JUDICIAL EFFICIENCY IN FIGHTING CORRUPTION

Report of the project „Corruption Trial Monitoring Programme"
in the Republic of Macedonia

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LIST OF MOST COMMONLY USED ACRONYMS

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

CONTENT

SUMMARY REPORT OF THE PROJECT „CORRUPTION TRIAL MONITORING PROGRAMME IN THE REPUBLIC OF MACEDONIA“FOR 2011

The report of the project "Corruption Trial Monitoring Programme in the Republic of Macedonia" for 2011 was prepared by **Associate Professor Gjorgji Slamkov, Ph.D.** (teacher of Criminal Law at the Faculty of Law at the European University - Skopje).

This paper is composed of three parts, divided according to the issue of elaboration, which are “**Introduction and Research Methodology”**, “**Analysis of the results from the monitored corruption cases in 2011”** and the final part determines “**Conclusions and recommendations”**.

1. The author in the first part - **Introduction and Research Methodology**, determines in four points the framework of the research i.e. the methodological approach applied, as well as the objectives of the research. Initially the author attempts to define the term "corruption" by using two definitions, the first one of Vito Tanzi and the second one of the World Bank after which he determines the etiological and phenomenological characteristics of the phenomenon, using criminal and criminological approach.

The author seeks to determine the criminal offences that are more frequently into contact with corruption and state their characteristics, identifying them both individually by separate object of protection, as well as jointly by a joint object of protection. He devotes a special attention to the methodological approach, where he determines certain weaknesses and suggests ways for their elimination in future research. Quite logically, in this part the author defines the objectives of the research by which he strives to get a full picture of the manner in which courts deal with corruption cases i.e. their efficiency.

2. The second part - **Analysis of the results from the monitored corruption cases in 2011** is essential and it contains the actual analysis of the data obtained in the research. This part consists of ten points that elaborate the complete criminal proceeding.

It describes the scope of research, presenting data that in 2011, 174 cases with 194 criminal offenses were monitored with a total of 548 defendants and 528 monitored hearings before 14 basic courts (Bitola, Veles,

Kavadarci, Kocani, Skopje I, Strumica, Tetovo, Stip, Ohrid, Gostivar, Kumanovo, Struga, Prilep and Negotino). The monitoring for 2011 covered 174 cases with 16 different criminal offences: Illegal interceding, Illicit manufacturing, Embezzlement, Unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors, Forgery of official document, Embezzlement in service, Tax evasion, Abuse of official position and authority, Unlawful influence to witnesses, Damaging or providing privileges to creditors, Forgery of document, Criminal association, False bankruptcy, Receiving bribe, Money laundering and other revenues from chargeable offence and Fraud.

The author concludes that most of the criminal proceedings in the monitored cases were for Abuse of official position and authority and Fraud, noting that such situation is repeated in every yearly research.

Year	Basic courts	Cases	Criminal offences	Abuse of official position and authority	Fraud
2009	9	110	110	68	32
2010	8	154	175	75	58
2011	14	174	194	96	51

Furthermore, the author determines the profile of the perpetrator of the corruptive criminal offence by the following characteristics:

- Lives in an urban environment;
- At the age between 46 - 55 years;
- Of Macedonian nationality;
- With secondary or higher education;
- Appears as a perpetrator for the first time;
- Citizen of the Republic of Macedonia.

In this part, the author provides suggestions for expanding future researches with new criteria, such as: the type of job and its impact on corruption, indicating at the same time that in almost all criteria high rates of missing information (N/A) are encountered, which leads to conclusions drawn only based on the data available. Therefore, he recommends in future researches efforts to be put for this phenomenon to be reduced.

In respect of the preliminary investigation, the author notes that MI has dominant position in submitting the criminal charges (44%), due to its operational set up, the specific work tasks and its large number of employees.

As a reminder, last year the contribution of MI in submitting charges was 62%. On the other hand, the role of the Public Prosecutor in the initiating proceedings is increasing i.e. from the last year's 14% it increases to 26%. This situation is salutary having in mind the fact that as of November 2012 the implementation of the new Criminal Procedure Law begins, which provides inter alia an emphasized role of the Public Prosecutor, particular through the implementation of prosecution's investigation. The author at the same time determines that the contribution of the inspection bodies to detection of these offences is insignificant, thus recommending strengthening of their capacities in respect of identification of corruption offences and their timely documentation, since this situation leads to transferring the burden of detection to other bodies, as well as to increasing the dark figure.

Regarding investigation the author concludes that in 90% of the cases an investigation was conducted, while in 10 % of the cases there has was no investigation i.e., an indictment was filed directly. Therefore, he concludes that in the monitored corruptive cases the indirect indictment dominates or the investigation is conducted as the first stage in criminal proceedings which means that during the detection phase the competent authorities do not provide the necessary evidence and quality, so the evidence must be obtained during the investigation phase. The author notes that in half of the cases the investigation lasted up to three months, which is consistent with the intention of the law, as well as with certain principles that require efficiency of the proceedings, especially the request for trial within a reasonable time. However, in 13 % of the cases the investigation lasted longer than 1 year, which is very hard to explain rationally.

It has been noted that the application of the special investigative measures is insignificant, in less then 10% of the monitored cases, the measure interception of communications is most often used and there is a great disparity among the basic courts regarding their application, mainly we find cases with these measures at the BC Skopje I.

The author recommends compliance with the legal provision stipulated in article 295 of the CPL which defines the timeframe from the issuing the indictment until the scheduling the first hearing. According to the data from the monitoring only 3% of the cases were processed according to the law, which strongly affects the efficiency of the proceeding. Therefore, he concludes that the president of the panel of judges is responsible for such situation. Namely, it is not acceptable the main hearing in every tenth case to be scheduled after one year from the date of issuing the indictment.

In terms of control of the indictment, a complaint against the indictment was filed in 17% of the cases, but most of them were rejected and an insignificant number was adopted – situation that has been continuously reported. The author concludes that this data goes in favour of the work of the public prosecutor, i.e. shows that the public prosecutor prepares quality indictments and therefore the complaints are rejected.

Measures of securing attendance of the defendant during the proceeding were issued in 37 out of 174 cases whereas in some of the cases several measures of the same or different type were applied. The detention measure was applied the most – in 27 cases, mainly in proceedings for Abuse of official position and authority, prescribed and punishable according to article 353 of the CC and criminal association, article 394 of the CC. The majority of cases where detention was imposed were processed before the BC Skopje I, while the danger of fleeing was the most common reason for application of the detention measure.

Based on the data the author recommends application of restrictive policy with regard to the detention. Namely, as a measure for securing attendance of the defendant, detention was imposed in 27 of the monitored cases, but it was used for 47% of the defendants (of the 548 defendants, the measure detention has been issued for 255 persons). Once again the research showed that the judges use the measure guarantee rarely, only in 2 cases, that opens room for discussion on the reasons for such a position, whether is it a lack of confidence or something else.

Regarding the main hearing, the author concludes that in 91% of the monitored hearings the composition of the participants in the proceeding was according to article 329 the CPL, as well as that most of the cases related to corruption (76%) were prosecuted by panels comprised of one judge and two lay judges.

6% of the hearings were performed in the absence of the defendant, mainly due to the unavailability of the defendant (there are relevant reasons for trial in the absence), less frequently due to the fleeing of the defendant. The author notes that the mentioned data should not be a surprise since the measure detention was imposed to 47% of the defendants, which implies that it secures the attendance of the defendant during the proceedings, although other measures for securing attendance were used in 37 cases. It is recommended trial in absence to be conducted only in exceptional circumstances (obsolescence of criminal prosecution or lost of evidence)

because the presence of the defendant enables the defendant to have a full overview of the trial and contribution in building the defence.

For achieving the goals of the proceeding, it is necessary the main hearing to be prepared and the case thoroughly examined by the presiding judge. During the main hearing, all legal rights of the parties have to be respected but at the same time attempts for delay of the hearing have to be prevented. To achieve the above mentioned, the judge needs to have full control over the case i.e. to be judge - manager, thus his behaviour will have the character of managing the court case. In fact, adhering to the principle of trial within a reasonable time is considered as one of the key elements of good judicial management. This obliges the presiding judge to timely undertaking procedural actions and successfully directing the process.

The reasons for postponement are various, though most frequent are: absence of the defendant (25% or 138 postponements), the need for obtaining new material evidence (17% or 93 postponements) and absence of the defence counsel (15% or 82 postponements). Rarely as reasons for postponement of the hearings occur the absence of the injured party (7% or 38 postponements) and the absence of the public prosecutor (6% or 32 postponements).

The need for a break is the most frequent reason to recess the main hearing (83% of the recessed hearings). It is noted that the data for 2011 regarding the reasons for recess of the main hearing are more optimistic compared to the ones for 2010, because the recesses due to obtaining evidence have been decreased (from 20% to 6%) and mainly the reasons for recesses were due to the need for a break.

