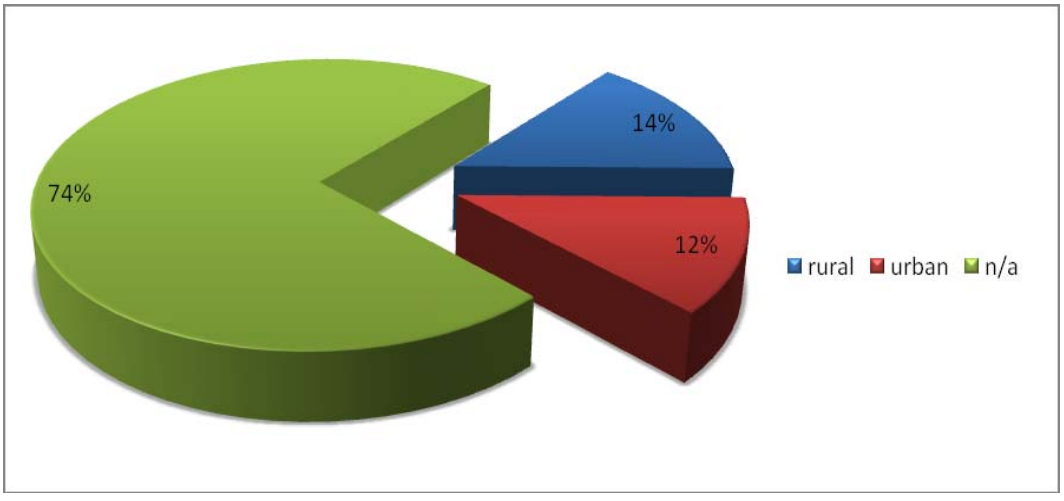


- **Number of defendants per felony**

The number of the defendants in the cases covered by the research is 468, but we need to have in mind the fact that some of these individuals are tried for two or more felonies. The two most often encountered felonies are the felony abuse of professional position and competency with a total of 281 individuals facing such charges, while 104 individuals are charged with the felony fraud. A total of 141 individuals are charged with the felony joint malefice which is quite logical if we think of the character and the legal essence of the corruption as phenomenon. Among the other felonies that involve a larger number of defendants we would mention the felony receiving bribery – 75 defendants, forgery of official documents – 58 defendants, money laundry and other illegal revenues – 18 defendants. As a summary, the number of defendants is 468 but since some of them are charged with two or more felonies, the number of actual defendants is 771 individuals. This condition is a result of the fact that there is stake in the performing the felony, regardless of whether ideal or realistic one; yet the existence of the stake increases the evidence materials that needs to be looked into before coming to the verdict.

When it comes to the features that define the profile of the felons that have performed felonies from the sphere of corruption, the research included the data on the age, domicile, nationality, citizenship, as well as level of education and history of previous convictions.

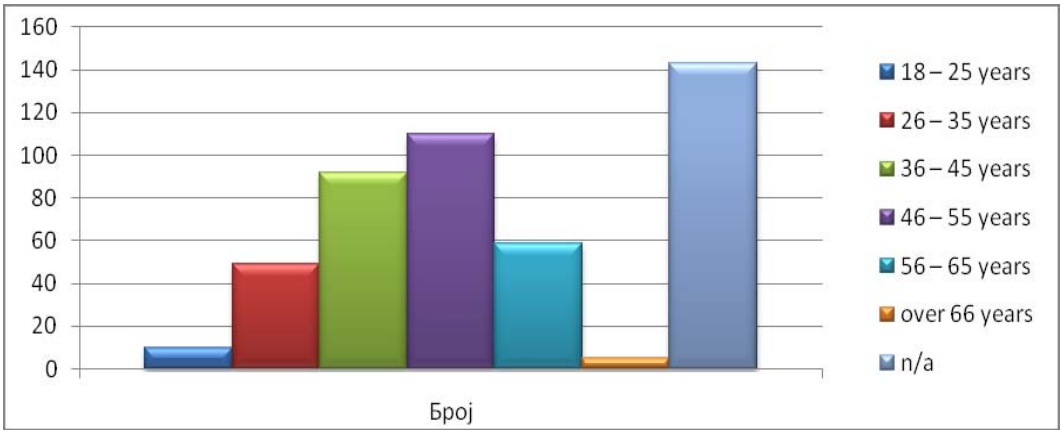
- **Domicile of the defendants**



According the domicile address, the felons that have undertaken a corruption related felony can be mainly located in the urban areas. According the data available to the Coalition, the largest percentage of such individuals can be encountered in Skopje

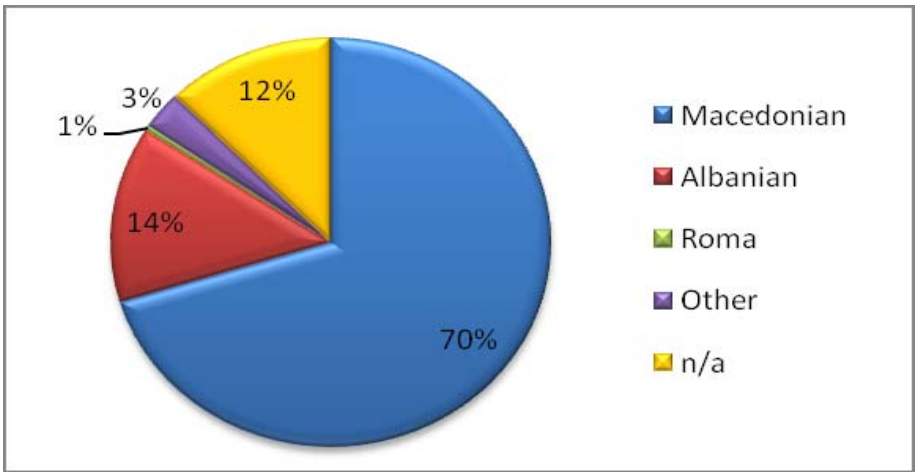
(26%), Bitola (19%), Strumica (6%), Kavadarci, Kocani and Stip (each with 4%). About 14% of the defendants are individuals that come from rural environment, while the international element is insignificant (0,3%).

- **Age of the defendants**



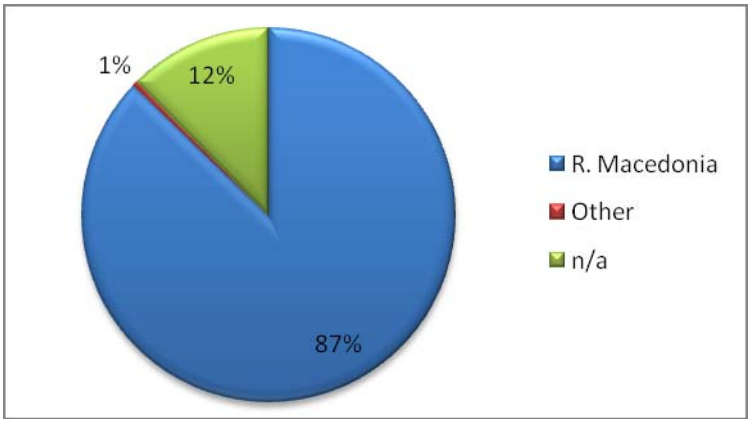
As far as the age is considered, although all age groups are present, yet the largest percentage falls on individuals in the age group from 46 to 55 (24% or 10 individuals) and from 36 to 45 (20% or 92 individuals). The smallest participation can be encountered among the group from 18 to 25 (2% or 10 individuals) and the age group of over 66 (1% or 5 individuals). Also please note that for 31% (143 individuals) of the defendants we have not been able to obtain the data regarding their age.

- **Nationality of the defendants**



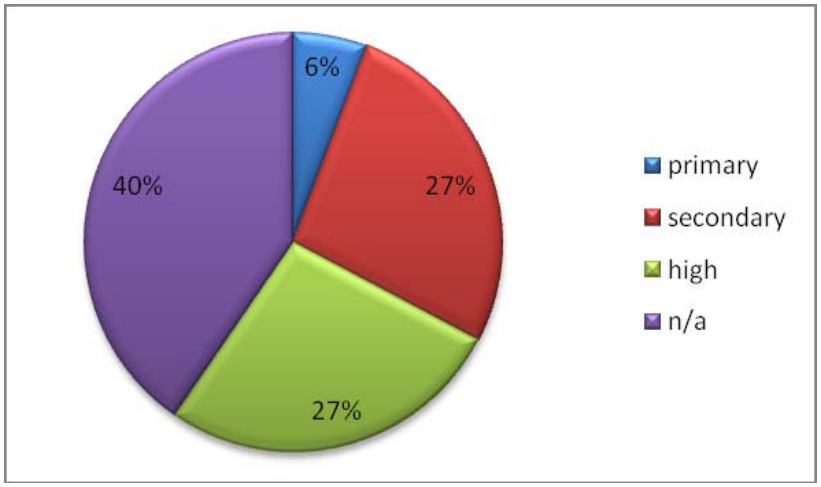
According the data available to the Coalition, the largest part of the defendants were of Macedonian nationality a total of 71%, and we would also make note of the Albanian nationality also present with 14%. The other nationalities are present with about 3%. Also note that for 12% of the defendants we did not receive information relevant to their nationality.

- **Citizenship of the defendants**



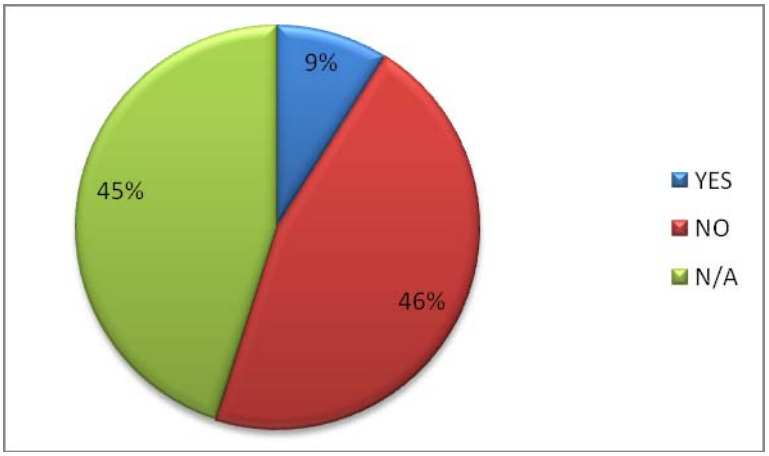
The research shows that most of the defendants are citizens of the Republic of Macedonia (87,18%), the foreign element is inconsiderable (0,43%). For a certain number of defendants or more precisely for 12,39% we could not obtain information on their citizenship.

- **Educational background of the defendants**



With regard to the educational structure, the research shows that in most cases the felons of corruption related felonies are with completed secondary school or university education (both equally present with 27%), only inconsiderable part are with completed primary education only (6%). Still, we also need to make a note that for 40% of the defendants there is no data on their educational background.

- **Previous convictions of the defendants**



According the data available at the Coalition, recidivism is not a common occurrence. Namely, only 9% of the defendants come to collision with the law for a second time, whereas for 46% of the defendants this occurs for the first time. Also note that for 45% of the defendants there is no data if they were previously convicted or not.

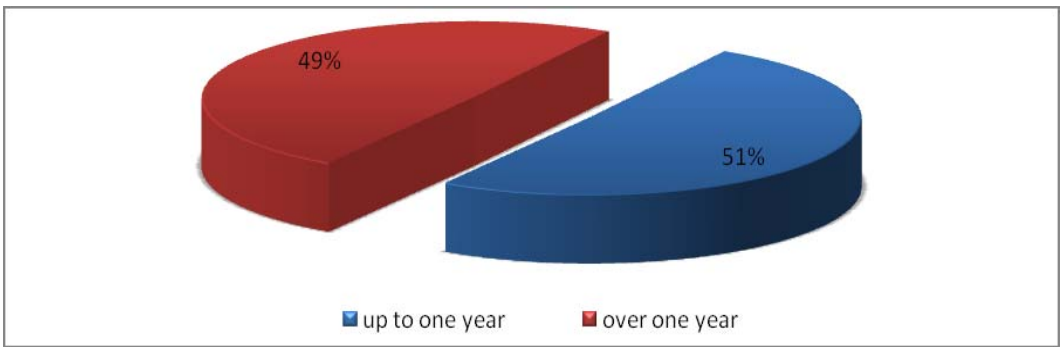
2.3. Preliminary Investigation

Before starting a formal procedure, several actions need to be undertaken to determine if a felony has been executed, who is the perpetrator, and more importantly, gathering the necessary evidence. The activities that the authorities undertake prior to the initiation of the formal proceedings are known as preliminary investigation. In general it is administrative and criminal proceeding whose goal is to create the conditions to initiate the criminal process.

The preliminary investigation is conducted by the bodies of internal affairs and the public prosecutor, and as exception, the investigative judge. Still, the main role in the preliminary investigation is the one of the public prosecutor who coordinates the work of the other bodies and issues orders; furthermore reports are submitted to him/her and the end it is the public prosecutor who submits a request to put the investigation into action i.e. to formally initiate the criminal proceedings.

- **Timeframe from the moment of performance of the first criminal actions until the moment of discovery of the felony**

The efficiency of the fight against crime also involves prompt discovery of the performed felonies, their detection and processing until the verdict is reached. The characteristic of the corruption felonies is that the level of discretion is higher as well as the secrecy and therefore they are more difficult to be discovered, hence large number of such felonies fall within the gray (unknown) statistics. This can also be concluded by looking at the data that came as a result of the monitoring. Namely, 51 % of the felonies were discovered a year after they occurred, and in 49 % of the cases this was done over a year after the felony was performed.



- **Timeframe from the moment of performance until discovery**

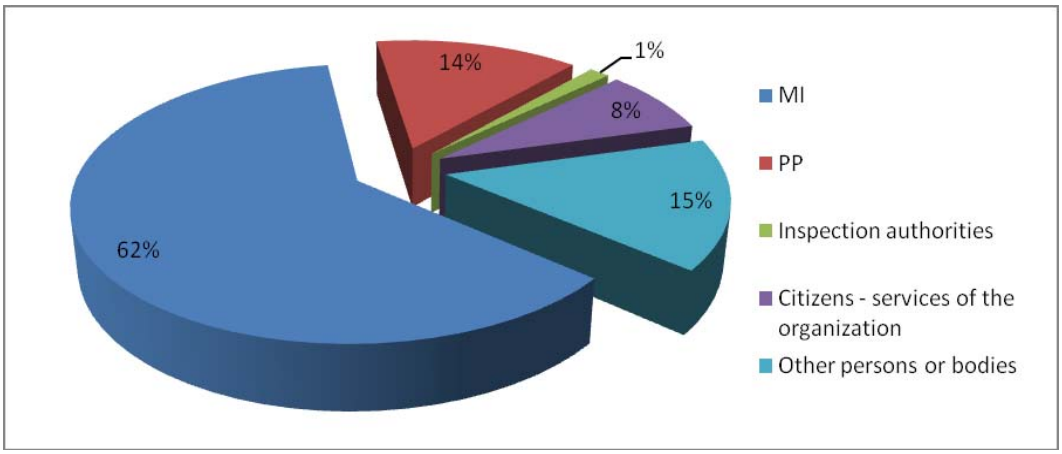
This data is not encouraging at all and presents an indicator that the bodies whose task is to discover crimes, especially the felonies related to corruption, need to invest additional efforts in order to help achieve a more efficient and a more rapid fight against this form of criminal misbehavior.

- **Submitting the criminal charges**

In order for the authorized prosecutor to be able to initiate the criminal proceeding he/she needs to have evidence that the felony has been performed. There are several basis or sources that can initiate the activity of the public prosecutor, as an authorized prosecutor of felonies to initiate the criminal proceeding, and those are: criminal charges, direct notice of the public attorney, voice and notoriety.

During the work performed by the monitoring team, they were interested in the criminal charges, as a trigger and the body filing them. From the data we draw a conclusion that the MI has a dominant position when filing the criminal charges (62 %); this is a result of its operational positioning, the specific working tasks as well as the large number of staff at operational positions. The public prosecutor is the authorized

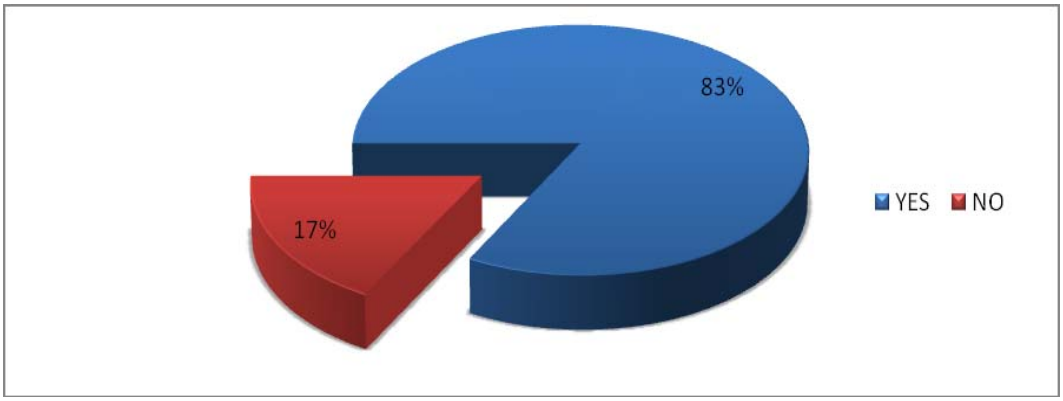
state body to prosecute the felons and in accordance with the Criminal Procedure Law the obligation of the public prosecutor is to undertake measures to discover felonies and perpetrators and guide the criminal proceeding. Although the authorized public prosecutor has a strong legal position, still only 14 % of the cases were initiated by him/her which take us to the conclusion that the detection and initiation of the procedure is mainly initiated my the MI, the citizens as well as other individuals and bodies.



In future, with the introduction of the prosecution investigation, probably things will change for the better and the authorized public prosecutor will become the moving force at this stage supported by the other bodies such as the judiciary police as well as the staff that will be needing in order to reinforce the capacity of the office of the authorized public prosecutor.

2.4. Investigation

- **Was the investigation conducted**?

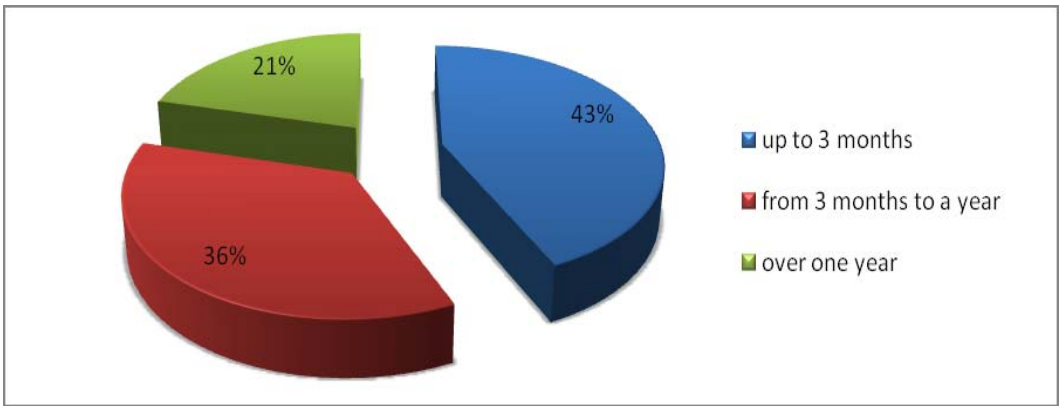


The investigation or the preceding procedure is the first stadium of the regular criminal proceeding; its primary goal is to gather evidence and data necessary to make a decision if there are grounds to initiate a prosecution act or there are no such grounds so the procedure needs to be stopped. The decision if the prosecution act is to be raised or stopped is passed by the authorized prosecutor, based on the gathered evidence and data. In other words, during the investigation the authorized state bodies undertake process activities directed towards determining the existence of a criminal act, detecting the perpetrator and gathering the necessary evidence.[6]

According the data available to the Coalition, the investigation has been conducted in 83% of the cases, while in 17 % of the cases there was no investigation.

- **Duration of the investigation**

The duration of the investigation is not with a specific time limit, it can be conducted until there are material, legal and procedural presumptions that justify its existence, until its goal is accomplished. However, if the investigation is not completed within 90 days, the investigation judge must inform the President of the Court on the reasons due to which the investigation has not been completed. After being informed, the President of the Court, if needed, will undertake measures to put the investigation to a closure (article 178 Criminal Procedure Law).



[6] The new Law on Criminal Proceedings has been published in the "Official Gazette of RM, number 150/10, dated 18.11.2010; among the most important novelties introduced is the introduction of the prosecution investigation that replaces the currently used court investigation (in the authority of the investigation judge). A lot of remarks were issued on the court investigation i.e. that the investigation judge does not show energy to reveal new facts and that his activity consists of repetitive registration of what the bodies of internal affairs have detected. In this way, the procedure is prolonged beyond reason thus breaching article 6 of the European Convention of Human Rights. The new law will be put into force 2 years from its enactment.

- **Duration of the investigation**

From the data that the Coalition has on its disposal, it can be concluded that for the largest number of cases the duration of the investigation exceeded three months, which is understandable up to a certain limit because there are some cases with a larger number of defendants and in that case multiple investigations need to take place. However, it is very difficult to digest the fact that for 4 cases the duration of the investigation went on for entire 36 months and for one case it was even 57 months. The investigation being the first stage of the regular procedure tends to gather the necessary evidence but it doesn't have to mean that it should provide the entire pool of evidence materials at any cost. Some of the evidence can be obtained during the other phases of the procedure.

2.5. Special Investigative Measures

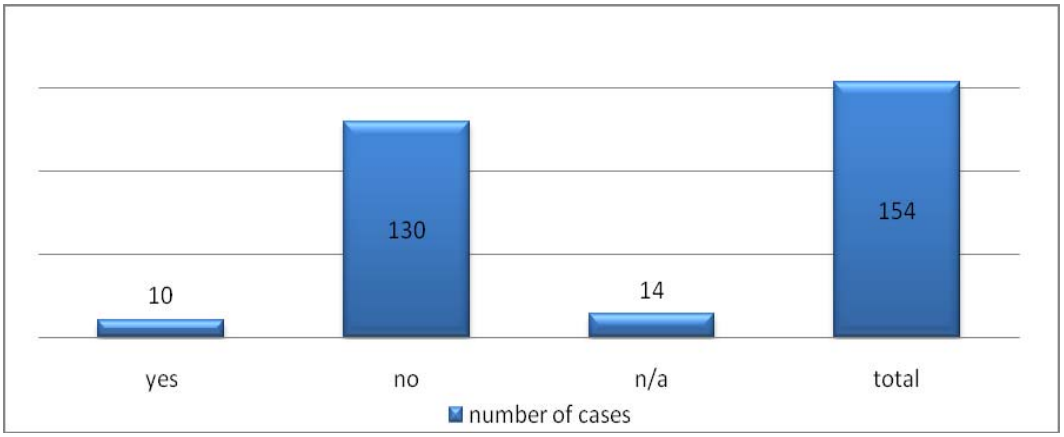
- **Was the undertaking of Special Investigative Measures ordered?**

The basic goal that is to be achieved when ordering the special investigative measures is to get hold of data and evidence that are necessary to successfully conduct the criminal procedure and which can not be obtained otherwise or if it can be obtained otherwise, it would incur large costs; this measure is only used for felonies for which the penalty is imprisonment of at least 4 years and for felonies for which there is grounded doubt that it has been performed by an organized group, a gang or other form of joint maleficence. There are eight measures, each of them with a special character and special goal that needs to enable the gathering of evidence in the cases where the common criminal and forensic methods would not yield success.

One of the most emphasized measures is the communication tracking that is regulated by a separate law. Article 8 from the Law on Communication Tracking[7] lists a large number of corruption related felonies in the case of which this measure can be applied (receiving bribery regulated with Article 357, offering bribe regulated with Article 358, illegal mediation regulated with Article 359, money laundry and other illegal revenues regulated with Article 273, abuse of professional position and competency regulated with Article 353, deception during professional service regulated with Article 354, fraud during official service regulated with Article 355, and servicing during official service regulated with Article 356 from the Criminal Code).

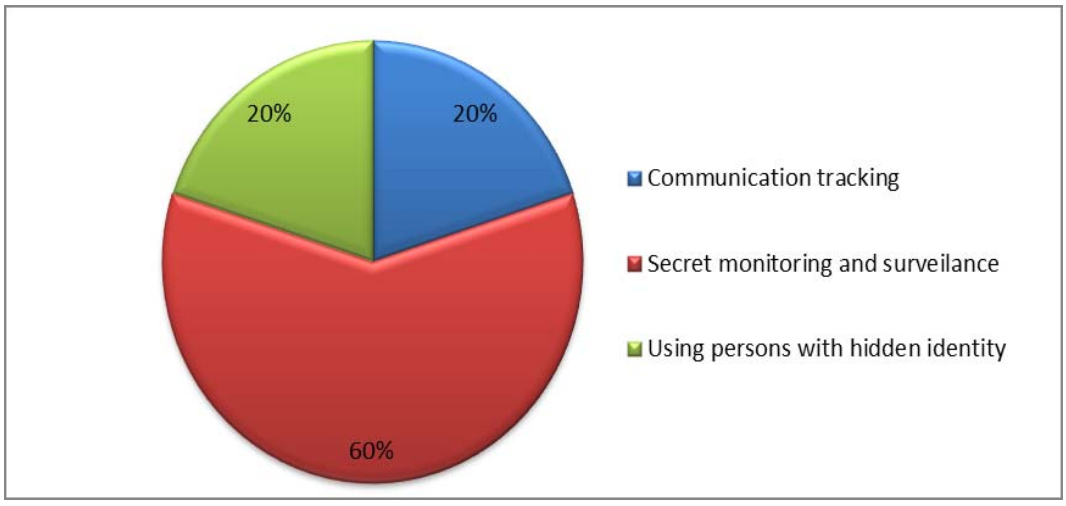
In the course of the monitoring, the team was interested in the application of the special investigative measures in the monitored cases, and more specifically if they were applied, and if yes, which of the measures were applied.

[7] Official Gazette of RM, number. 4/09



- **Use of Special Investigation Measures**

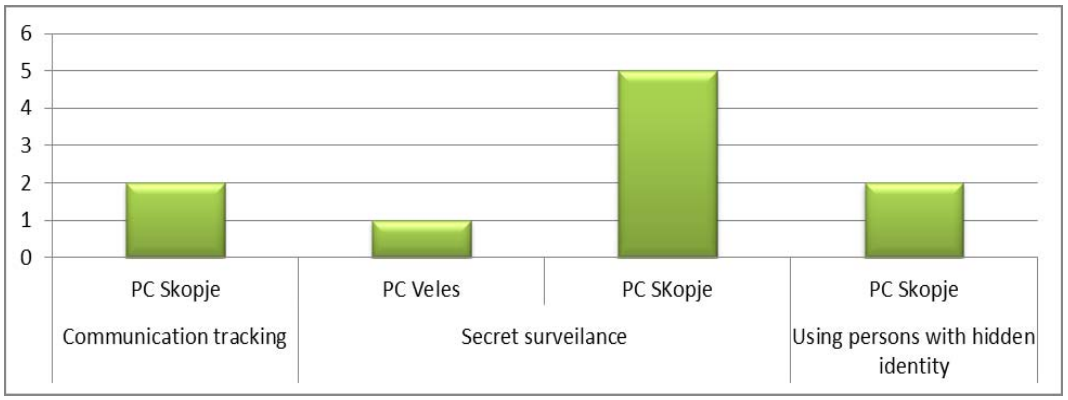
It was determined that out of 154 cases, the special investigative measures were used in 10 cases, for 14 cases there is no data if the special investigative measures have been used or not.



Although the legislator prescribes eight measures, still, in the monitored cases there is no versatility, some of them were used more often than others and some were not used at all.[8] The measures most often used were – secret surveillance, following in 6 out of 10 cases, then communication tracking in 2 cases and the measure – usage of individuals with hidden identity in 2 cases.

[8] The Law on Criminal proceeding prescribes 12 special investigation measures, Article 252,

It is interesting to note that large portion of the measures are applied in cases that are processed by the PC Skopje I.



Only one measure (secret surveillance, following) is used in a case that was processed by the Principal Court Veles, the remainder was used in the cases processed by the Principal Court Skopje I. Just as a reminder, in the Principal Court Skopje I the monitoring team monitored 25 out of the 154 cases for 47 felonies, with a distinct versatility i.e. the court in Skopje is looking at a case for almost each corruption felony. In the cases of the other six courts that were part of the research, the special measures were not used.

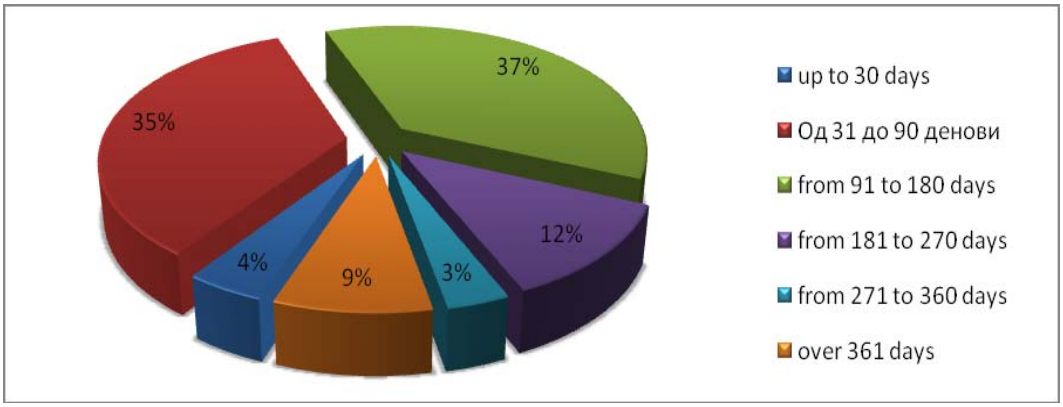
2.6. Prosecution act and objection to the prosecution act

The prosecution is a unilateral procedure with strong emphasis of the principle of accusation because raising the conviction depends entirely on the activity of the authorized prosecutor. The prosecution has two important roles, the first meaning consists of the circumstances that serve as the process presumption for the further flow of the criminal procedure, it serves as a presumption to set and hold the main hearing. The second importance of the prosecution is the fact that it determines the subject matter and the size of the main hearing, i.e. the felony discussed at the main hearing will be only the one that is contained in the prosecution act, and only against the individual listed in the prosecution act.