The monitoring showed insignificant application of the measures for temporary securing and confiscation of goods and property i.e. only in 5% of the cases a decision for temporary securing or confiscation was adopted, which is too few because as per definition the corruption related offences are illegal acts that lead to acquisition of enormous tangible assets. Therefore, it is recommended that the use of measures for temporary securing and confiscation of goods and property be increased. The author emphasizes that these data have a negative effect in dealing with corruption, namely the law enforcement bodies are obliged to initiate and the court to apply the temporary measures more often because they have an essential role in the realization of the criminal policy for this type of crime.

In the adjudication of the corruption related criminal offences, the court still rely mainly on the statements of the defendant and the witnesses. Thus, the testimony of the defendant accounts for most of the presented evidence - 25% and the testimony of the witness for - 22%. The author notes that the character of the corruption acts, particularly the most common ones – abuse of official position and authority and fraud, requires written documents and material evidence to have a central role in the proving process. He emphases that it is necessary to increase their participation, which means greater efficiency of the law enforcement bodies in detecting and providing this type of evidence.

According to the monitoring data in 2011, same as the previous 2010 there has not been a single case where a request for inclusion in the program for protection of witnesses was submitted in none of the cases, thus this mechanism for quality protection of witnesses and proving legally relevant facts in corruption criminal offences is not being used. This data does not correspond to the nature of the corruption offenses nor to the need for providing evidence, and does not correspond to the data that the witness statement is one of the most commonly used evidence. This situation requires further research on non-use of quality protection of witnesses and collaborators of justice.

The courts of first instance that deal with cases of corruption related criminal offences in most of the cases passed conviction judgment, which points to the success of the prosecutors to provide arguments for the indictments in the course of the main hearing. If we connect this fact with the fact that most of the complaints against the indictments were rejected, we may conclude that the prosecutors were at the required level. The author recommends keeping the tendency towards stricter penalties for perpetrators of corruption related criminal offences, taking into account their nature. Namely, there has been an improvement in this area in 2011 by the application of longer-term effective imprisonment penalties and higher fines. However, our system of criminal sanctions is versatile allowing imposition of other sanctions, particularly penalties and alternative measures for the perpetrators of corruption acts.

The trend of reducing the number of judgements that are pronounced immediately continues, so in 2009 this was the case with 53% of the judgments, in 2010 - 33%, while in 2011 it was reduced to 12%. On the other hand, exceeding the statutory term of 3 days occurred in 39% of the cases (in 2010 in 23%, while in 2009 – 11%). The author points out that this is a

continuous negative trend that has to be stopped and recommends things to reverse, in accordance with the law. Quite logically, he raises the question why this happens, or why this treatment continuously grows. He locates the responsibility within the judges in seeking answers - whether they are too busy, or is it the scope and complexity of the case or is it something else at stake. The author stresses that the monitoring did not provide data on this issue, but he recommends future researches to address it.

The author has remarks on non-application of the extended confiscation. This measure was expected to provide significant results in fighting against corruption, but the monitoring data from 2010 and 2011 show that it has not been used or its application has been insignificant. The application of this measure requires greater engagement of the court, as well as of other bodies, primarily financial ones, but its application will provide a more thorough case examination and confiscation of criminally acquired tangible assets from third parties. Therefore, the author recommends its application in order fulfilling the purpose of punishment - the general as well as the specific.

Regarding the standards for fair trial, the author pays special attention to the trial within a reasonable time, whereas he explains the normative framework of our legislation, and then presents data obtained from the Supreme Court of the Republic of Macedonia on the manner this institution handle requests for protection of the right to trial within a reasonable time in 2011, with a special emphasis on the criminal matters.

He underlines the thesis according to which the longer the period from committing the act until the adopting the court decision is, the less intense the effects of the sanction are. In addition he states that as to the corruption criminality the time of discovery of the act does not match the time of committing the act, so what will be the time period depends on the professionalism and expertise of the law enforcement bodies.

In terms of the research, he concludes that a significant proportion of the cases still take unacceptably long time, so additional efforts for adjudication in a shorter time period, i.e. trial within a reasonable time, which is one of the basic principles of the ECtHR are necessary. In most of the cases, the duration of criminal proceedings in first instance represents a significant part of the overall period for the specific case, therefore it should be shortened, but without jeopardizing the purpose of punishment.

3. The third part of the report is titled **Conclusions and recommendations**. In this part, the author draws the most significant conclusions arising from the research, striving to go through every part of the proceedings, listing 22 conclusions. The recommendations provide guidelines for improvement of the judicial efficiency in handling corruption cases as well as for improvement of the methodological framework of future researches. Fourteen recommendations in total are presented. At the end of the report the author provides an overview of the literature used.

1. INTRODUCTION AND RESEARCH METHODOLOGY

The Project **"Corruption Trial Monitoring Programme in the Republic of Macedonia"** is implemented through the courts of the Republic of Macedonia for the fourth year.[1] Its realization is based on monitoring of a certain number of corruption related cases in the basics courts on the bases of which conclusions are drawn on the efficiency of the competent authorities in the fighting against corruption. Subject of monitoring have been judicial proceedings for precisely defined corruption criminal offences, in this case - 30 criminal offences in total, deriving from eight chapters of the special part of the Criminal Code, as follows:

- **Criminal offences against elections and voting** (Bribery at elections and voting),
- **Criminal offences against public health** (Unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors),
- **Criminal offences against property** (Fraud, Defrauding buyers, Unauthorized receiving of gifts, False bankruptcy, Causing bankruptcy by unconscientiously operation, Misuse of bankruptcy procedure, Damaging or providing privileges to creditors, Embezzlement),
- **Criminal offences against public finances, payment operations and economy** (Money laundering and other unlawful property gains, Fraud in transactions with securities and shares, Disclosure and unauthorized acquisition of a business secret, Illicit manufacturing, Tax evasion),
- **Criminal offences against duty** (Abuse of Official position and authority, Embezzlement in Office, Fraud in Office, Using property of the Office, Receiving bribe, Giving bribe, Illegal interceding, Covering up of the origin of oversized acquired assets, Disclosure of official secret, Abuse of state, official or military secret, Forgery of official document, Illegal collection or disbursement),
- **Criminal offences against the administration of justice** (Illegal influence on witnesses),
- **Criminal offences against legal operations** (Forgery of document) and
- **Criminal offences against the public order** (Criminal association).

Common feature of the above-mentioned specific criminal offences is their connection with corruption, i.e. the use of material resources for attaining an unlawful purpose. Thus, we encounter the criminal offence -

[1]The research includes data for the period from 01.01.2011 – 30.11.2011,

bribery at elections and voting in the group because of the significance of the electoral process in the formation of government and thus in the future development of the country. The voting right is equal and exercised on direct and secret elections that allow citizens to express their will freely. The emergence of corruption in this process shall mean directing the voting in a certain direction for a particular benefit, which moves the individual voting and the entire electoral process away from its goal.

The large profits that criminal organizations gain from the unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors is the reason that the criminal offence unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors is embedded in the group of corruption related criminal offences. These organizations for achieving their own goal, being gaining enormous revenues, use two instruments, the first is corruption and the second is violence.

The listed criminal offences from the chapter criminal offences against property may be divided in two groups, the first related to fraud, the second to bankruptcy. The essence of the fraud lies in misleading the victim on the existence of certain facts for acquiring property gains illegally or unlawfully. The damage from such behaviour is especially sensitive when the number of persons appearing as victims is higher or when it comes to detriment of large proportions. Criminal offences related to bankruptcy are included because of the need for existence of reliability in the economic activities, that participants in legal relations will fulfil their obligations to creditors on time. Causing false bankruptcy and especially the abuse of the bankruptcy procedure are more serious since a bankruptcy administrator may appear as an executor.

Full or partial tax evasion is regarded as one of the more serious criminal offences in the developed countries. Such conduct directly strikes the power of the state to achieve the planned economic policies and the functioning of the entire system. The consequences of all corruption related criminal offences from the group of criminal offences against public finances, payment operations and economy are sensitive in the economic area. We would mention the criminal offence money laundering and other unlawful property gains intended to prevent spill over of monetary assets derived from criminal activities in the legal financial payment operations. Even though in our country there are regulations for prevention of this phenomenon, control of the movement of money as well as a separate institution dealing with this

issue, still further work on this issue is needed due to the harmful consequences arising from such an offence. In this group of criminal offences, corruption may be present in the creation of the criminal goods/monetary assets or their legalization.

When talking about corruption and corruption related criminal offences, criminal offences against professional duty, namely the offense abuse of official position and authority is certainly one that comes into mind. The official position is normatively determined right and obligation of a person to take certain actions of a public character. These are authorizations established by an act, have a formal nature and their violation generates harm for a particular subject. These criminal offences are very sensitive to corruption since they test the ability of the holder of office to resist the challenge to profit at the expense of the objective and lawful operation. The criminal offence abuse of official position and authority emerges as the most often perpetrated criminal offence in the monitoring for 2011. As highly corruption related offences in this group we would point out - receiving bribe and giving bribe. These are explicit offences where the official position is subject of trade, the perpetrator has no doubt about his behaviour and knowingly unlawfully earns at the expense of lawful operation.