- **How much time passed from the submission of the prosecution act until the first hearing**

The President of the Council schedules the main hearing not later than 30 days after the admission of the prosecution act in the court; in case the President of the Council requests that the prosecution act is investigated, in line with article 291 from

Criminal Procedure Law, the council passes a decision defining the timeframe within which the hearing is to be scheduled. If the main hearing is not scheduled within that timeframe, the President of the Council will inform the President of the Court in writing as to the reasons due to which the main hearing has not been scheduled. In such instances, the President of the Court will undertake measures to schedule the main hearing (article 295, paragraph 2 from the Criminal Procedure Law).



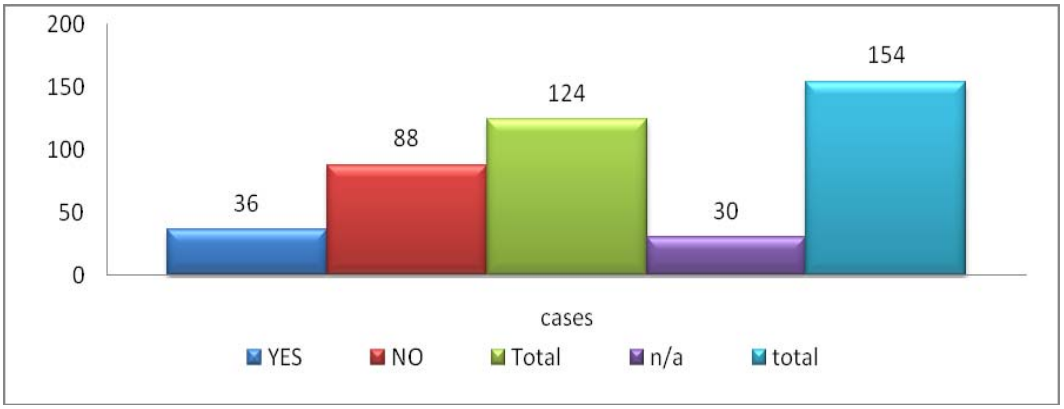
The data gathered by the monitoring team point out that the legal timeframe has been followed in only 4 % of the cases. Most of the cases are in the group from 91 to 180 days (38 %), and at the extreme there is the last measuring unit – over 361 days (9 %). This situation raises a lot of concerns, having in mind that this part of the procedure is taken into consideration when evaluating the court processes in terms of the criteria of reasonable timeframe, and thus it has direct link to the enforcement of Article 6 paragraph 1 of the European Convention on Human Rights.

- **Has the defendant submitted objection to the prosecution act - control of the charges**

The prosecution is a unilateral procedural act that contains the opinion as well as the proposal of only one processing party i.e. the prosecutor's. However, the prosecution itself as well as taking citizens in front of the court as occurrences could have negative consequences on human rights, freedoms and interests. Therefore it is of crucial importance that before taking action, the legality and foundation of the accusation is determined in order to avoid cases of taking citizens in front of the courts without solid foundation for the existence of such actions.

The previous investigation or control of the charges is conducted by following one of the several procedures: as an official duty, at initiative of the defendant, as objection to the prosecution act and without objection at request of the President of the council of the Court in charge of the case (article. 291 Criminal Procedure Law).

Objection to the prosecution act is a legal instrument with which the defendant can ask the court to research the grounds and legality of it, and which can prevent the case from getting to the main hearing. The investigation of the prosecution act after objecting it is done in different ways in order to determine its formal and material grounds.



The data resulting from the research point out that out of 154 cases, objection to the prosecution act was submitted in 36 cases, i.e. in 23 % of the cases, and all of them were rejected. Practice shows that only in rare occasions the objections are sustained. The monitoring in 2009 registered 18 objections all of which rejected. Similar results come from the research in 2008 where out of 75 objections only 2 were sustained. In 2010 however, for 30 cases we do not have information if objection to the prosecution act have been submitted or not.

2.7. Measures of securing presence during criminal proceeding

The implementation of the criminal proceeding imposes the presence of certain individuals (defendant, witnesses, and forensic experts). The presence of these categories of individuals when realizing certain activities in the criminal procedure is provided by determining the legal duties of these individuals to respond to the court invitation i.e. the subpoena. If the summoned individuals do not answer voluntarily to the invitation, then, their presence is secured by applying forced measures.

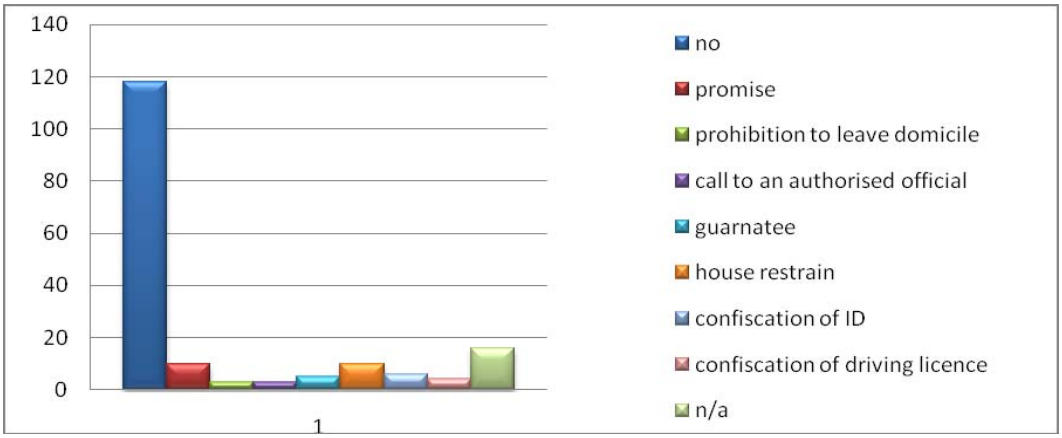
Although these are intended for individuals that have different roles during the hearing, still the main figure is the defendant. Hence, the Criminal Procedure Law stipulates several measures of securing presence of the defendant in order to successfully carry out the procedure; the competent body has the possibility to chose from the measures depending on which one is the most appropriate for the concrete case, taking into account not to use the heavier measure if the same objective can be achieved by using a milder measure. The softest measure of all is the invitation. The next

one is detention; promise of the defendant that he/she will not leave the dwelling; preventive measures such as orders not to leave the domicile i.e. the dwelling, obligation of the defendant to occasionally call an authorized individual or authorized state body, temporarily confiscation of passport or other ID document so as to prevent him/her from crossing the border and/or prohibition to issue an ID document, temporarily confiscation of the driving license and/or prohibition to issue one; guarantee; house arrest and detention.

- **Application of the measures that ensure presence of the defendant**

According the information that the Coalition has, in most of the cases none of the measures that ensure presence of the defendant are used; from 154 monitored cases, in 188 the measure was not used and for 16 cases we do not have data if the measure has been used or not.

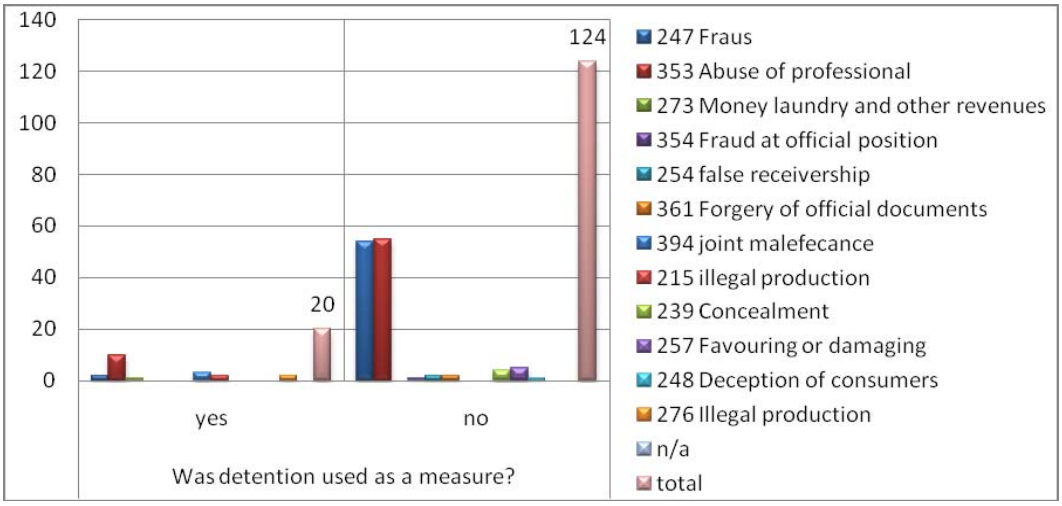
Based on the above we can say that the measures that ensure presence of the defendant have been used in the remaining 20 cases; in some of these 20 cases several measures of same or different type have been issued. From the available data we can conclude that the dominant measure is house arrest or promise, each of those used in 10 cases, the other measures are rarely present. These are: confiscation of ID – 4 cases, prohibition to leave the dwelling and occasional call to an authorized individual in 3 cases each.



- **Use of the measure detention**

The detention is the heaviest measure of process enforcement and as such can be used only when the interest of the criminal proceeding can not be protected with another milder measure.[9]

[9] Matovski Nikola, Criminal Process Law, Law Faculty "Justinian I" Skopje 2003, page 357



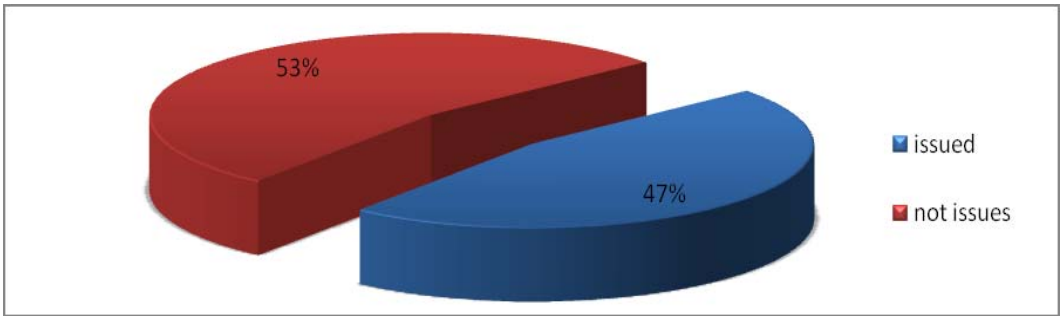
In line with Article 199 Criminal Procedure Law, if there is founded doubt that a certain individual has committed a felony, detention can be used as a measure in such cases when the individual is in hiding, if his/her identity can not be determined or of there are other circumstances that point out to the danger of escape; if there is founded fear that the individual will destroy the traces of the felony or that he/she will incur damage to the investigation by influencing the witnesses and collaborators and if special circumstances justify the fear that the person will repeat the felony or will complete the attempted felony or will commit a felony that he/she threatens to perform.

The measure detention consists of limitation of the personal freedom of the defendant by locking him/her in separate facilities; the purpose is to ensure the presence of the defendant in the course of the criminal proceeding, as well as to prevent the defendant from influencing the process of presenting the evidence and making the proof.[10]

The detention can be used only under conditions and in cases determined by law; the duration of the measure needs to be carefully thought out rationally so that it is never longer than necessary. Furthermore, all bodies that participate in the criminal proceeding are obliged to treat the case with special urgency if the defendant is detained and to be alert and dismiss the measure detention once the reasons supporting the decision to use the measure are no longer valid.

According the available data from the monitoring, this measure has been issued in 20 cases. If we have in mind that the total number of monitored cases was 154, we can conclude that its application is not widely spread, but then when we point out that out of 468 defendants the measure detention was issued to 218 individuals, then, the situation is quite different.

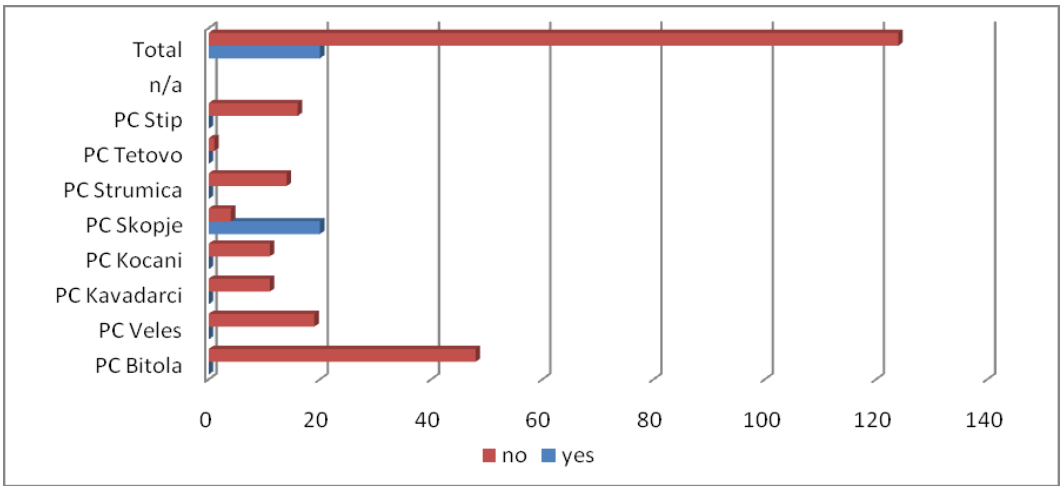
[10] Stevanovic Cedomir, Criminal Process Law, SFRY, Contemporary administration, Belgrade 1982, page 282



Compared to last year, this year a total of (154) cases were monitored and detention was issued to most of the defendants, more precisely 218 defendants out of 468; last year a total of 110 cases were monitored with a total of 256 defendants and the measure detention was issued to 58 defendants. Last year out of 110 cases the character of "detention cases" could be assigned to 10 while this year out of 154 cases this characteristic can be assigned to 20 cases. Hence we can conclude that in 2010, for the cases that were monitored, the measure detention was issued a lot more often.

If we look at the felonies for which the detention was issued, we can see that in most cases it is the felony: abuse of professional position and competency with 50 % of the cases. The other felonies for which the measure detention was issued are: joint malefice – 3 cases; fraud, unauthorized production and sale of drugs, psychotropic substances and precursors, illegal production – each with 2 cases and money laundry and other illegal revenues – 1 case each.