Among the criminal offences against the administration of justice, the illegal influence on witnesses is considered as a corruptive one. This offence however aims more at determination of the requirement for establishing the material truth, i.e. of enabling uninterrupted testimony against persons who are perpetrators of corruption related criminal offences.

Out of the group of criminal offences against legal operations, we have the offence - forgery of document. This is an offence that endangers the security of legal operations, especially if it is a public document or official book, which implies involvement of the person in charge of keeping such material.

Last but not least important is the offence - criminal association, from the group of criminal offence against the public order. The criminal association manifests a higher degree of danger to the common goods since it is a group determined to perform criminal offences and by definition, has no temporal nature but is designed to be permanent and achieve as greater criminal gain as possible. At the same time, it uses several methods of operation and one of the main is corruption.

1.1. Corruption - a concept, causes and consequences

Corruption is a social phenomenon with particularly harmful impact on the development of society. The consequences of corruption are far reaching, namely, its spread represents at least a "virus" capable of blocking the work of the government, discrediting public institutions and private companies, with a devastating effect on human rights, undermining the society and its development, a phenomenon that must be prevented and the fight against it should be in all forms. The fight against corruption is a comprehensive social action involving every potential: governmental and nongovernmental, national and international, expert and scientific, that in a preventive and repressive manner will enhance the sense of responsibility of all individuals in the community, which is the greatest guarantee for observing the principle of legality and the rule of law.

As a socially harmful phenomenon, corruption is as old as the state, so the ancient Athenians faced this social problem and therefore had a set of rules for its eradication. This problem occupied Machiavelli as well, who defined the term corruption as "qualitative regression of power". The term corruption often implies unlawful use of the social status and power for personal benefit. Starting from the strong influence of the egoism, we can say that in some sense the human nature is susceptible to corruption. Thus, to be selfish and aggressive it is enough just to pursue own instincts, but to be moral and good requires investing certain efforts to subdue the instincts. When living in an organized society, especially when performing a position of power and influence, a person is exposed to many temptations among which the threat of corruption is a primary one.

Among commonly used definitions of corruption is the one of Vito Tanzi[2]. According to him, corruption exists if there is an intentional violation of the principle of impartiality in the decision-making for the purpose of appropriation of certain benefit. Holding an office implies working for the interests of the society for improvement of the living conditions and the standard of all its members; these are offices in the politics, economy, health, education, security and other areas of social life. Holding an office represents gained trust from the rest of the members of the society that the entrusted rights and obligations will be performed in an objective and impartial manner. However, this definition includes not only corruption in the public sector but

[2] Vito Tanzi, Corruption around the world, International Monetary Fund Staff papers, Vol.45, No.4 December 1998, http://www.imf.org/external/Pubs/FT/staffp/1998/12-98/tanzi.htm

also in the private sector, which gives an extensive perception of the phenomenon. The violation of the principle of objectivity and impartiality opens the door for corruption. According to the definition of Tanzi, it is a conscious and desired i.e. intentional violation of impartiality in decision-making, intention designed for acquiring certain unlawful benefit.

Very often when defining the term corruption, the definition of the World Bank is used[3], according to which the corruption is an abuse of public office for private gain. It is a restrictive approach towards examining the phenomenon since it is limited only to the public sector and excludes the corruption in the private sector. When we talk about corruption we usually have in mind unlawful behaviour in the public sector, so the corruption in the private sector is put aside in some way, which is wrong since it exists (more attention should be paid to this phenomenon) and produces the same harmful consequences as the corruption in the public sector.

The exercise of the position of power and decision-making combined with the egoism and the desire for maximizing personal wealth, violating the legal norms, represents a “winning” combination for entering the world of corruption. How much this phenomenon will be present in practice depends on the manner of functioning of the whole system, i.e. if the society is heavily corrupted it will be much easier to enter into corruption since the system is weak or there is no responsibility for the harmful effect. When we talk about a system, we have in mind all institutions, but in the forefront, the police and other inspectorates responsible for law enforcement, public prosecutor’s office - the leader in the fight against overall crime, the courts (all instances) - which should impose sanctions on the perpetrator of the corruption offence, but also to confiscate goods acquired in a criminal manner, the penitentiary institutions - through appropriate programs to achieve reconciliation of convicted person and change in his awareness (to conclude that crime - corruption is not a way of life), the services for post-penalty treatment - should fit him into the daily life in freedom, i.e. to achieve his adaptation without criminality. This is a rather complex system and even if only one of its links is dysfunctional - "corrupted" then it is only a matter of time before the whole system is “infected”. Therefore, building strong and permanent policies against corruption with quality institutions for implementation is the solution for a successful fight against it.

[3] http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm

Essentially speaking, in every society there is a certain degree of corruption, it cannot be completely defeated, nor a creation of a system absolutely resistant to corruption is possible, but it is possible by a series of measures to reduce its extent, i.e. to move from high to low corruption. In societies with a low degree of corruption priority is placed at creating new value, improving the welfare… On the other hand, the societies with a high degree of corruption can not be proud of creating new values, when there is redistribution of existing values i.e. such societies have no perspective.

The corruption has long lasting effects on society being primarily economic and social effects that create lack of ideas in the system and high degree of poverty. Practically, it leads to stratification in the society whereupon the poor become even poorer thus making social problems hardly solvable. The consequences of corruption depend on the types of corruption that dominate, while as a very dangerous is considered any corruption that allows enactment and enforcement of laws and other regulations according to personal interests of certain individuals or groups.

1.2. Project continuity[4]

The Project "Programme for Monitoring of the Corruption Court Cases in the Republic of Macedonia" was initiated in 2008. However, the origin of the project dates back to 2007 when a 6-month pilot phase entitled "Evaluation of the need to develop a program for monitoring of the corruption related court procedures in the Republic of Macedonia" was undertaken by "All for Fair Trials" Coalition in cooperation with the NGO "Transparency – Zero Corruption".

The pilot project determined the corruption related criminal offences [5] (with the research in 2011, 30 separate criminal offences have been covered, i.e. despite the 24 criminal offences contained in the project, the following

[4] In 2011, 174 cases with 194 criminal offences were monitored, where as defendants appear 548 persons on 528 monitored hearings in 14 basic courts.

[5] The definition of corruption contained in 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", included 24 criminal offences in total, such as: Bribery during elections and voting, Fraud, Defrauding buyers, Unauthorized receiving of gifts, False bankruptcy, Causing bankruptcy by unconscientiously operation, Misuse of bankruptcy procedure, Damaging or providing privileges to creditors, Money laundering and other unlawful property gains, Fraud in transactions with securities and shares, Disclosure and unauthorized acquisition of a business secret, Embezzlement in Office, Fraud in Office, Using property of the Office, Receiving bribe, Giving bribe, Illegal interceding, Cover up of the origin of oversized acquired assets, Disclosure of official secret, Abuse of state, official or military secret, Forgery of official document, Illegal collection or disbursement and Illegal influence on witnesses.

criminal offences were included as well: Illicit manufacturing, Embezzlement, Unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors, Tax evasion, Forgery of document and Criminal association) and empirical materials have been collected that helped in identification of several problems the prosecution bodies face when working on corruption related cases.

The multiannual continuity of the project enables an in-depth analysis of the situation in this sphere as well as of the capacities of the judiciary to deal with corruption cases. It is also important that this continuity provides possibility for creation of a comparative analysis that by comparing the results from the annual reports, the progress in the work of the courts when dealing with cases containing elements of corruption will be noted.

The annual reports end with conclusions on noted condition as well as recommendations for strengthening the judiciary capacity, taking into account the impact of corruption on the performance of institutions. Actually in this part may be noted whether certain issues have progressed or regressed compared to the previous year, which represents an indicator of undertaking certain initiatives for improvement of the situation.

1.3. Objectives of the research

Starting from the harmful effects of the corruption, the research should go depth into the conduction of the judicial corruption cases i.e. the data should provide a clear picture of their course that will indicate whether there were certain weaknesses in the course of the proceedings and if the answer is yes, will note them in order to make easier finding appropriate solutions. This is precisely one of the objectives of the research, analysis of data obtained by monitoring of court cases of criminal offences related to corruption. Such analysis will provide grouping of data according to the stage of the proceedings to which they belong, thus the extracting conclusions on certain issues would be even more precisely.

Determining the profile of the convicted person for corruption criminal offence will enable creation of solutions for overcoming the situations in which a person is pushed into committing a criminal offence - in this case a corruption related criminal offence. From these data it will be determined the most common age of the perpetrators, level of education, whether he/she is recidivists and similar circumstances. Particularly important is to be determined the working position that is most commonly involved in

performance of these criminal offences, taking into account that the majority of corruptive offences are double sided, meaning there is a system of favour - returned favour.

The detailed analysis of all phases of the criminal procedure is next objective of the research. Previous investigation as a start of whole sequence is also included. Actually, reviewing all stages will allow us to have a full insight into the movement of the case thereby to monitor the activity of all subjects, as well as the manner of performance of the legal obligations. From the moment of making a decision for conducting an investigation until the first instance judgement is passed, there are set of actions, intertwined with each other, assigned to subjects that participate in the procedure. Filing a complaint against the indictment, recess or postponement of the main hearing, application of special investigative measures or measures to securing the defendant, are some of the actions; but these are basic questions on which a huge number of sub-questions may be attached in order to create a real mosaic-summary of the whole research. Achieving this objective requires a particular engagement during the monitoring i.e. many questions and sub-questions, keeping in mind that in any case a number of specifics may occur, thus leading to taking procedural actions unnecessary in other cases. Analysis of the duration of the proceedings i.e. observing the right to trial within a reasonable time is the next objective. It is necessary the period from taking the first procedural action until the passing the judgement to be determined. This issue deserves attention from the aspect of the role of the Supreme Court of the Republic of Macedonia in the protection of this civil right.

The analysis of the penal policy of the courts towards perpetrators of corruption related criminal offences is needed in order the type of sanctions imposed on the perpetrators of such offences to be determined. We claim that corruption is a very harmful phenomenon that seriously undermines the system, so existence of more serious response including from the courts, in respect of sanctions and measures for confiscation of the illegally acquired i.e. confiscation and especially, extended confiscation, would be logical. According to the CC, courts have an extensive set of instruments for sanctioning the perpetrators of these offences, but they should always select the measure that will have the best effect, in respect of prevention as well as in respect of justice.

Each of the objectives provides an answer for the respectful area and their linkage in a whole will allow construction of a realistic picture of the

current situation as well as prediction of next steps for improvement of judicial efficiency by respecting the guaranteed freedoms and rights.

1.4. Method of research

Each research relies on the use of specific methods, which represents the way to approach the specific subject of the research. Methodologically speaking, the research in this case was conducted using two methods: monitoring and questionnaire. The monitoring as a method provides direct sensory perception by the monitors. That means direct registering of both the main event/subject of research and the side/accompanying occurrences. The monitors in the course of realization of the research in 2011 monitored 528 hearings in total.

The second method is an instrument prepared in advance - a questionnaire consisting of 64 questions. The content of the questionnaire includes all phases of the criminal proceedings and it was conceived in such a way that it provided information on the separate segments of the subject of the research:

- Court where the case is processed, number of members of the panels of judges, name and surname of the president of the panel of judges;
- Date of the monitoring, duration of the hearing, as well as the ordinal number of hearing for the same case monitored;
- Data on the defendant;
- Criminal offence and description of the specific case for which the proceeding is conducted;
- Interval of committing the criminal offence, from the moment of the performance of the first actions until the moment it has been discovered;
- Whether there has been an investigation and if it has, duration of the investigation;
- Whether there has been an order for undertaking special investigative measures;
- How much time has elapsed from submission of the indictment until the first hearing/has the defendant filed a complaint against the indictment;
- Whether there has been a proper summoning of the persons whose attendance is necessary for the main hearing;

- Data on the number of cases that are processed in absence or cases where an order for detention has been issued;
- Whether there are any measures ordered for ensuring attendance of the defendant;
- Whether a measure detention is applied, and if it is, what was the ground and duration of the detention;
- Data on the main hearing;
- Reasons for postponing or recessing the main hearing;
- Has the court issued a penalty for the counsel (or another person) that had offended the court or another person in the proceeding;
- The course of the procedure of examining evidences before the court (with an emphasis on the witnesses and the expert witnesses);
- Data on the judgement (date of pronouncing the judgement, type of the judgement and the criminal sanction, whether the court decided to confiscate property or order extended confiscation);
- Whether the standards for fair trial have been respected,
- Time elapsed from the beginning of the court proceeding until pronouncing the judgement.

The monitors, who directly attended main hearings in a role of interviewers and judges or court services, filled in the questionnaire. It should be noted that a significant number of questions were answered with the formulation “no data available” ("n/a") that had a great impact on drawing the individual conclusions. Therefore, we recommend in future researches monitors to take a more active role in order to prevent this occurrence. In addition, it is necessary the monitors to ask questions that are more detailed in order to get a clearer picture of the cases, since in the details of the case some weaknesses or strengths in handling the case may be located. Monitors are required to have an active approach both for answering the formulated questions and those arising during the research but have a crucial impact.

In this context, in future, the methods of research should be reviewed and it would be useful interviews to be made with criminal judges of those basic courts that are more burdened with corruption cases. As a reminder, the research for 2010 used data from direct interviews with judges of the basic

courts,[6] while interviews with judges were not made within the research for 2011.

In order to be determined how in practice protection of the right to trial within a reasonable time is performed, the Coalition submitted request to the SCRM to obtain information on dealing with requests for determination of a violation of the right to trial within a reasonable time for 2011, with special emphasis on the criminal part. The request was positively answered and the data obtained are discussed in the part on standards for fair trial.

2. ANALYSIS OF THE RESULTS FROM THE MONITORED CORRUPTION CASES IN 2011

The analysis of the results from the monitoring of the court cases related to corruption in 2011 points to improvement in certain areas, but at the same time shows weaknesses in the areas where conditions previously noted a positive trend. Generally, the court proceedings took place in the presence of the defendant, in the presence of his counsel before panel of judges composed of one judge and lay judges. Emphasis is placed on the increased attention dedicated to the principle of trial within a reasonable time, but a significant proportion of cases still take unacceptably long time. Compared with last year, in 2011 courts practiced stricter sanctions on the perpetrators of corruption related criminal offences, such as longer effective imprisonment sentences and higher amounts of fines (other sanctions have not been applied).

The extended confiscation remains a week point, so last year this measure has been used in one case, while in 2011, according to the monitoring data it has not been applied at all. This is a very important instrument against illegal acquisition of material goods that requires more profound analyzes of the case in order various transactions for concealing the criminally acquired property to be prevented.

The European Commission Progress Report for the Republic of Macedonia for 2011,[7] more specifically the Chapter 23 – **Judiciary and**

[6] Monitoring of court cases with elements of corruption in 2011 was performed in 14 basic courts in the Republic of Macedonia as follows: Bitola, Veles, Kavadarci, Kocani, Skopje I, Strumica, Tetovo, Stip, Ohrid, Gostivar, Kumanovo, Struga, Prilep and Negotino. For comparison, 8 basic courts were covered in 2010 and 9 basic courts in 2009.

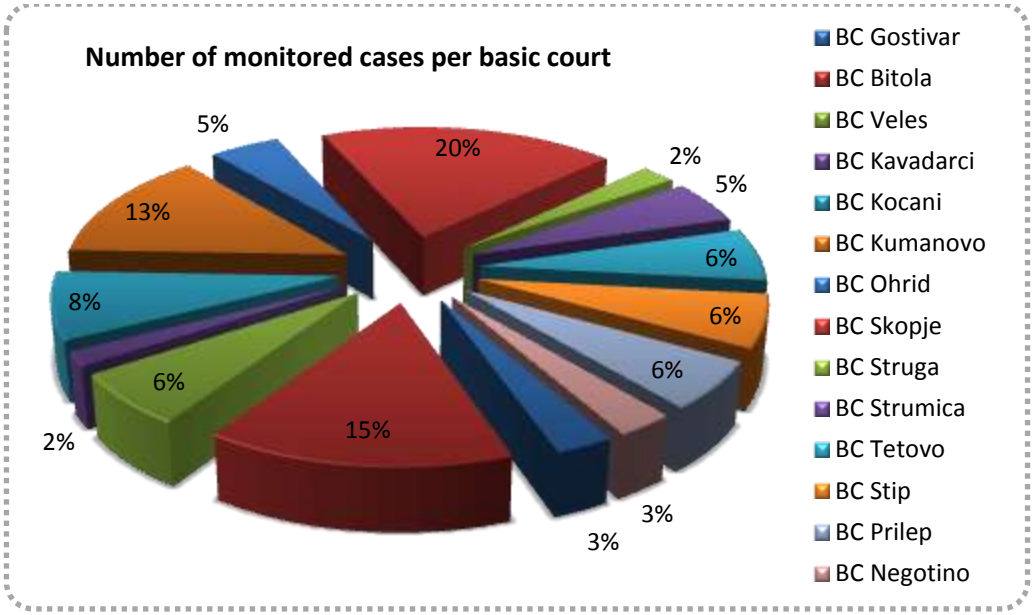
[7] The Former Yugoslav Republic of Macedonia 2011 Progress Report, European Commission Brussels, 12.10.2011, p. 60

fundamental rights, contains data and recommendations for dealing with the corruption. Namely, according to it, some progress was made in the area of anti-corruption policy, amendments were adopted with a view to implementing GRECO's third round recommendations (transparency of party funding, both during election and non-election years).