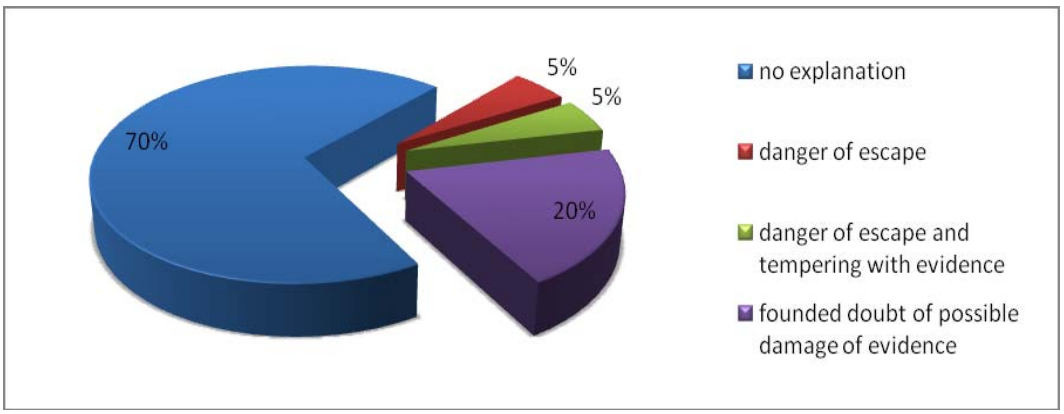
We need to stress the fact that all 20 cases where detention was issued are cases processed by the Principal Court Skopje I; as a reminder, in this court the monitoring team monitored a total of 25 cases. The other courts never issued the measure detention.



The cases where detention is issued have the nature of urgency and priority; namely since there is founded doubt of the felony, the defendant is deprived if his/her rights and freedoms, and suffers from all the deprivations since he/she is detained, and at the same time there is the presumption of innocence.

The Criminal Procedure Law stipulates precise time lines for the duration of the detention, so the total duration of the investigation can not exceed 180 days, and after raising the charges the detention can not last more than one year for such felonies for which the potential penalty is imprisonment of up to 15 years or up to 2 years for felonies for which the penalty can be life prison (Article 207 Criminal Procedure Law).

In the monitored cases we noticed different duration of the detention, the longest being 455 days of a defendant whose felony is abuse of professional position and competency; the next one is defendant whose felony is money laundry and acquiring of other illegal revenues who spent 180 days in detention. For the other detained individuals the duration of the measure is in the interval between 12 and 147 days.



According the data that is available to the Coalition, the main reason for issuing the measure detention is the danger of the defendant tempering with the evidence, and the danger of escape. Still, we need to emphasize that for 70% of cases where detention was issued as a measure there is no data available, i.e. it was not stated what is the reason for issuing the measure detention. Therefore, this also influences on the accurateness of the conclusions that we drew in view of this issues.

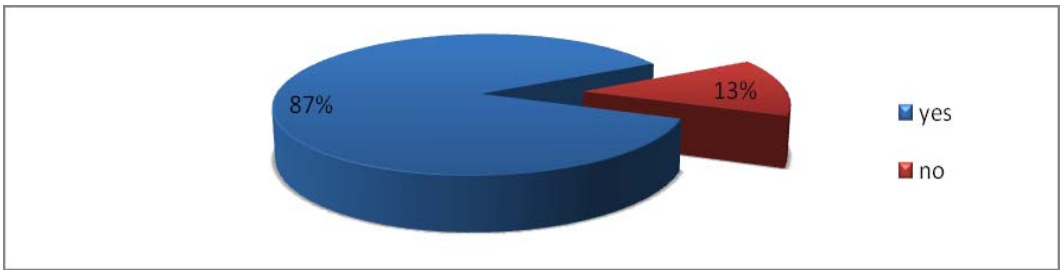
2.8. The main hearing

The main hearing is the central stage in the criminal proceeding. It has essential meaning and takes central position because all the other phases of the penalty procedure are it its function; the realization of each of their specific objective adds up to

the special goal to realize the objective of the main hearing. Thus, the, preceding procedure and the prosecution have one objective and that is to provide the conditions for main hearing without obstacles, while the legal remedy phase has as a goal to control the regularity of the decision passed at the main hearing. Hence, the main hearing is a stage of the penalty procedure, where, the court looks into the charges brought to it by the authorized prosecutor, taking into consideration the principles that support the public, contradictory, oral and direct representation and passes a verdict.[11]

One of the basic features of the criminal proceeding is the form of the process i.e. in order to be legally valid the processed need to be taken in a way and form as determined by law. Therefore there are exact rules of the place and role of the parties in the course of main hearing, such as, in line with article 329 of the Criminal Procedure Law, the parties and all present stand up when the council enters the court room, the parties sit opposite of the President of the Council and from his left side are the defendant and his/her attorney while on the right side is the authorized prosecutor, the damaged party and his/her proxy. The defendant, witnesses and the forensic experts give their statements in a special position right from the President of the council faced towards the prosecutor and the defendant.

Was the arrangement of the participants in the proceeding in line with Article 329 of the Criminal Procedure Law[12]



The monitoring team also had as a task to monitor the seating arrangement of the participants in the procedure. From the data we received, it can be concluded that in most cases the legal provisions are respected. In 87% of the monitored hearings, the arrangement of the present is as the law prescribes. Still, there are 13% of the hearings where this was not in line with the legal provisions, which is not inconsiderable since it is each 9th or 10th hearing that has not followed this formal obligation of the court.

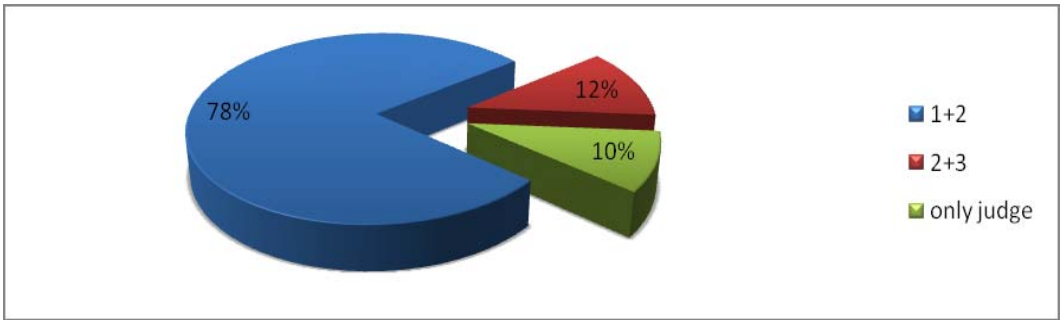
[11] Marina Panta, The criminal procedure of SFRY, Kultura, Skopje, 1979, page 411
[12] Law on criminal proceeding (cleared text), Official Gazette of RM, number. 15/05

- **Composition of the Court Council**

The authority of the court is the legally nominated right and duty in the course of the criminal proceeding to undertake certain actions and pass a decision per one punitive action, taking into consideration the nature of the felony. In line with Article 22 from the Criminal Procedure Law, the single judge in first degree actions passes verdicts only for those felonies where the main penalty is either monetary fine or imprisonment with duration of up to three years.[13]

The council comprised of two judges and three judges of the jury on felonies decides for felonies for which the penalty is from 15 years of imprisonment and more, while a council comprised of one judge and 2 judges of the jury is comprised for felonies for which there is a milder penalty.

The Constitution of the Republic of Macedonia stipulates that when regulated by law, the judges of the jury also need to be part of the trial (article 103 paragraph 3 CRM).



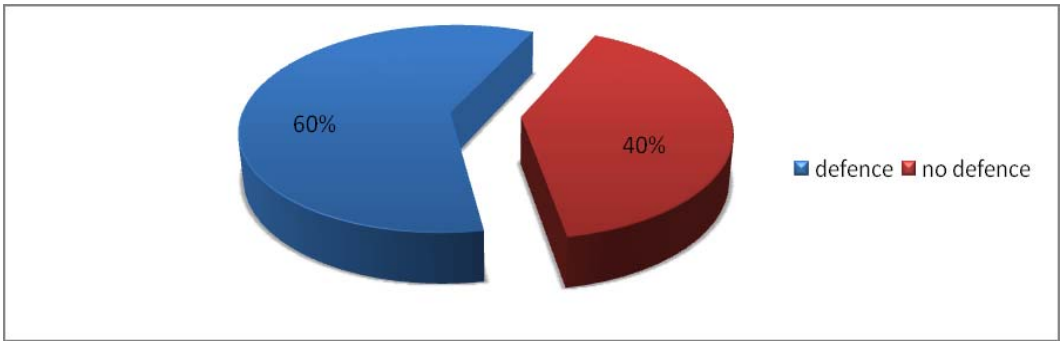
If we look at the data obtained from the motoring, we can conclude that over ¾ of the trials were held in front of the court council comprised of one professional judge and two judges of the jury. 12 % of the cases were held in front of a council comprised of two professional judges and three judges of the jury while in 10 % there was only one judge. By including the judges of the jury in the criminal cases, efforts are made to impose the civil factor in the passing of the verdict. However, the penalty cases require serious preparation of all the participants (prosecutor, defendant) and especially the ones that perform the function of passing the verdict since goods from which the defendant is deprived (freedom, property) and the ones of the damaged party (life, body, property and similar) are of highly sensitive nature. Therefore, the state of preparation requires special education, experience, additional trainings, seminars, workshops, counseling, all of which are part of the professional career of a judge; therefore the judge is the actual one passing the verdict while the jury is part of another aspect of the trial i.e. the civic, and some times they only attend the trial.

[13] With the new LCP, article 25, a single judge process cases where the felonies in question are penalized with fine or imprisonment of up to five years.

- **Did the defendants have a defender – right of defense**

One of the three functions of the criminal proceeding is the defense. Defense is a process activity of opposing the charges, completely or partially, denial that the felony has been performed and not accepting responsibility for it by bringing forward arguments that go against the thesis of the prosecution. The defense is a range of actions undertaken in order to present everything in favor of the defendant. The defense function is performed by the defendant and his/her defender (each individual is entitled to a defender in the criminal proceeding).

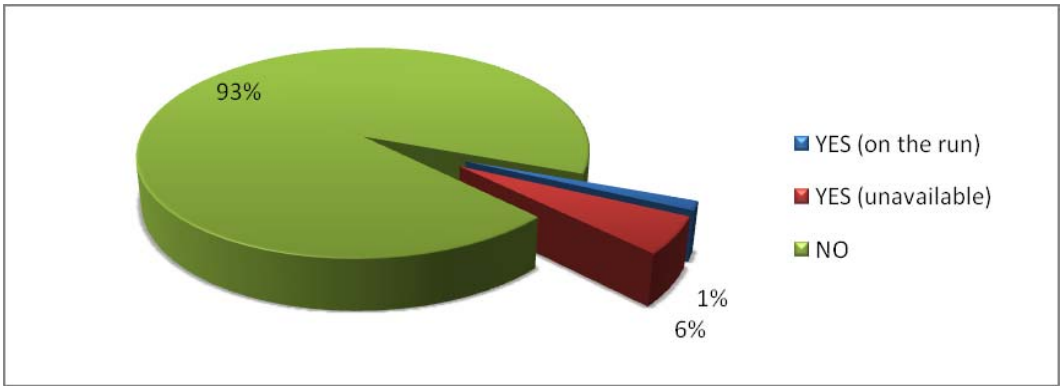
Our criminal law qualifies the defense as material and formal (depending who performs it) or facultative and obligatory (depending if there is obligation for representation on behalf of the defender). The corruption felonies are the ones that the obligatory defense; this is due to the character of the felonies and the penalties foreseen for them in the CC, and because oftentimes detention is used as well as trial in absence. In the cases of obligatory defense, if the defendant does not have a defender, the President of the Court appoints him/her a defender.



The results from the monitoring show that out of 468 defendants monitored during the research, 279 or 60 % had a defender, including the cases of obligatory defense (cases where detention was also used), whereas 189 or 40 % did not use the right of formal defense, i.e. they did not have a defender.

- **Are there trials in absence**

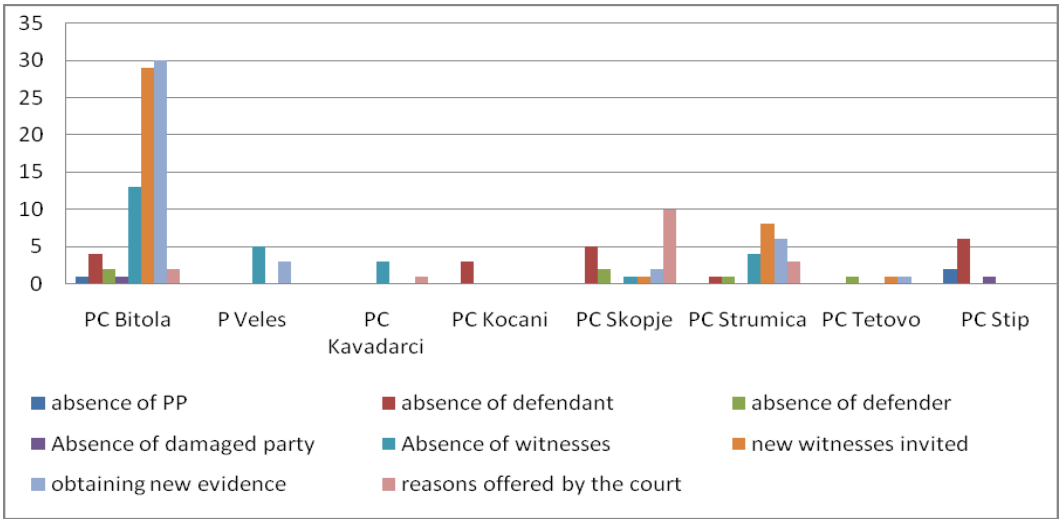
The proper use of the principles of contradiction and direct exposure impose that at the main hearing the presence of the defendant is obligatory, i.e. the presence of the defendant is a prerequisite to hold the main hearing. Still, there are exceptions, in regular procedure, to have the trial in the absence of the defendant if an only if he/she has escaped or unavailable to the state bodies, and there is an extremely important reason to go forward with the trial even though he/she is not present. The decision if there should be a trial in absence is passed by the Council at the suggestion of the prosecutor (article. 316 paragraph 3 and 4 Criminal Procedure Law).



With respect to the monitored hearings in the cases selected by the Coalition, it is evident that in most of them the defendant is present. In 93% of the monitored hearings, the defendant is present which implies that he/she can directly participate in the defense, while in 7% of the hearings the trial happened in absence of the defendant, in 6% of those, the defendant was not available to the court and in 1% the defendant escaped.