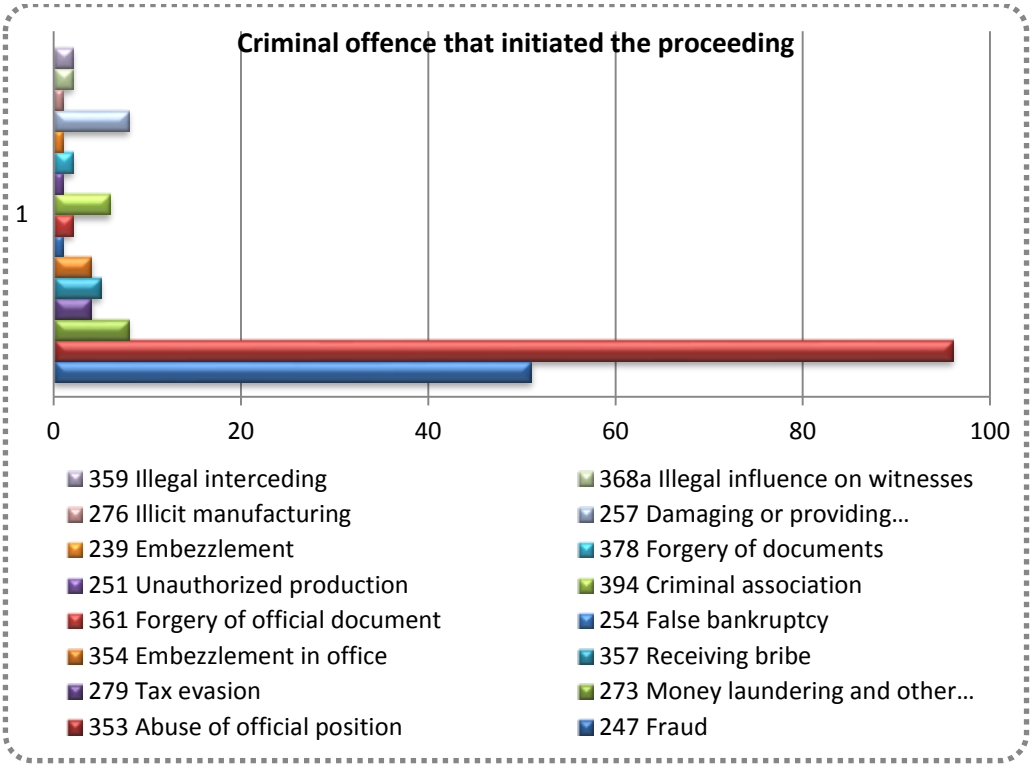
Despite that, EC recommends adoption of the 2011-2015 State programme for prevention and repression of corruption and the State programme for reduction of conflict of interest. It is recommended that the capacities of the State Commission for Prevention of Corruption, Anti-corruption Unit within the Organized Crime Department of the Ministry of Interior and the Public Prosecutor's Office to be strengthened. The Report stated that the capacity of the judiciary to deal with sensitive high-level corruption cases remains week, the courts for such cases apply lenient penalties and the application of the measure confiscation of assets is insignificant.

It is recommended establishment of a consolidated statistics, which track the investigation, prosecution, conviction and sentencing, in order to better inform the public of the progress made in suppressing the corruption, as well as to facilitate the preparation of future strategies.

2.1. General information on the monitored cases



In the course of 2011, the Coalition's monitoring team monitored criminal proceedings in 174 cases for corruption related criminal offences processed at the basic courts in the Republic of Macedonia, which are 20 cases more than in 2010. Regarding their distribution per basic court, we may conclude that almost 50% of the monitored cases regard the Basic courts Skopje I (20%), Bitola (15%) and Kumanovo (13%). The remaining courts participate with smaller percentage, from 2 to 8%. One may note that the monitoring in 2011 includes higher number of cases and courts and a certain balanced inclusion of the both. Thus, in 2010 most of the monitored cases regarded the Basic Court Bitola (33%), while the remaining courts were less included. This structure may affect the drawing conclusions i.e. they to be based only on the operation of few basic courts, so we may say that the monitoring data for 2011 provide greater territorial representation.



In the course of the research, court proceedings in 174 cases were monitored thus it should be noted that in some cases the court proceedings

were conducted under several articles of the CC,[8] so as a result the monitoring included 194 criminal offences.

Regarding the monitored criminal offences, we may conclude that the most common criminal offence is the one under the article 353 of the CC – abuse of official position and authority amounting to 96 out of 194 offences, thus making this offence subject to proceedings in nearly 50% of the monitored cases. The second place belongs to the article 247 of the CC – the criminal offence fraud being subject to proceedings in 51 cases (26%). We come across other criminal offences in the rest of the monitored cases but in a much smaller scale. Consequently: the criminal offences money laundering and other unlawful property gains – article 273 and damaging or providing privileges to creditors – article 257 are contained in eight cases, the criminal offence criminal association - article 394 of the CC is contained in six cases, the criminal offence receiving bribe – article 357 of the CC is contained in five cases, the criminal offences tax evasion – article 279 and embezzlement in office – article 354 of the CC are contained in four cases. Twice encountered in the monitored cases are the criminal offences: forgery of official document – article 361, forgery of document – article 378, illegal influence on witnesses – article 368a and illicit interceding – article 359 of the CC. Once encountered in the cases are the criminal offences: false bankruptcy – article 254, unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors – article 215, embezzlement –article 239 and illicit manufacturing – article 276 of the CC.

From the above stated, we may note that the criminal offences – abuse of official position and authority and fraud dominate thus out of 194 criminal offences subject to proceedings they encompass 147 criminal offences i.e. approximately 75 % of the cases.

If we compare these results with the results from the previous two years,[9] we may conclude that regarding the predominant criminal offences

[8] 174 cases for 16 different criminal offences were monitored in 2011: Illegal interceding, Illicit manufacturing, Eembezzlement, Unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors, Forgery of official document, Eembezzlement in Office, Tax evasion, Abuse of Official position and authority, Illegal influence on witnesses, Damaging or providing privileges to creditors, Forgery of document, Criminal association, False bankruptcy, Receiving bribe, Money laundering and other unlawful property gains and Fraud.

[9] In 2010, 154 proceedings were monitored (related to 17 criminal offences) Judicial efficiency in fighting corruption in the Republic of Macedonia, Coalition "All for fair trials", Skopje January 2011, page 12. In 2009, 110 proceedings were monitored (related only to 9 criminal offences), Judicial efficiency in

the situation is almost identical. So in 2010, the criminal offences abuse of official position and authority and fraud were contained in 133 out of 175 criminal offences subject to proceedings or in 133 out of 154 monitored cases respectively. The situation is similar in 2009, when the criminal offence abuse of official position and authority was contained in 68 out of 110 proceedings, while the criminal offence – fraud was contained in 32 proceedings.

Year	Basic Courts	Cases	Criminal offences	Abuse of official position and authority	Fraud
2009	9	110	110	68	32
2010	8	154	175	75	58
2011	14	174	194	96	51

The research results continuously show that court proceedings for corruption cases is most often initiated for abuse of official position and authority and fraud, emphasising the first one since their ratio is nearly 2-1. The offence abuse of official position and authority, article 353 of the CC, is "pure corruption offence", offence against official duty. Any person who has been granted certain public authority, power to make decisions, may commit such offence. The large participation of the criminal offence within the research sample leads us to conclude that people vested with such authorizations in our country are under strong pressure to abuse their position for satisfying personal material appetites and hence the moral system is at a lower level. This shows that one should work with the public and the holders of such functions in order to be understood that the official function is a commitment to work for improvement of the living conditions of the entire community. On the other hand, the high percentage of proceedings for this criminal offence shows that the prosecution bodies successfully detect and document such cases, but another sub-question arises i.e. whether the penal policy is appropriate for the perpetrators of this offence and whether the system fulfils the general prevention.

In every research, the offence fraud, article 247 of the CC, holds the second place in participation in the court cases. its circle of perpetrators is larger, it is not only the holders of official authorities and that is concerning since it creates a higher degree of instability in the everyday property related legal relations. The consequences of this offence are especially sensitive when

fighting corruption in the Republic of Macedonia, Coalition "All for fair trials", Skopje February 2010, page 9

by its committing, a larger number of people are damaged or a damage of significant scale it caused.

For improvement of such situation, work on preventive and repressive plan is necessary, in other words broader social action for introducing the importance of the goods and values being violated by committing the mentioned offences and eventually making sanctions more rigorous.

Basic Court	Cases	CO	247 Fraud	353 Abuse of official posit...	273 Money laundering ...	279 Tax evasion	357 Receiving bribe	354 Embezzlement in office	254 False bankruptcy	361 Forgery of official...	394 Criminal association	215 Unauthorized production	378 Forgery of document	239 Embezzlement	257 Damaging creditors	276 Illicit manufacturing	368a Illegal influence on witnesses	359 Illegal interceding
Gostivar	5	5	0	4	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Bitola	26	26	10	13	0	0	0	1	1	0	0	0	0	0	1	0	0	0
Veles	11	11	3	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kavadarci	3	3	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kocani	14	15	3	10	0	1	0	0	0	0	0	0	0	1	0	0	0	0
Kumanovo	23	23	6	13	0	0	0	1	0	1	0	0	0	0	0	0	2	0
Ohrid	8	8	6	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Skopje	34	50	0	24	8	3	4	0	0	0	6	1	1	0	1	1	0	1
Struga	4	4	2	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Strumica	9	9	4	4	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Tetovo	11	11	6	4	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Stip	11	14	2	7	0	0	0	1	0	0	0	0	1	0	2	0	0	1
Prilep	10	10	2	6	0	0	0	0	0	0	0	0	0	0	2	0	0	0
Negotino	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	**174**	**194**	**51**	**96**	**8**	**4**	**5**	**4**	**1**	**2**	**6**	**1**	**2**	**1**	**8**	**1**	**2**	**2**

Question arises what is the situation with the remaining corruption related criminal offences. Are they really so rarely committed in real life (for example tax evasion, receiving bribe or illegal interceding)? It is likely that there are dark numbers for these offences, since their committing serves both sides. Therefore, the detection function of the competent authorities should be mobilized, not only of the MI, but also of the other inspection bodies responsible for law enforcement.

Using the methods of analysis and comparison, a detailed overview on the qualitative and quantitative workload of the courts covered with the monitoring may be produced. Thus, in the BC Skopje I 34 cases with 50

criminal offences have been monitored, where most of them or 24 are abuse of official position and authority. It may be pointed out that the offence fraud, the second most common offence in the monitoring, has not been encountered in any case processed by the BC Skopje I, while all the cases connected to money laundering and other unlawful property gains (eight) and criminal association (six) were processed by this court. The situation is similar for the offences tax evasion (three out of four cases) and receiving bribe (four of five cases).

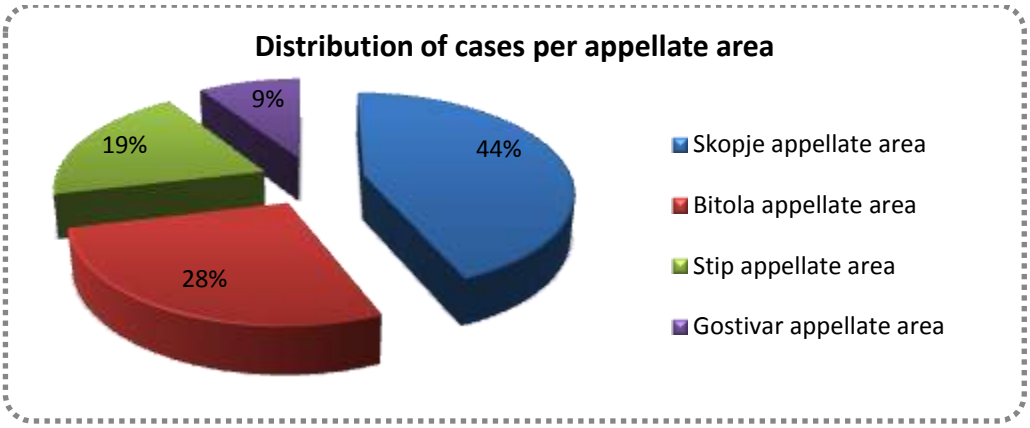
Unlike last year when the BC Bitola had processed most of the monitored cases, its participation this year is smaller, thus 26 cases with 26 criminal offences. Out of them, the offence abuse of official position and authority is encountered in 13 cases, while the offence fraud has been processed in 10 cases. Once processed have been the offences: embezzlement in office, false bankruptcy and damaging or providing privileges to creditors. The BC Kumanovo is on the same level, with 23 cases for 23 criminal offences. The abuse of official position and authority has been processed in 13 cases, while fraud in 6 cases. Both cases for illegal influence on witnesses have been processed at this court. Proceedings for embezzlement in office and forgery of official document have occurred only once.

The second group is consisted of courts where 14-8 cases have been monitored. The BC Kocani is a leader in this group, with 14 monitored cases with 15 criminal offences, out which 10 for abuse of official position and authority and 3 for fraud. The only embezzlement case has been processed at this court. In the BC Stip 11 cases with 14 criminal offences were monitored, and the ratio of the most common is 7 – 2 in favour of abuse of official position and authority. Similar situation may be noted in the BC Veles, where 11 cases have been processed for 11 criminal offences, 8 abuses of official position and authority and 3 frauds. In the BC Tetovo, 11 cases with 11 criminal offences were monitored, majority lies at frauds – 6 frauds, 4 abuses and one case for forgery of official document. In the BC Prilep, 10 cases with as many criminal offences were monitored, out of which 6 are abuse of official position authority, 2 are fraud and 2 are damaging or providing privileges to creditor. The BC Strumica is represented with 9 cases and as many criminal offences. There has been an equal distribution of the most common criminal offences i.e. 4 frauds and 4 abuses of official position and authority, as well as one receiving bribe. The group ends with the BC Ohrid with 8 monitored cases with 8 criminal offences being 6 offences fraud, one offence abuse of official

position and authority and one offence for damaging or providing privileges to creditors.

The third group is consisted of several basic courts with the least coverage of the monitored cases. The BC Negotino participates with 5 cases, all related to the criminal offence fraud. The BC Gostivar has the same participation but with 4 cases processed for abuse of official position and authority and one case for the offence damaging or providing privileges to creditors. In the BC Struga 4 cases with 4 criminal offences have been monitored namely 2 cases for the offence frauds, one case for abuse of official position and authority and one case for embezzlement in office. Last in the group is the BC Kavadarci with 3 monitored cases, out of which 2 for the offence fraud and one for the offence abuse of official position and authority.

If the data for the number of cases and criminal offences are placed on the level of appellate areas, a conclusion may be drawn that in the largest one – Skopje appellate area, 76 cases with 92 criminal offences were monitored (in the basic courts Skopje I, Kumanovo, Veles, Negotino and Kavadarci); in the Bitola appellate area, 48 cases with 48 criminal offences were monitored (in the basic courts Bitola, Ohrid, Prilep and Struga); in the Stip appellate area, 34 cases with 38 criminal offences were monitored (basic courts Stip, Strumica and Kocani), whereas in the Gostivar Appellate area only 16 cases with as much criminal offences were monitored (in basic courts Gostivar and Tetovo).

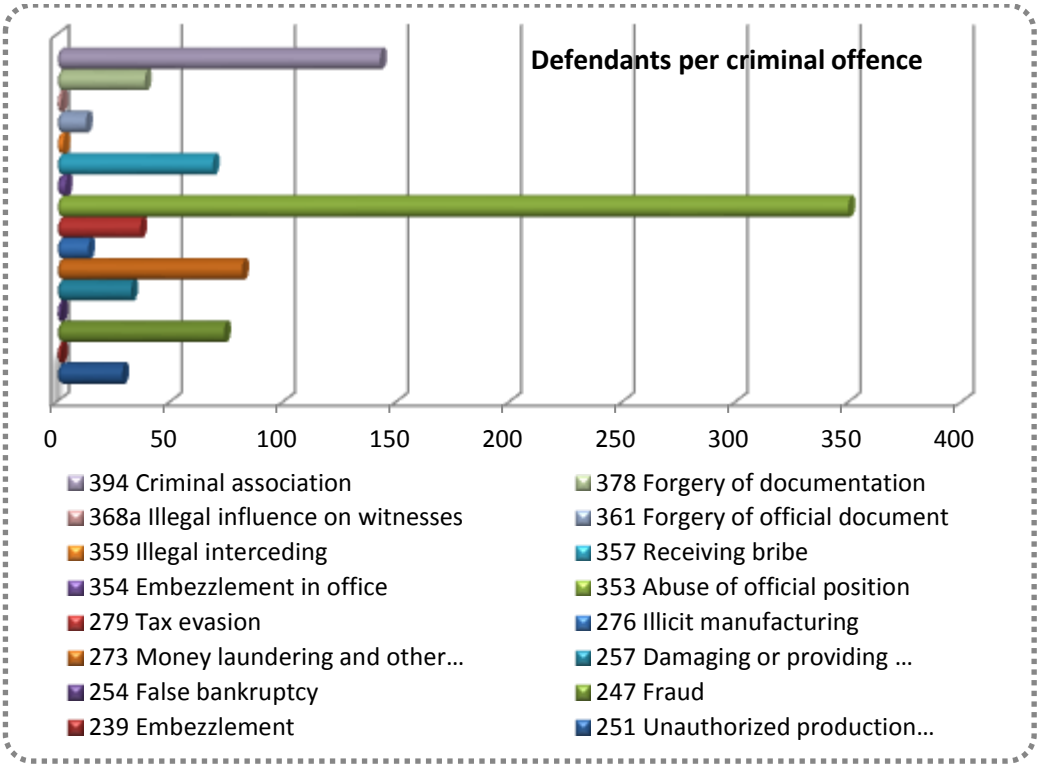


The largest percentage that is 44% of the cases that were monitored are those in the basic courts included in the Skopje appellate area, followed by the Bitola appellate area with 28% of the cases, the Stip appellate area with 19% of the cases and the Gostivar appellate area with the lowest percentage of 9% of the monitored cases.