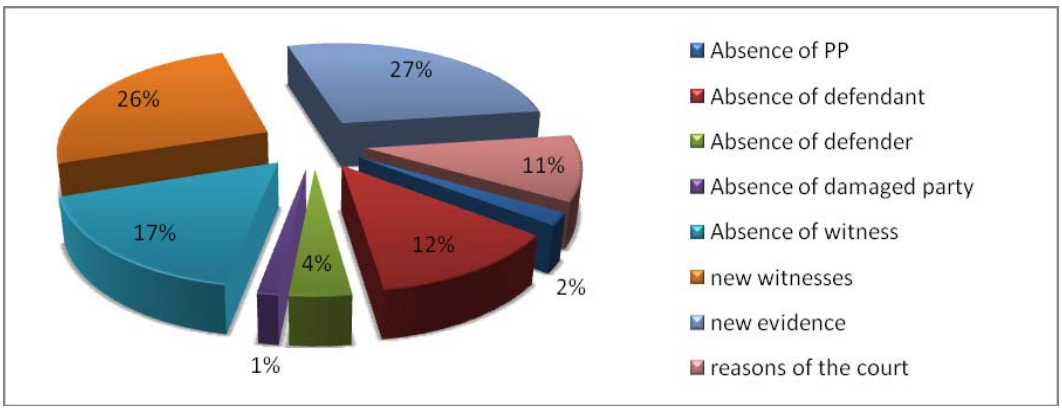
- **Postponement of the main hearing**

The postponement of the main hearing is having the hearing at another day than scheduled, or if the main hearing already started, postponement can also imply recess of it for a longer period of time. If this postponement exceeds 60 days or if the main hearing took place in front of another President of the council, that the main hearing must be restarted from the beginning and all the evidence needs to be represented again..



The team of monitors registered a total of 153 postponed hearings, most of which occurred in the Principal Court Bitola - 82 postponements. Then, follow the Principal Court Strumica – 23 postponements and the Principal Court Skopje I – 21 postponements. Least postponements are encountered in Kavadarci, Kocani and Tetovo – 4, and 3 postponed hearings.

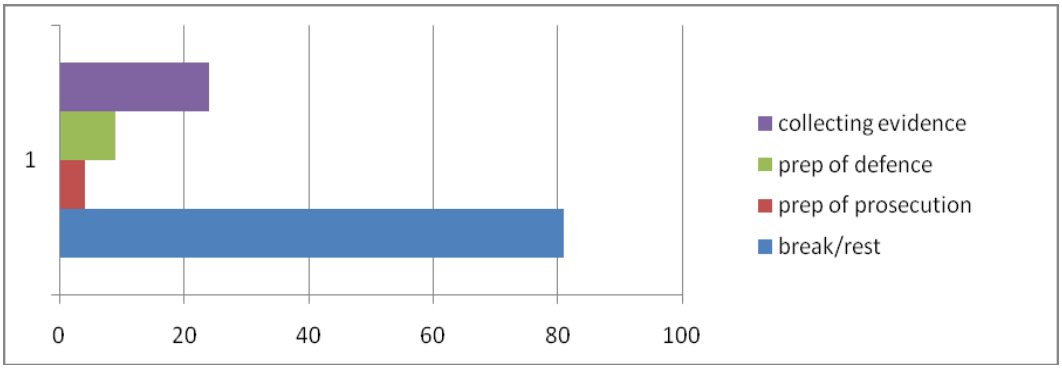
The reason that can lead to postponement of the main hearing can vary, still the data available to the Coalition shows that in most cases the reason is the need to gather more evidence and call up new witnesses; this was the case in 54% of the postponed hearings. It happened rarely that the hearing is postponed because of absence of the defender (4%), the public prosecutor (2%) or the damaged party (1%)



If we compare it to 2009, out of the 110 cases monitored there were a total of 206 postponed hearings; this indicates that in 2010 the number of postponed hearings has decreased tremendously both due to the absence of the public prosecutor, the defendant or the defender. In 2009, the most frequent reasons for the postponement of the main hearing was gathering new material evidence and summoning new witnesses; these show decrease in 2010. From the comparison we can conclude that the only reason that showed trend of increase was the absence of the witnesses (26 hearings, compared to the 17 in 2009).

- **Recess of the main hearing**

Recess of the main hearing is adjourning it for a shorter period of time, not more than 8 days. The reasons that most commonly provoke the recess of the main hearing can be different, but in most cases they are divided in two groups, regular and irregular. Regular are the ones where the reason for recess is short break to rest during the main hearing, as well as end of the working hours. Irregular reasons can be several such as: gathering new evidence, preparing the conviction, preparing the defense. In line with article 323 paragraph 2 of the Criminal Procedure Law, the main hearing that was recessed, continues where it stopped in front of the same council.

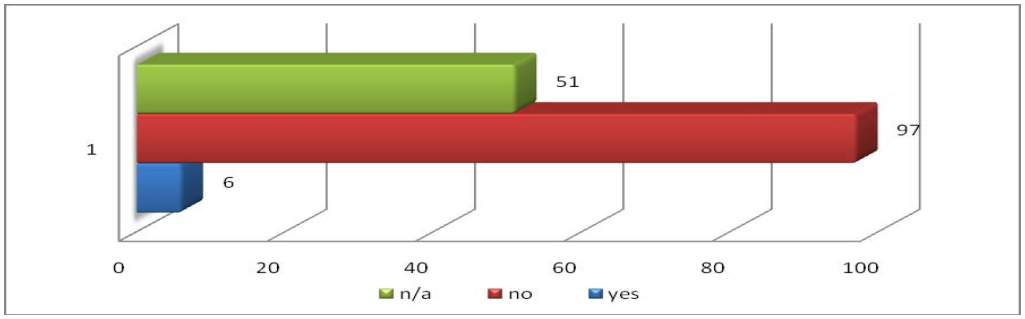


By looking at the data that the Coalition has available, we can conclude that out of 118 recesses of the main hearing, in 81 case or 69 % the main reason is adjourn to rest; the gathering of new evidence is only in 24 cases or 20%; the need to prepare the defense is a reason to recess the main hearing in 9 cases or 8, while the preparation of the conviction is present in 4 cases or 3 % of the monitored cases

- **Temporarily provision and confiscation of objects and property**

In line with Article 219 of the Criminal Procedure Law, the object that according the CC need to be confiscated are the ones that later on can serve as evidence in the criminal proceeding; these will be temporarily confiscated and given to the court for safekeeping, or would make provisions for their safekeeping otherwise. The legal provisions clearly show that this is a temporarily confiscation of the objects and after the procedure ends it is decided what next with these confiscated goods, i.e. whether they will be permanently confiscated or destroyed or returned back to the individual from which they were initially confiscated.

When dealing with corruption felonies, besides confiscation of the objects, another important measure is temporarily safeguarding the property or assets that relate to the felony. This temporarily safeguard can also imply temporarily freezing, capturing, and keeping the funds, bank accounts or financial transactions or revenues from the felony. From the data gathered with the monitoring, these measures have not been encountered too often.

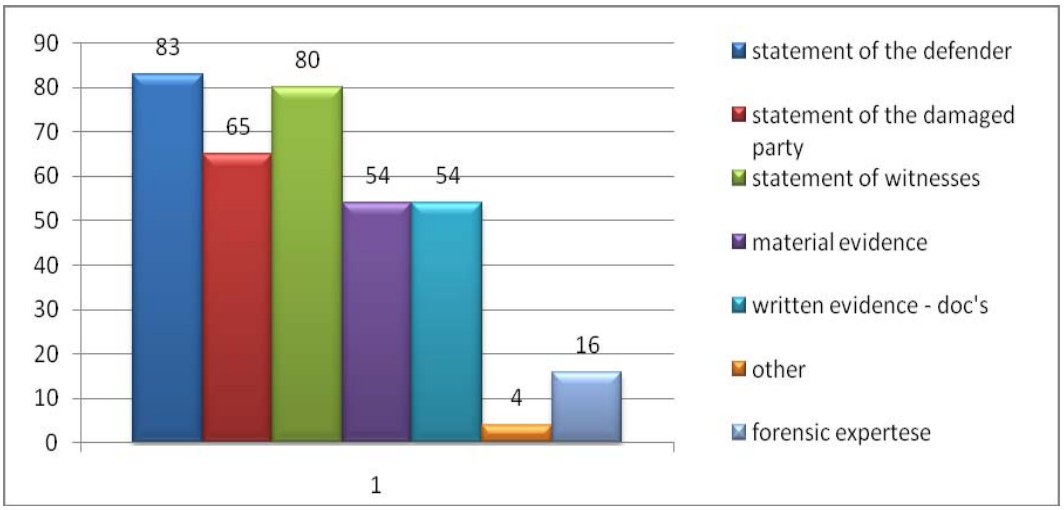


Namely, out of the 154 monitored corruption cases there were only 6 cases or 4% when decision was passed for temporarily confiscation or safeguard; in 97 cases or 63% no such measures were used. However, for 51 cases or 33% we do not have information whether these measures were used or not and this percentage can completely twist the picture that we currently have from the data that is known to us.

- **Evidence material**

The legally relevant facts in the penalty procedure are determined through the evidence material; the evidence materials are the sources that provide the grounds for the evidence.[14] Thus, the evidence material is the source for obtaining data and gathering facts that are founded and viewed as proof.[15]

For each separate felony there is a special subject that needs to be proved and that involves facts that are determined during the procedure by proving their authenticity. Thus, which evidence material will be used in a specific case depends on the environment and the circumstances and the characteristics of the case; it is the judge that decides which evidence material to be used, taking into account the duty of the court to duly evaluate each evidence separately and its relation with the other evidence and then conclude if a fact has been proved true.



From the data gathered with the monitoring it can be concluded that out of 356 presented evidence material, most of those were part of the statement of the defendant - 83 times or 24 % and of the statement of witnesses - 80 times or 23 %. The most rarely

[14] Vasiljević Tihomir, Systems of criminal process law SFRY, Savremena administracija, Belgrade 1981, page. 301,

[15] Marina Panta, op.cit, page. 225

used evidence is the forensic expertise, 16 times or 4%. The crux of the presented evidence material belongs to the statement of the defender, material and written evidence and they comprise 48% of the presented evidence material in the monitored cases.

If we compare this to the results from last year, we can conclude that the results are identical i.e. in 2009 the most frequently used evidence materials were statement of the defendant, statement of witnesses and the forensic expert was rarely used.

The data above points out to the fact the courts when determining facts rely heavily on the witnesses and their statements (in the monitored cases there were two cases when individuals with hidden identity were used as witnesses; these cases were processed in front of Principal Court Skopje I, which means that this category of individuals can also be witnesses). The statement of the defendant is a means of evidence that allows the defendant to present his/her arguments regarding the event and assist the defender in creating the defense (here we also include the confession as a statement, but besides pleading guilty, other evidence need to be obtained to confirm the confession and give a logical and comprehensive picture of the event). Having in mind their nature, the corruption felonies in most cases are proven through material evidence and written evidence – documents, as permanent evidence for the deed, which even after the elapse of a considerable period of time can still proof the incrimination and responsibility of the damaging behaviors. The professional forensics is rarely used as a means of evidence. According the data, we can conclude that most fats were determined through previous evidence material so there was no need of forensic expertise or the serious financial expenditures related to them are the reason that so little forensic expertise has been used.

- **Witness**

Witness is a physical person who is summoned during the criminal proceeding by the court; the witness has a duty to answer the subpoena and present the data that he/she possesses regarding the felony, the felon, as well as other important circumstances based on his/her cognitive insight on all the facts that are subject of being proved. The report that the witness offers in the criminal proceeding is called, statement of the witness. With the statement, the witness conveys to the court his/her knowledge of facts that the acquired by using the senses of sight and hear, and which relate to the court case.

From the data we can notice that the most frequently used evidence material is the statement of witness. In line with articles 241 and 243, paragraph 2 of the Criminal Procedure Law, the witness is not obliged to answer certain questions if by doing so it is evident that he/she would put him/herself or a close relative in grave disgrace, considerable material damage or criminal prosecution. The President of the Council informs the witness about this right and the same is entered in the official minutes. With regard to this the monitoring team concluded that in 89 % of the cases the witnesses

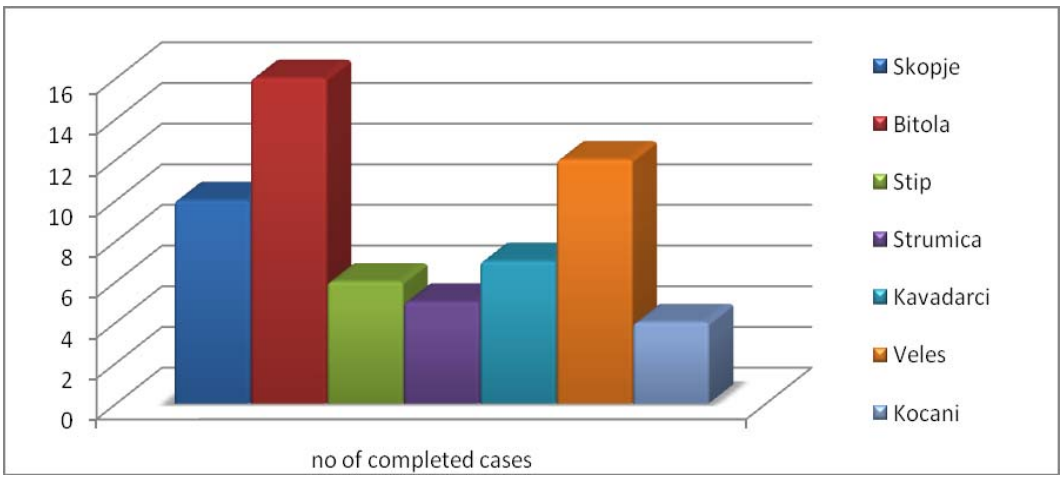
were informed about their rights while in 11 % of the cases it did not occur. This data point out to the fact that the judges mainly respect the quoted articles from the Criminal Procedure Law, but the situation needs to further improve because the law imposes absolute respect of the legal norms and provisions.

Since corruption related felonies are tightly related to the organized crime, it is necessary to dedicate huge attention to the safety of the witness. Thus, in 28 % of the hearing where one of the presented evidence was statement of the witness, he/she did not agree to give the statement with the defendant in the courtroom. At this, the defendant was taken out of the courtroom. In the other 72% of the hearings, the witness gave statement in front of the defendant. Still, in only 1 % of the hearings measures were undertaken to provide efficient protection of the witnesses by using a special inquisition method (technical communication means). From the monitored hearings, we can conclude that there wasn't a single case where the witness protection program was asked for assistance.

2.9. Verdict and penalty policy

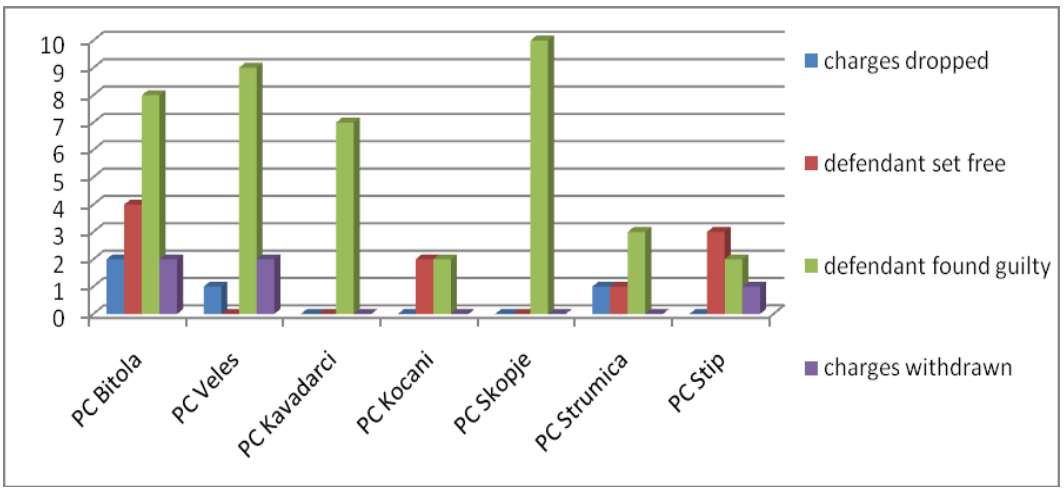
All process activities undertaken in the course of the criminal proceeding are directed towards passing a verdict and that is the most important act passed during the procedure. The verdict is a decision with which the court completes the criminal case. The verdict as an act of an authorized state body contains the answer to the question if the defendant is guilty or not of the felony.