Theoretically speaking, the research for 2011 has included 30 separate criminal offences i.e. in addition to the 24 offences of the project "Evaluation of the need to develop a program for monitoring the corruption related court procedures in the Republic of Macedonia", the following criminal offences have been included: illicit manufacturing, embezzlement, unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors, tax evasion, forgery of document and criminal association. However, the 2011 monitoring covered cases with 16 corruption related criminal offences (within the research the monitors have registered these offences in the court proceedings i.e. on the monitored hearings, there has not been any proceedings for the rest of the 14 separate corruption related criminal offences). At the same time an absolute domination of two corruption related criminal offences is noticed – abuse of official position and authority and fraud. As already mentioned that of the total of 194 criminal offences being subject to proceedings, they participate with 147 offences or of the total of 174 monitored cases they encounter in 147 cases. It should be noted that such situation has been noted in the last year's research namely, the criminal offences abuse of official position and authority and fraud dominated. Therefore, we may conclude that the rest of the corruption related criminal offences covered with the research are either rarely performed in practice or the manner of their committing creates difficulties in providing necessary evidence for determining liability, which is not the case with the offences abuse of official position and authority and fraud, or the law enforcement bodies have capacities to effectively deal only with the two mentioned corruption related criminal offenses.

2.2. Characteristics of perpetrators of corruption related criminal offences

Within the research 174 cases with 194 corruption criminal offences and 896 defendants were monitored. However, the fact that some of these individuals have been accused for two or more criminal offences has to be bore in mind.

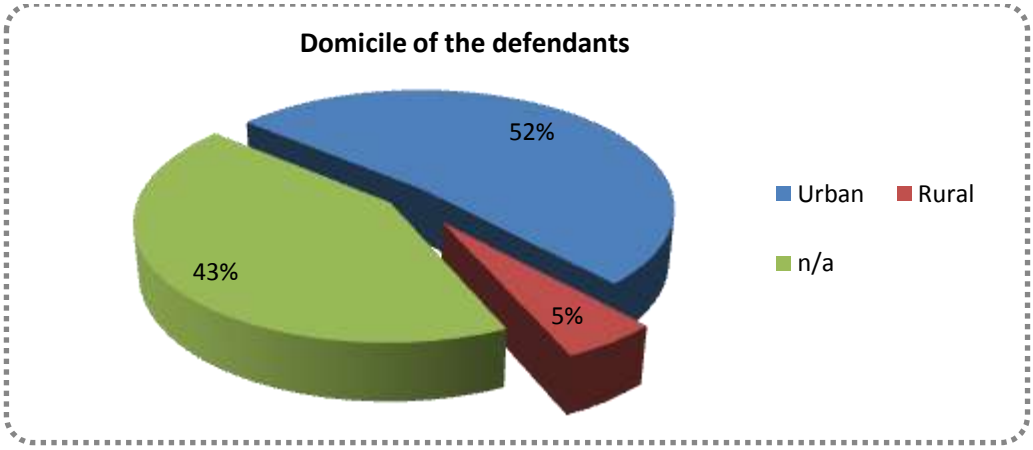


For the two most common offences namely abuse of official position and authority 350 defendants were charged, while for the criminal offence fraud 74 defendants were charged. Then, 143 persons were charged for the criminal offence criminal association, which is quite logical having in mind its character and legal essence. This is a very important fact since this criminal offence is contained in only 6 cases in the research material, processed in the BC Skopje I, i.e. viewed from personal aspect it is one of the more common criminal offences. For comparison, 74 persons were charged for the criminal offence fraud but in 51 cases. The situation is similar regarding the offence money laundering and other unlawful property gains – 82 defendants. This offence is contained in 8 monitored cases, but the complexity of its

performance requires involvement of several people, so the detection of this criminal offence will result in charging of several persons

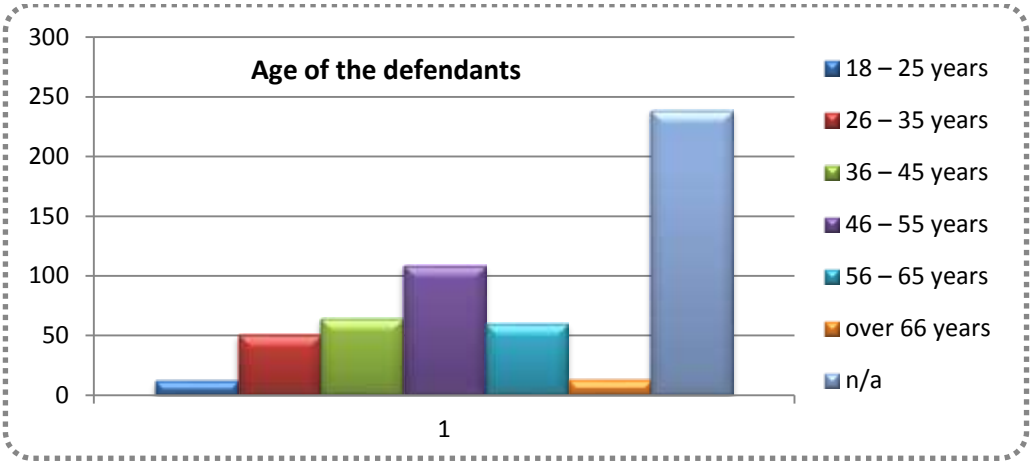
From the remaining criminal offences that involve a considerable number of defendants, we would mention the offences receiving bribe – 69 defendants, forgery of document – 39 defendants, tax evasion – 37 defendants. Briefly, the number of defendants is 548, but since some of them are charged of two or more offences, it turns out that the number of actual defendants is 896 individuals. Such situation results from the existence of plurality in crimes during committing the criminal offence, regardless of whether it is ideal or realistic one, which further increases the evidence material for adjudicating.

When it comes to the characteristics that define the profile of the perpetrators of corruption related criminal offences, the research includes questions on domicile, age, nationality, citizenship, as well as level of education and history of previous convictions. For the purposes of creating a more precise profile of the perpetrator of such offences, it is recommended future research to include other features such as workplace or motive for committing the offence, in order to be seen from which position the abuse of official position and authority, the fraud or other corrupted related offence is committed.

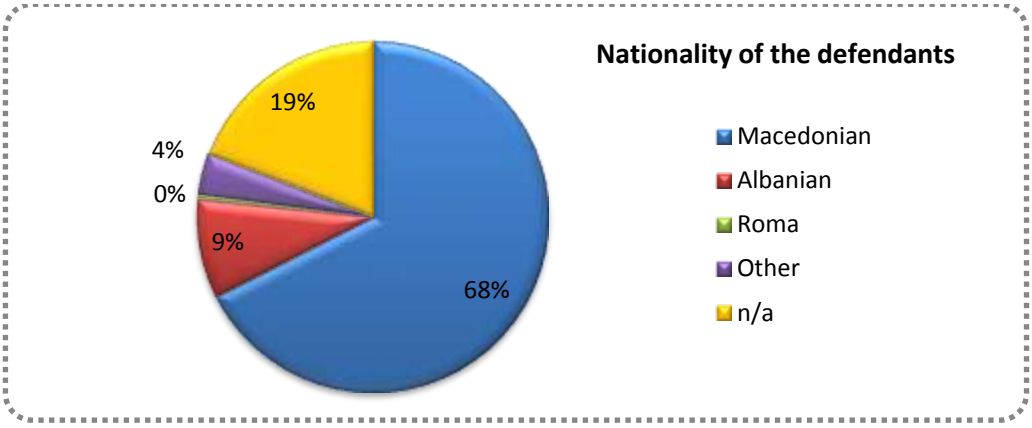


According the data available to the Coalition, by domicile, the perpetrators of corruption related criminal offences are mainly located in the urban areas (52% of the defendants). Only 5% of the defendants live in rural environment, while for 43% of the defendants there is no data available. So, 82 out of 548 defendants, live in Skopje, followed by a series of cities with an interval of 17 to 21 defendants, being: Bitola, Kocani, Veles, Strumica, Tetovo

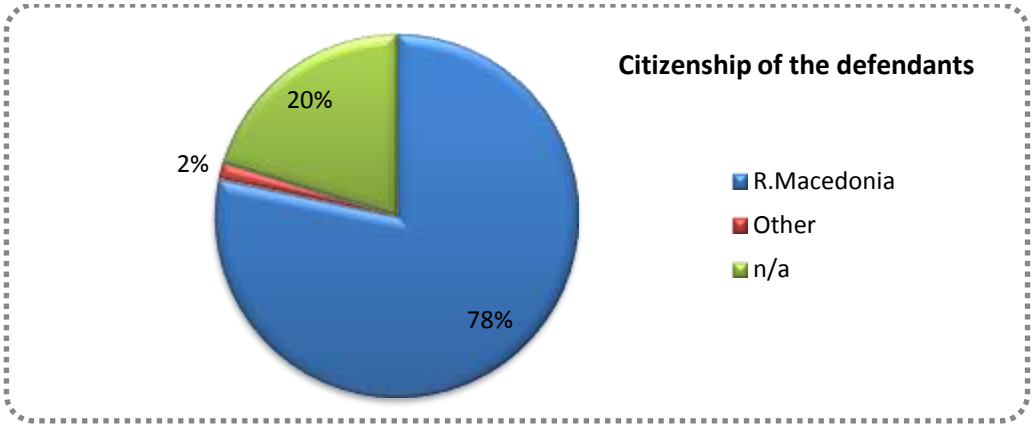
and Stip. Similar to last year, the international element is insignificant (4 defendants).