According the data at disposal of the Coalition, out of the 154 monitored cases, 60 of them were completed after first instance. Most of these came from the Principal Court Bitola – 16 cases, then from the Principal Court Veles – 12, the Principal Court Skopje I 10 cases, and the other courts had fewer such cases.



- **Type of verdict**

In line with Article 366 paragraph 1 of the Criminal Procedure Law, there are three types of verdicts: verdict with which the charges are dropped (charges dropped verdict), verdict with which the defendant is set free of the charges (verdict to set free) and verdict where the defendant is claimed guilty (condemning verdict). These three types of verdicts can be subdivided into 2 groups: formal and material. Formal verdict is the one that rejects the accusation i.e. drops the charges, while all the rest are verdicts of the material type.



Out of 60 cases, the condemning verdict where the defendant agreed with it is passed in 41 cases, the verdict to set free was passed in 10 cases, and in 4 cases the verdict of charges dropped was passed, while in 5 cases the charges were dropped and hence the case was closed. The Principal Court Skopje I has the largest number of condemning verdicts – 10 and none of the other types of verdicts. The Principal Court Bitola has the largest number of verdicts to set frees – 4 and 2 verdicts of dropped charges – 2, it also passed 8 condemning verdicts and in two instances the charges were dropped. So this is the only court that there is data on all four instances related to the type of the verdict or dropping of the charges. The Principal Court Veles has passed 9 condemning verdicts and one case of charges being dropped, while the Principal Court Kavadarci has 7 verdicts and all of those are condemning.

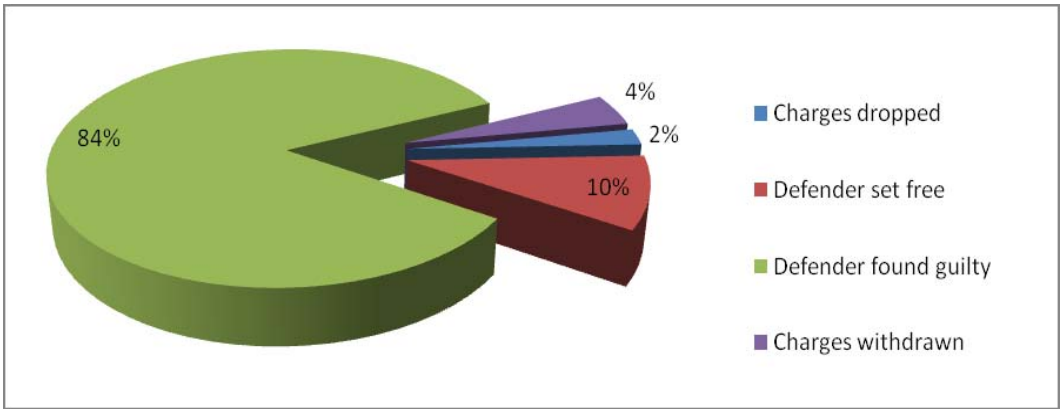
The completed first instance cases were mainly for the felony fraud, stipulated in Article 247 of CC in a total of 26 cases, right next to it is the felony stipulated in Article 353 - Abuse of professional position and competency with 22 cases. Smaller number of case were for the fraud of joint malefice – 4 cases, concealing – 3 cases, forgery of ID and unauthorized production and sale of drugs. Psychotropic substances and precursors – each with 2 cases, and there was one case of the fraud – damaging or favoring creditors.

The PC Bitola passed the largest number of verdicts for fraud – 10 out of 26, while the PC Kocani had no such verdicts. There were 5 verdicts passed on the felony - abuse of professional position and competency in the PC in Bitola and Veles, while the court in Kavadarci passed only one such verdict. The Principal Court Skopje I is the only court that passed the verdict for the felony of joint malefice – 4 cases and for unauthorized production and sale of narcotic drugs, psychotropic substances and precursor it had 2 cases.

Passed verdict?		Type of felony?							
		247	353	361	394	215	239	257	total
Charges rejected	PC Bitola	2	0	0	0	0	0	0	2
	PC Veles	0	1	0	0	0	0	0	1
	PC Strumica	0	1	0	0	0	0	0	1
Total		2	2	0	0	0	0	0	4
Defendant is set free	PC Bitola	0	3	0	0	0	0	1	4
	PC Kocani	0	2	0	0	0	0	0	2
	PC Strumica	1	0	0	0	0	0	0	1
	PC Stip	1	2	0	0	0	0	0	3
Total		2	7	0	0	0	0	1	10
Defendant pleads guilty	PC Bitola	6	2	0	0	0	0	0	8
	PC Veles	5	3	1	0	0	0	0	9
	PC Kavadarci	5	1	1	0	0	0	0	7
	PC Kocani	0	1	0	0	0	1	0	2
	PC Skopje	1	3	0	4	2	0	0	10
	PC Strumica	1	2	0	0	0	0	0	3
	PC Stip	1	0	0	0	0	1	0	2
Total		19	12	2	4	2	2	0	41
Charges dropped	PC Bitola	2	0	0	0	0	0	0	2
	PC Veles	1	1	0	0	0	0	0	2
	PC Stip	0	0	0	0	0	1	0	1
Total		3	1	0	0	0	1	0	5
Total		26	22	2	4	2	3	1	60

The largest number of condemning verdicts – 19 were passed for the felony – fraud; most of these were passed in the courts of Bitola, Veles and Kavadarci – all together 16. There were two verdicts to set free the defendant for the same felony in Strumica and Stip and rejection verdicts (Bitola), and in three cases the charges were dropped. There are 12 condemning verdicts passed for the felony -abuse of professional position and competency (from the monitored courts only the Principal Court Stip and the Principal Court Tetovo did not pass such verdict in the monitored period). It is interesting to know that all the verdicts of the Principal Court Skopje I for the felonies of joint malefice and unauthorized production and sale of narcotic drugs, psychotropic substances and precursor were with condemning verdict (a total of 6 cases).

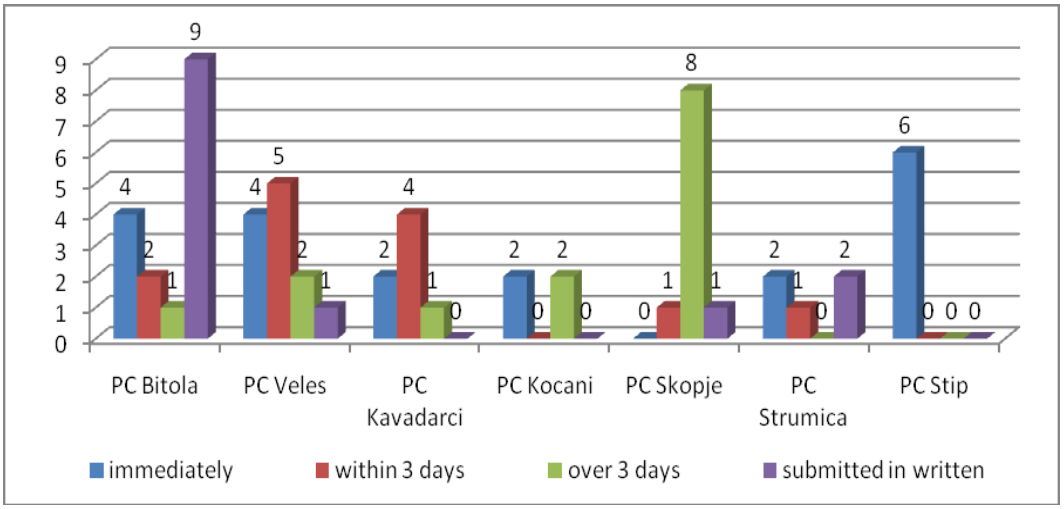
In the 60 cases that were completed in the first instance procedure, there were a total of 186 defendants. From those, 156 defendants (84 %) were given the verdict guilty. The verdict to set free was passed for 18 defendants (10 %), while the charges were dropped for only 4 defendants (2 %). Also, for 8 individuals (4 %) the charges were rejected. Hence, the first instance courts mostly passed condemning verdicts when deciding on the cases that relate to corruption felonies.



- **Announcing the verdict**

The announcing of the verdict is the last process activity that the convened council has to perform. The verdict is announced immediately whew reached. However, in the case the court is not in a position to announce it immediately the same day when the main hearing ends, it can be proposed that the verdict is to be announced later on in the following three days and sets the place and time when it is going to be announced (Article 370 paragraph 1 Criminal Procedure Law).

The President of the Council announces the verdict in the presence of the parties, their legal representatives, proxies and the defender. However, the announcement of the verdict can also be done when the parties, their legal representative, proxies or the defender is not present, in such case the verdict is submitted in writing.

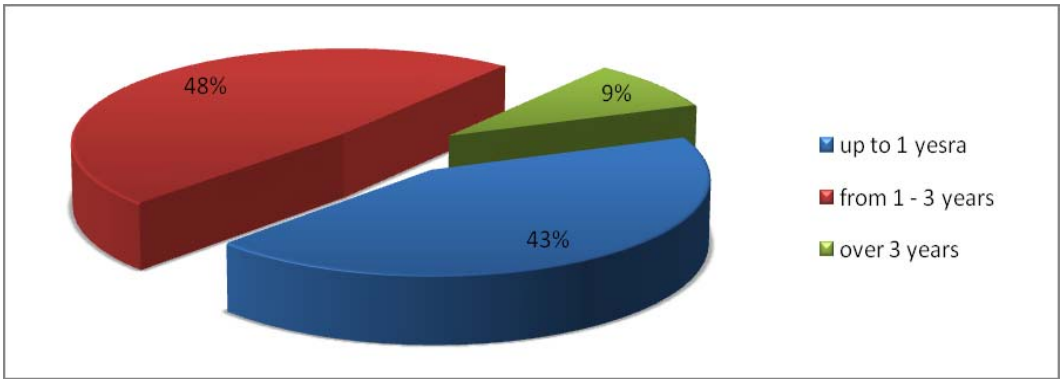


In 33 % of the cases where the verdict was past, it was announced immediately, in 22% of the case the three day notice period was followed, while the legal time limit for announcing the verdict was breached in 23 % of the cases. Apart from that, in 22 % of the cases the verdict was submitted in written. A good example is the Principal Court Stip, where for the six cases the verdict was announced immediately. On the other side of the quality meter is the Principal Court Skopje I, where even for 8 cases announced the verdict after the three day time period had elapsed. Written notifications are mostly present in the Principal Court Bitola, in 9 out of the 16 cases. If we compare it to last year, we will see that this year there are less verdicts that have been announced immediately, last year that percentage was 53 % while this year it dropped to 33 %. On the other hand we note an increased number of verdicts announced after surpassing the three day limit; these cases last year were present with 11% while this year the percentage went up to 23 %. Last year the most expedite of all monitored courts was the Principal Court Strumica with 6 verdicts announced immediately and two within the three day time limit. This year the honor of most expedite court is given to the Principal Court Stip.

In 92 % of the cases for which a verdict was passed, the President of the Council when announcing the verdict shortly explained the reasons for the same (in line with Article 370 paragraph 2 Criminal Procedure Law), and this obligation was not fulfilled in 8 % of the cases.

- **Type of penalty sanction**

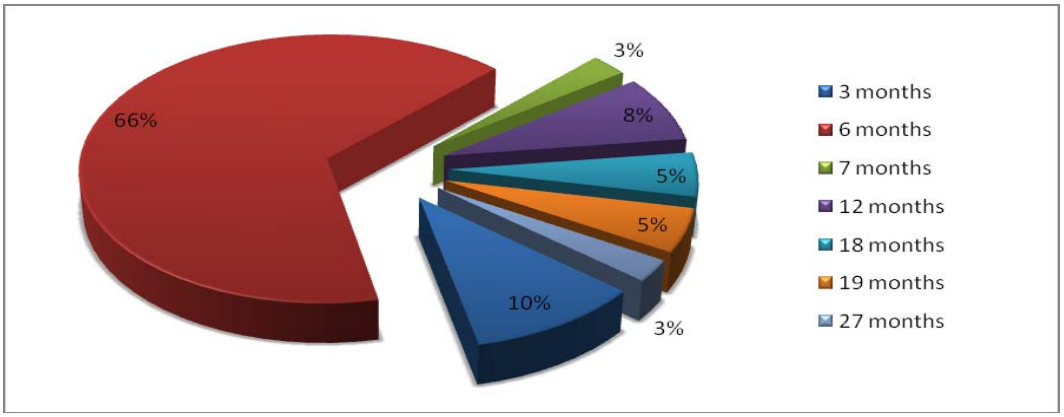
Out of 156 individuals who received the condemning verdict, the effective penalty imprisonment was issued for 116 individuals. The lowest one is in the duration of three months and it was issued to 2 individuals, while the highest penalty imprisonment was issued to one person in the duration of 81 months.



- **Individuals sentenced to effective penalty - imprisonment**

In general, the effective penalty imprisonment with duration of up to one year was issued to 49 individuals or 43 % of the felons sentenced with first degree verdict. A total of 55 individuals were issued penalty imprisonment form 1 to 3 years or 48%. The strictest verdict was for 10 individuals or 9 % whose penalty was imprisonment of over 3 years.

An alternative measure of parole was issued to 38 individuals. This measure gives an opportunity to the felons to re-socialize through a treatment outside the institutions, placing them directly in the community. With the parole, the court determines the sentence of the felon and simultaneously determines that the sentence will not apply if the convicted individual during the time determined by the court (not shorter than 1 and not longer than 5 years) does not commit another felony. This measure was mostly issued with duration of 6 months; it was issued to 25 individuals or 65 % of the convicts. The measure was also issued with duration of 3 months to 4 individuals, while with longest duration of 27 months it was issued to one convict; we also need to have in mind that parole can be issued only if the felon was initially sentenced to serve imprisonment of at the most 24 months i.e. 2 years.



- **Duration of the parole**

The time frame during which regular checkups are made is 2 years in most cases (for 20 individuals or 53 % of the convicts that received this penalty), for 13 individuals (34 %) the check ups are for one year while for three individuals this timeframe was set at 4 years.

The monetary fine was issued as a penalty to 29 individuals, and it can be main or supporting which means that in some of the cases the convict at the same time were sentenced to imprisonment and monetary fine. However, we need to note that the fines were set at relatively low amounts, starting from the character of the corruption related felonies. Therefore, a fine from 1000 to 9000 denars was issued for 20 individuals (nine of which had to pay 2500 denars). The highest fine was 160.000 denars and it was issued to only one individual.

In relation to the sanctions we can note that only one individual received the penalty of banishment it was to a foreigner with life-long duration.

From the data that the Coalition disposes with it can be noted that in all of the verdicts issued for „detention cases", the detention is also calculated in the final penalty; we stress this because otherwise we would be faced with elementary violation of the human freedoms and rights.

The data offered above point out that the courts practice relatively low sanctions with regard to the perpetrators o corruption related felonies. This behavior can not reinforce the general preventive role of punishment, and even less the special role.

- **Expanded property confiscation**

In line with Article 97 from CC, no one is allowed to acquire material benefit in a criminal way because such behaviors shatters the basic economic principles that govern the society and it would also put into jeopardy and breached the most important values in the society. The confiscation of the property is fiscal measure that intends to prevent the enrichment of individuals through crime. With changes of CC[16] in Article 98-a the expanded confiscation is introduced. It enables confiscation of the property of the felon or third parties if it is acquired in the timeframe up to 5 years before the felony is performed, for the more heavy felonies (where most of the corruption related felonies monitored during this research fall into this group).

From the data received from the monitoring it was concluded that there was only one verdict asking for expanded confiscation of vehicles and goods. This means that the courts use this new instrument very little when preventing corruption related felonies.

Its application requires and in-depth research of the case (that is exactly the goal of the principle to seek for the truth, as one of the basic ones in the criminal proceeding), thus preventing the perpetrators to hide the property acquired in criminal manner through various transactions.

[16] Official Gazette of the Republic of Macedonia no. 114/09,

2.10. Fair and righteous trial standards

- **Trial within a reasonable timeframe**

Article 6, paragraph 1 of the European Convention on Human Rights acknowledges the right of each individual when determining his/her civic rights and duties, or when he/she is criminally prosecuted to have the right of fair and public trial within a reasonable timeframe, in front of an unbiased and independent court established by law. Namely, the unreasonable delay implies lack of efficiency of justice. The damage done by the long procedure is of special importance of the criminal area (especially if it is a case where detention is one of the measures used).

The European Court for Human Rights has not established qualitative parameters to determine the reasonable duration of the procedure; it always starts from the "special circumstances" of the case combined to the system characteristics of the legal and court system of the state in question. The content of the "special circumstances" comprise of: the complexity of the case, the harm done to the damaged party, the contribution that the submitter of the case has in the delay of the procedure, the contribution of the public bodies in the delay of the stages of the procedure (the over burden situation of the courts is not accepted as an argument in favor of the state, the European Court for Human Rights instructs the state to fin an efficient model for the procedure). [17]

With the changes of the Law on Courts in 2008[18] a new legal remedy was introduced to contravene the lengthy duration of the process (the obligation comes from Article 13 of the European Convention on Human Rights). Therefore, the Supreme Court of RM has a department for processing cases in reasonable timeframe; this department is authorized to decide at request of the clients and the other participants in the case on the matter of breach of the right of a trial in a reasonable timeframe in line with the rules and principles determined with the European Convention on Human Rights and the basic freedoms if we look at the court practice of the European Court for Human Rights.

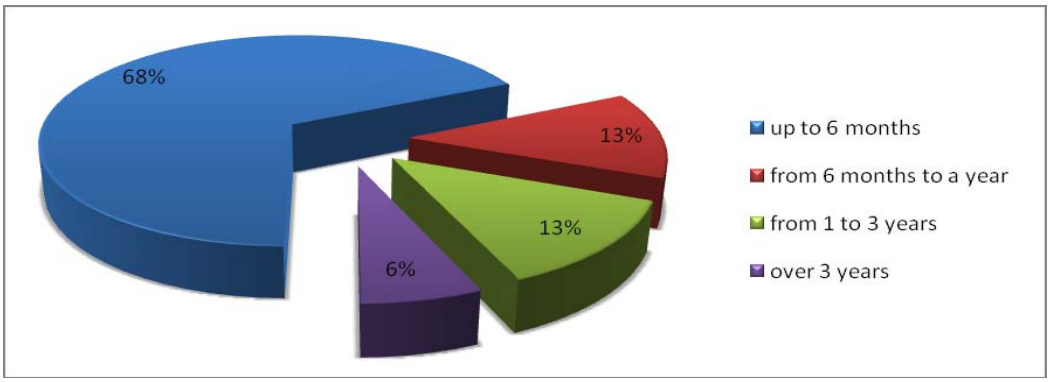
- **How much time passed from the start of the court procedure until the announcement of the verdict**

The data from the monitored cases points out that in large part the first degree courts when deciding on corruption related cases did honor the principle of a trial within reasonable timeframe. In 68 % of the completed cases the verdict was passed in a period within 6 months which is a great result having in mind the specific type of felonies and the methods used to prove it. For 13% of the completed cases the

[17] Luis Lopez Guerra (judge at the ECHR) Unreasonable delay, Iustitia no.3, 2010, Academy for training of judges and public prosecutors of the Republic of Macedonia, page 22

[18] Official Gazette of the Republic of Macedonia no. 35/08

procedure was with duration form 6 months to a year, which is for praise. In 6% of the cases the right of trial in a reasonable timeframe was breached and in these case it went for above 3 years (the longest such example is a case from the court in Veles that had a duration of even 67 months).



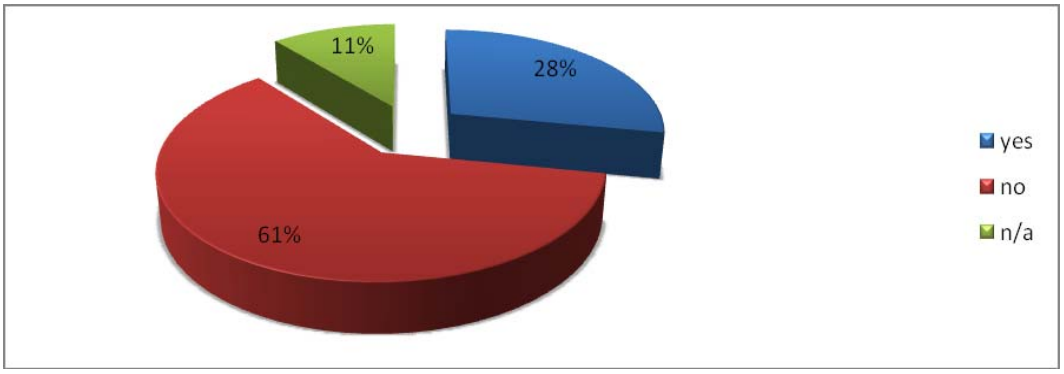
The first instance courts need to make efforts to improve the condition of efficient trial within legally prescribed duration because the European Court for Human Rights when evaluating the breach of this right takes into account the duration of the procedure in all instances, so the contribution of the first instance courts is also a part of the wider picture.

3. Analysis of the results from the interviews with the judges

A. Condition

1. In order to get the opinion and hear the position of the judges whose case the All for Fair Trials Coalition monitored throughout the years, the coalition decided to interview them asking them about relevant questions to the procedure an the corruption that they are experiencing with the Coalition. We interviewed 18 judges from the courts in Veles, Strumica, Stip, Kocani and Bitola. Before starting the interviews, we asked the President of the Courts for permission and went them a copy of the questionnaire to be used. We sent such request to obtain the permission for an interview in PC Skopje 1, we never received an answer to it and thus we never managed to interview the judges from Skopje that work in the Department of fight against organized crime and corruption.

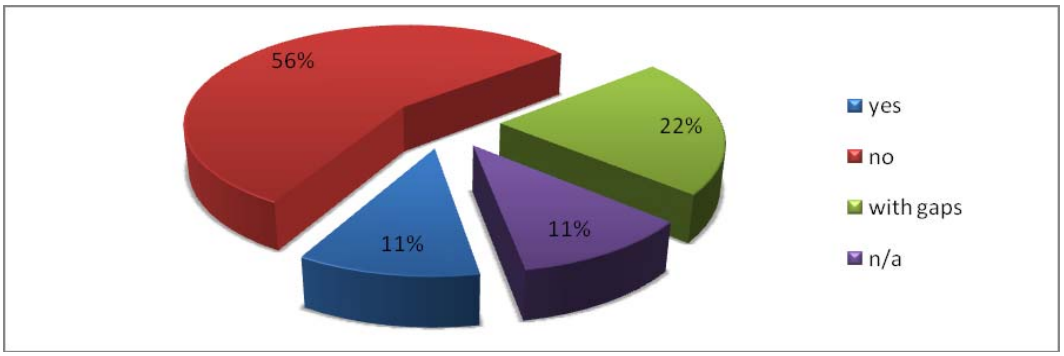
From the answers we received, we concluded that most of them, 61% believe that there is no increase of corruption, and for certain actions it is considerably in decline. About 28 % of the interviewed judges pointed out that there is rise in the corruption while 11% gave no answer to the question.



- **Do you believe that corruption is at rise**

2. With regard to the question of how much the persecution bodies are successful in identifying the corruption related felonies, most of the interviewed judges or 56% said that the persecution bodies are not very successful in identifying these felonies, and some of them even pointed out that there are huge flaws when implementing the criminal proceeding and providing the evidence. Only 11 % from the interviewed judges believe that the persecution bodies are successful in identification of the corruption related felonies, 22 % believe that they are successful but there are some omissions and 11% did not answer the question.

From this we can conclude that the judges gave serious remarks on the work of the persecution bodies and they believe that the persecution bodies are not in a situation to successfully identify corruption felonies, and hence document them properly.



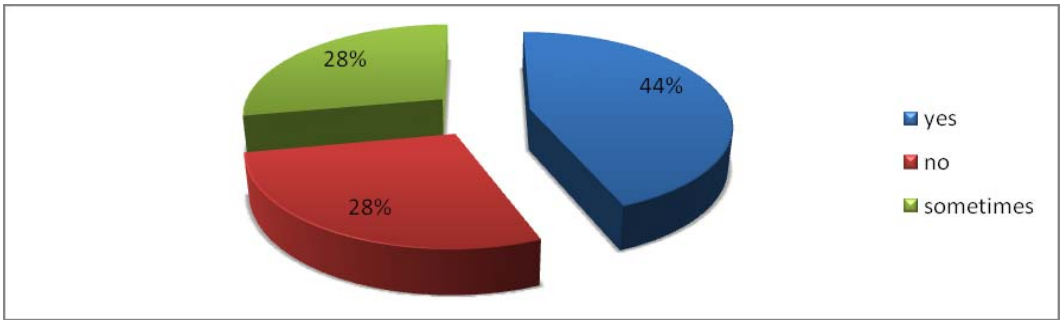
- **How successful are the persecution bodies**

B. Procedure

3. The efficiency and the trial in a reasonable timeframe are some of the principles that are the pillars of the philosophy of the criminal proceeding. Honoring them also implies determining the material truth without unnecessary delay of the trial.

The reasons behind this phenomenon are various but the Coalition was interested to hear the position of the judges when it comes to the absences of the defendants and the defenders i.e. if they are absent from the hearings on purpose or they do it in order to cause delay of the whole procedure.

The interviewed judges had divided opinion on this, some 44% from them believe that in a large portion of the cases the defendant and defender are absent from the hearing without a justified reason, all in order to cause delay of the entire procedure.



- **Defendant and defender cause delay of the procedure on purpose**

On the other hand, 28 % of the judges believe that this phenomenon is rarely present and the other 28% of the judges believe that the aim of the defendant is to complete the procedure as soon as possible and that if they are absent from the hearing it is due to reasons that can be justified and that are also covered by law.

4. The judges were also asked if they have the practice of issuing the measure detention in order to prevent the unjustifiable absence of the defendant a measure foreseen by Article 316, paragraph 2 of the Criminal Procedure Law. This provision enables the use of the measure detention to provide the presence of the defendant at the main hearing when it is obvious that he/she avoids coming to the main hearing. The judges answered that they use this legal provision, but in rare cases.

The judges also proposed several options that would shorten the duration of the criminal proceeding, such as:

- provision of all the evidence in a previous procedure and giving the courts a passive role i.e. the court should not have the role of actively gathering evidence during the procedure; the example of Anglo-Saxon law can be used where the court has passive role and it acts on the bases of the presented evidence, in line with the Roman maxim, how many evidence, that much justice (and not to have a situation of continuous proposal of new evidence and by the time these are submitted, the procedure is already largely delayed).

- Preparation of quality charges supported with evidence (there are too many cases where the charges are incomplete, not supported with evidence which delays the procedure).

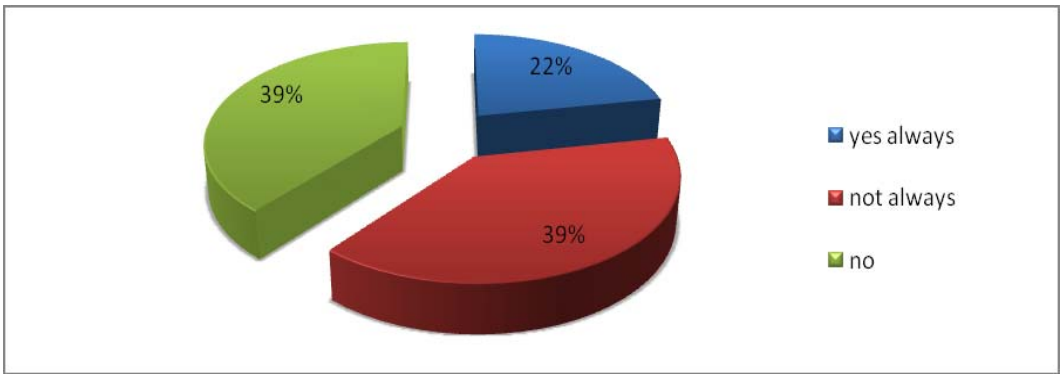
- The legal solutions for submission to be improved,

- More frequent use of the measures to provide presence (mainly for the defendant, while for the other subjects appropriate legal solutions also to be used such as sanctioning, replacement etc). We need to stress that this option was suggested by judges in whose courts in 2010 the measure detention was never issued, compared to PC Skopje 1 where almost all cases monitored by the Coalition "All for Fair Trials" were of detention nature.

- To provide more financial funds to prepare expert opinion and evidence (they have large influence on the correct determination of the actual situation).

5. In line with the principle of immediate contact the court passes the decision based on the facts and evidence presented at the main hearing. This means that it is necessary to provide the judge with all the facts and evidence from which the final decision would depend directly an immediately (without mediation of other bodies); the judge reviews them and builds opinion on all of the facts and evidence, and even then the process material as a whole.

Having in mind that the reached in these criminal proceedings tempers with the most important goods, values and interests of the main actors, the question imposed on us id the quantity of evidence that is given to the judges so that they pass a decision, i.e. if they have enough evidence to resolve the case.



It is of huge concern that even 39 % of the judges point out that when deciding on corruption related felonies they do not have enough evidence. They point out that often they are faced with week convictions where the evidence is provided later on only for the main hearing, and that is the direct reason for the delay of the criminal proceeding.

- **Have enough evidence been provided to you to work on the cases**

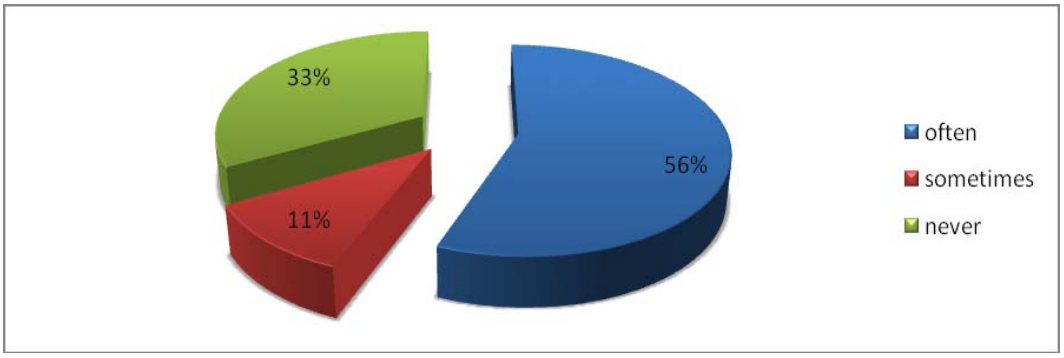
Only 22 % of the interviewed judges believe that in all cases they had enough evidence and that with no doubt based on it they were able to reach a verdict. A high 39% of the judges said that in most cases they did have enough evidence but not always

and sometimes they had to face problems because there were serious weaknesses deriving from the poorly provided evidence.

6. In the course of the main hearing the need might arise to undertake certain actions or to provide certain evidence that might be of crucial importance when passing the verdict. In line with Article 140 of the Criminal Procedure Law, all state bodies are obliged to offer the courts the necessary assistance, especially if that would help detect felonies or identify felons. Still, this obligation is not only of the state bodies but of all the citizens, both natural persons and legal entities.

As a result of the above, the question of cooperation came to surface, i.e. the assistance that the other bodies offer to the courts when they need it. The question was formulated in the following way: did you encounter obstacles and delays in cases where you requested certain evidence to be submitted to you? From the results obtained, we conclude that the courts get the needed assistance in a much more difficult way than prescribed by law. A total 56% of the judges involved in the interview gave a confirmative answer to the question. They stresses that in most cases when they address one body for evidence, they wait for quite some time before receiving the evidence; this results with them being forced to postpone the hearing or to present the evidence at another hearing.

A third of the judges or 33 % from the judges didn't have problems in obtaining good cooperation and assistance from the other bodies and they received the requested evidence in a timely manner.



- **Did you encounter obstacles and delays in cases where you requested certain evidence to be submitted to you?**

Some 11% of the judges said that in most cases they received the requested evidence in a timely manner and that only some times they faced problems because in cases of urgency they did not receive the evidence in the needed time.

7. The corruption related felonies are characterized with a high degree of discretion and secrecy in their realization; in order to fight corruption as a criminal and socially unacceptable phenomenon, the persecution bodies have at their disposal the special investigation measures, as special measures to provide evidence material. The

judges were asked if they have noticed improvement of the penalty persecution of the corruption related felonies by using the special investigation measures.

Most of the judges gave a positive answer pointing out that the special investigation measures provide timely provision of the evidence and hence the case is well supported by evidence and there is undisturbed flow of the main hearing. Still, a small number of the judges did not offer an answer t the question because they never used the special investigation measures in their work.

8. With respect to the measures that are used to ensure the presence of the defendant during the hearing, the judges pointed out that which measure is to be used depends on the felony and the nature of the defendant. Some judges stressed the use of the prevention measure of temporary dispossession of an ID. Regarding the detention they pointed out that it is used appropriately to the needs of the specific cases and that they try to use this heaviest measure the least possible. The coalition regrets that it did not have the opportunity to discuss this issue with the judges from the PC Skopje 1 where the use of this measure is widespread.

C. Penalty policy

9. Over 90 % of the interviewed judges pointed out that the penalty policy for the corruption related felonies is appropriate only some of them said that the penalties are too strict.

Most judges said that there is tendency of issuing penalties close to the legal minimum, stressing also that each case needs to be looked at separately, having in mind the individual aspect and the principles of re-socialization. There was some more interesting explanation of this position such as that if the penalty is too strict there is always an option that a higher court would change it to a less strict penalty and therefore they always issue penalties within the legal minimum. There are some that believe that the penalties are too high and therefore they stick to the legally set minimum when issuing the penalty.

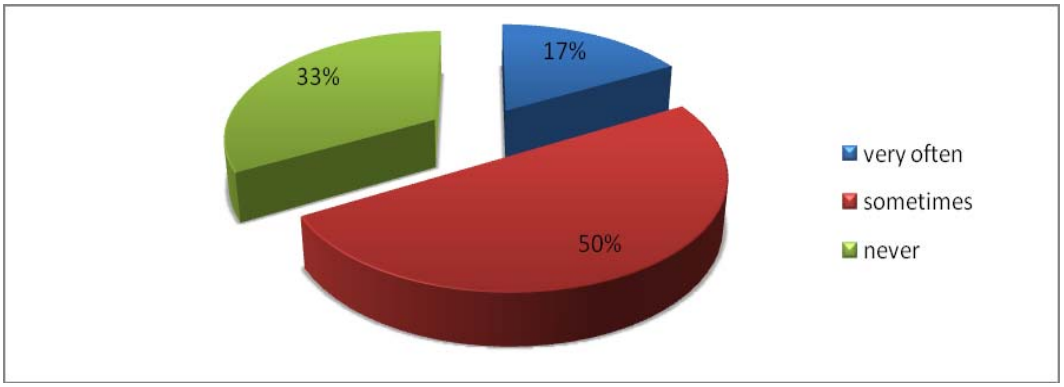
Still, some judges said that there is no tendency to issue penalties around the special minimum but that these are applied appropriately and that the issuing of these penalties is with the aim to result with general prevention and to stop the others from performing such felonies.

10. The aim of the corruption related felonies is to acquire large illegal material benefit in a short time. This type of motif needs a counter-motif to put up a good fight and the best option there is the confiscation of the acquired goods as well as the goods used for the felony.[19]

The judges were asked how often they use confiscation as part of the verdict. About 50% of them said that they some times use it. Some of them said that this

[19] With the changes of the Criminal Code from 2009, Official gazette of the Republic of Macedonia no. 114/09 in article 98–a the expanded confiscation was introduced.

measure should be proposed at the early stage of the investigation i.e. to freeze the free usage of the property so that it is not alienated during the duration of the procedure, which might take up to several years upon which it might happen that there is no property on name of the defendant.



- **How often is the measure confiscation issued**

Only 17% of the judges issue this measure very often, while 33% of them have never issued it. Some judges gave interesting answers, that they do not have practice to issue this measure, that it is a very complicated procedure and that it would cause additional delay in the criminal proceeding because they will need to gather plenty of data on the status of the belongings and property of the defendant.

11. Having in mind that the judges face this problematic on daily bases, they were asked to offer opinion on how to improve the situation in the sphere of corruption or more precisely what needs to be undertaken in order to improve the results of fighting the corruption in the society.

Most of them pointed out the investigation as the point that has the best opportunity for improvement, i.e. to provide the evidence in the earliest stage of the proceedings. Some judges pointed out that the sanctions also need to be stricter.

D. Monitoring and cooperation

The multi-annual efforts of the Coalition to monitor the criminal proceeding for corruption related felonies were greeted by all of the judges that were interviewed. They pointed out that the presence of the professional individuals in the course of the trial, as observers, influences the judge so that he/she makes additional efforts to have a better quality hearing. They were especially interested in the results from the monitoring i.e. to determine the flaws and the directions to surpass them.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions[20]

- The felonies *abuse of official position and authorization* and *fraud* dominate each aspect of the monitored cases. This takes us to the conclusion that the other corruption related felonies (contained in the research) are rarely performed or the operational weakness of the persecution bodies enable efficient fight only with the mentioned felonies – abuse of professional position and competency and fraud.

- The profile of the felon perpetrating corruption related felony consist of the following elements: he/she lives in urban environment, at the age between 36 and 55 years, mainly of Macedonian nationality, citizens of the Republic of Macedonia, with completed secondary or university education.

- The Ministry of Interior has a dominant position when submitting the criminal charges (62 %), due to its operational set up, the specific work tasks, and the large staffing mainly at operational positions.

- Corruption related felonies are mainly a one person job and maybe 2 individuals are involved in performing the felony, in order to maintain the conspiracy element and continue future criminal activities.

- The special hearing measures to prove facts are used rarely. Almost all of the ones used were for cases at the Principal Court Skopje I, and the used measure was secret surveillance and following.

- Although the legislator limits the timeframe from the submission of the prosecution act to the first hearing, still the data point out to the conclusion that in only 4% of the cases the legal timeline was followed. This is worrying having in mind that this part of the procedure is taken into consideration when evaluation f the trials is in a reasonable time frame, and it is directly linked to the violation of Article 6 paragraph 1 of the European Convention on Human Rights.

[20] There are two types of data, from the monitoring of the court cases and from the interviews with the judges. For each question there is collision in the received answers so the analysis will offer different positions of the judges compared to the data received from the monitoring.

- Objection to the prosecution act was submitted in 36 cases (23 %) but what strikes out is that all of them were rejected. As a reminder, last year in the monitored cases there were also 18 objections, and these too were all rejected.

- Although these are very sensitive felonies that involve acquiring illegal material benefits, and the risk of the defendant avoiding to face justice is very high, still in some 80 % of the cases the measure of securing the presence of the defendant was never used.

- In line with the data received from the monitoring, the measure detention was used in 20 cases. If we have in mind that a total of 154 criminal proceedings were monitored, maybe we can draw the conclusion that its use is not of large proportions, but if we look at the umbers differently i.e. that out of 468 defendants, detention was used with 218, then the situation is completely different.

- In all 20 cases where detention was used as a measure, the court where the cases were processed was the Principal Court Skopje 1. Hence the conclusion is that in this court the measure detention is easily issued unlike in the other courts. We could offer a better explanation of the reason behind this occurrence if we had had a chance to interview the judges in this court, but that opportunity was never offered to us.

- About 80 % of the cases took place in front of the court council comprise of one professional judge and two members of the jury.

- Most defendants or 60 % used the right of formal defense, i.e. they had a defender, including cases of obligatory defense.

- As a rule, the hearings were conducted in the presence of the defendant, meaning that the defendant was given an opportunity to directly participate in the defense and only in rare cases the hearing was performed in the absence of the defendant.

- The most frequent reasons that led to postponement of the main hearing are the following: provision of material evidence and inviting new witnesses on the stand.

- The temporary provision or confiscation of goods and properties are also not used too frequently. Out of 154 monitored corruption cases only in 6 or 4% this measure was used which is too few because as per definition the corruption related felonies are illegal actions that lead to the acquisition of huge material goods.

- The most frequently used evidence materials are statements of the defendant and the witnesses. This conclusion has been present in almost all reports; in 2009 the most often used material evidence was the statement of the defendant and the witnesses while the forensic expertise was with the rarest usage.

- The forensic expertise is one of the most rarely used evidence. Looking at the data we can conclude that in a large measure the facts are determined through other evidence material and thus there is no need to use forensic expertise or the reason behind this is that thee measures incur serious financial expenses so they are deemed as unnecessary.

- This year the number of verdicts that were immediately released decreased, while in 2009 this number was around 53 %, this year it went to 33 %. On the other hand there are more verdicts that were announced after more than three days of their passing; this number in 2009 was 11 % while this year this number went to 23 %.

- The first instance courts that deal with cases with corruption related felonies in most of the cases passed condemning verdicts which pints to the success of the prosecutors to provide arguments to the prosecution acts in the course of the main hearing. If we add to this the fact that all the objections to the prosecution act were rejected, we can conclude that the prosecution was at the needed level. On the other hand we have the data resulting from the interviews of the judges who complain that the convictions were not prepared well and that they experience problems in communication with the institutions fro m which they need additional evidence. This points out to the fact that the quality of the prosecution acts needs to be improved.

- The judges practice relatively low sanctions against the perpetrators of corruption related felonies. This does not do justice to the prevention role of the penalization, and even less the special prevention.

- The first instance courts when deciding on corruption related cases honored the principle of reasonable duration. For 68 % of the cases the verdict was reached in a time frame of up to 6 months, and this is for praise having in mind the specific character of the felonies and the manner in which they are proven.

- The judges believe that the persecution bodies are not in a condition to successfully identify corruption related felonies, and thus detect them and document them.

Recommendations

- Having in mind that the main objective of the investigation is to gather evidence and data needed to pass a decision if there is basis to initiate a prosecution act or not, the range of the investigation should not be too extensive or too tight, but adjusted for each specific case and its needs. The investigation is not to be expected to give an answer to all questions that arise in a concrete trial, it only needs to make provisions so that the decision of the further course of the criminal proceeding can be passed; it is the main hearing where all the necessary facts are determined. Still, here we need also to have into consideration that the position on this issue of the judges is that very often in corruption related cases they need to collect additional evidence which influences heavily the efficiency of the procedure. Namely their position is that the largest portion of the evidence is to be collected during the investigation and even though it would make it longer, that would also decrease the need to gather additional evidence later on during the main hearing which is currently prolonging the entire procedure.

- To respect the legal provision regarding the timeframe from the submission of the prosecution act until the scheduling of the first hearing.

- To lead restrictive policy with regard to the detention, as a measure to ensure the presence of the defendant; this measure was issued in 20 of the monitored cases but it was used with around 50 % of the defendants.

- To make sure that the duration of the detention is minimal i.e. to be used only for the time that is necessary.

- Trial in absence to be only acceptable under extraordinary circumstances because the presence enables the defendant to have a full view of the trial and also to assist them in the construction of the defense.

- To increase the measure for temporarily confiscation of goods and property, having in mind that the nature of these felonies is to acquire material benefits from these actions.

- To make efforts to increase the number of verdicts that are announced immediately since there is a considerable decrease compared to last year.

- To incite the success of the prosecutors so that they would prepare better arguments for prosecution acts, that would make the work of the courts easier and would shorten the duration of the entire procedure.

- The courts need to pay attention to the penalty policy they use with the corruption felons; the penalties are mild, in most cases around the legal minimum, which is contradictory to the efforts to provide more serious protection of the goods that are protected from such felonies.

- The main motif to perform a corruption felony us the material benefit so the counter-motif should be the confiscation of the illegally acquired property, and the usage of the expanded confiscation. The courts need to use these instruments more often, of course once they have clearly determined the factual condition of the case.

- To keep the tendency of passing verdict in a shorter period of time, i.e. to have trials within the reasonable duration because that is one of the basic principles of the European Convention on Human Rights.

- To make efforts to provide financial means for forensic expertise (these have large influence on the correct determination of the factual situation); thus we would have the forensic expertise as evidence more often than it is the case now.

- In order to improve the capacity of the persecution bodies to identify corruption related felonies and their timely documentations, and thus considerably contribute to the further course of the procedure, it is recommended that trainings are to be implemented within these bodies on this subject matter.

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