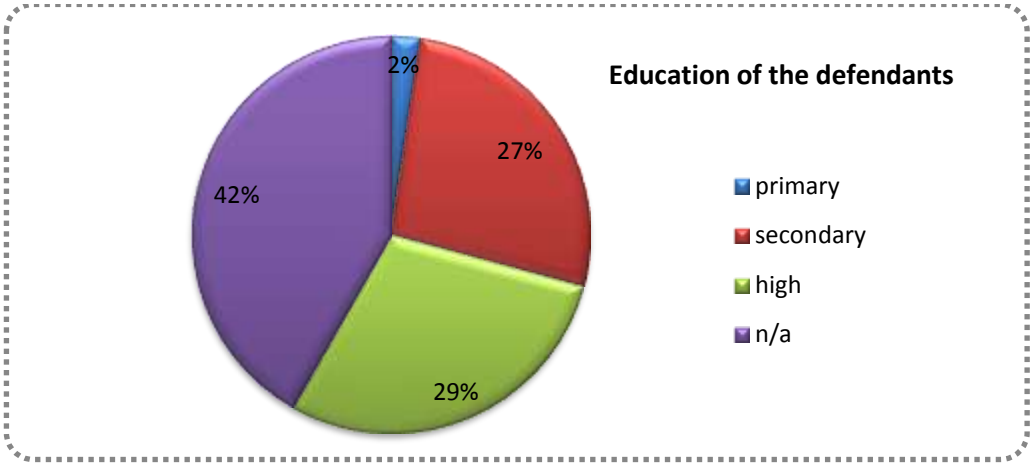
The data on the age of the defendants largely overlap with those from the last year's monitoring. So as far as the age is considered, although all age groups are represented, still the largest percentage of perpetrators of corruption related criminal offences are individuals from 46 to 55 years old (20% or 109 persons). Two groups position in the middle, those from 36 to 45 years old (12% or 64 persons) and from 56 to 65 years old (11% or 60 persons). The age group from 18 to 25 years old (2 % or 12 persons) and the age group over 66 years (2% or 13 persons) have the lowest participation. It should be noted that for 44% (239 persons) of the defendants data on age has not been provided. From the above stated one may conclude that according to the monitoring, as defendants in corruption related criminal offences most commonly appear individuals at the age of 46 to 55 years old. This data is contained in the reports of the last three monitoring.



Similar to last year, according the data available to the Coalition, the largest part of the defendants for corruption related offences were of Macedonian nationality (68%). 9% of the defendants are of Albanian nationality, while the remaining nationalities are represented with about 4%. The fact that for 19% of the defendants there is no data available on their nationality should be kept in mind.

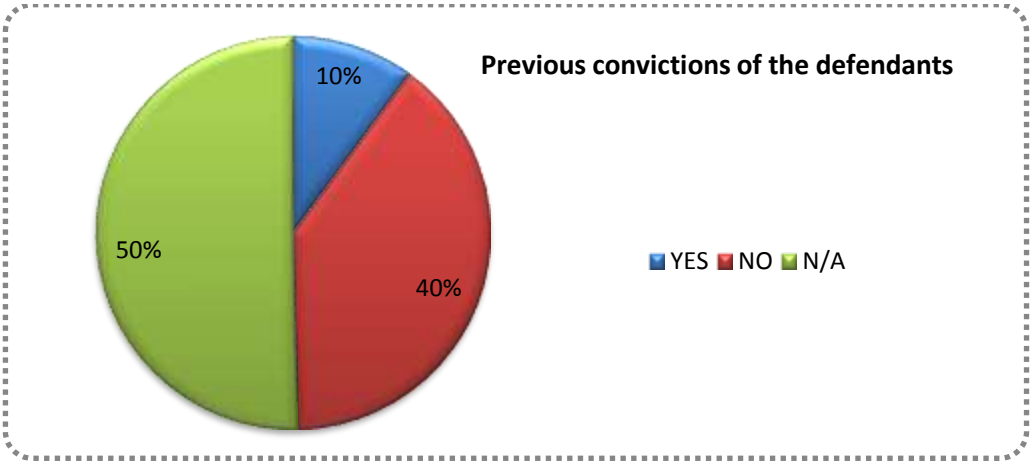


The research shows that most of the defendants are citizens of the Republic of Macedonia (78 %), the foreign element is insignificant (2%). Still, for 20% of the defendants no data on their citizenship has been provided which influences the drawing of conclusion on this bases.



With regard to the educational structure, the research shows that the defendants with completed primary education have smaller representation (last year's 6% has decreased to 2%). On the other hand, the defendants with completed secondary education (27%) and with higher education (29%) retain the positions they had in the previous years. It should be noted that for 42%

of the defendants there is no data on their educational background, which certainly affects the conclusion.



According the data available to the Coalition, recidivism is not a common occurrence in the examined population. Namely, only 10% of the defendants come to collision with the law for the second time, whereas for 40% of defendants this occurs for the first time. However, for even 50 % of the defendants there is no data available whether they have been previously convicted.

If we synthesize the results on the profile of the perpetrator of a corruption related criminal offence, he has the following characteristics:

- Lives in an urban environment;
- At the age between 46 and 55 years;
- Macedonian nationality;
- Completed secondary or higher education;
- Appears as a perpetrator for the first time;
- Citizen of the Republic of Macedonia.

The description seems to be missing data on the type of workplace, so when it comes to the criminal offence - abuse of official position and authority, committed by a person 46 -55 years old with a completed higher education, it would be good to be known: the type of abused workplace, the motive, whether the insufficient reward for put efforts have recourse the perpetrator to committing the offence, duration of the offence. Such data will enable shaping preventive policies towards workplaces that are more likely to be threatened.

However, for almost every criteria there are high rates of missing information (N/A), which leads to situation where conclusions are to be drawn only based on the available data, therefore it is recommended that in the following researches this phenomenon to be reduced.

2.3. Preliminary investigation

After a criminal offence has been committed, the competent state authorities face a set of obligations, primarily regarding determination of its elements and perpetrator. Namely, the question on the perpetrator of the offence may be easily answered if it is obvious who has committed the offence, but sometimes it may be very default to answer it i.e. the identification of the perpetrator may be a serious problem.

However, regardless of whether the answering such question is easy or difficult, for a person to be found guilty of a committed criminal offence and sanctioned, it is necessary a series of legal procedures closely related to the purpose of the criminal procedure to be conducted, or article 1 paragraph 1 of the CPL „an innocent person is not to be convicted and the guilty person to be sanctioned with a criminal sanction under the conditions prescribed in the Criminal Code and on the bases of a legally enforced procedure“ as well as article 2 paragraph 1 of the CPL „everyone charged with a criminal offence will be presumed innocent until proved guilty by a legally valid judgement“ i.e. presumption of innocence.

The criminal procedure represents one whole, divided into several phases or stages in order to provide for better achievement of its objective. The stages of the criminal procedure include the following:

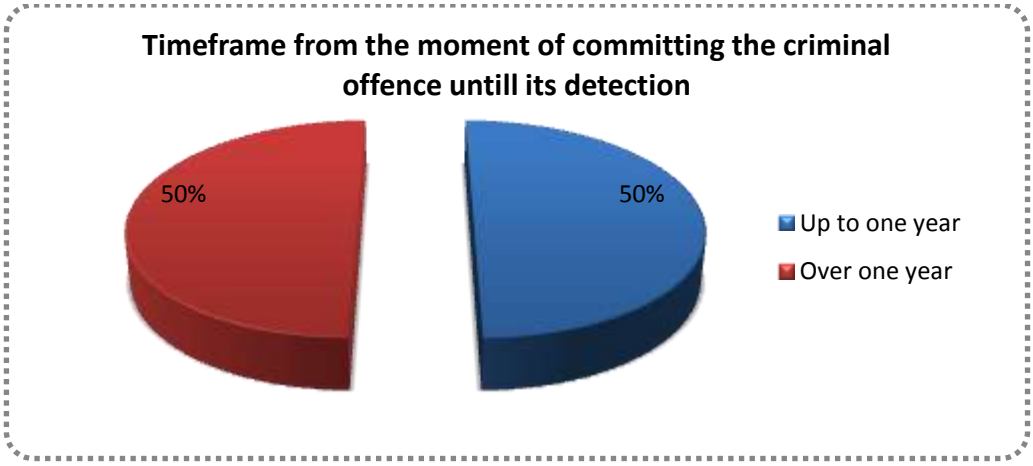
- Preliminary investigation,
- Issuing indictment,
- Main hearing with passing and pronouncing a judgement and
- Procedure for legal remedies

However, before the initiation of the formal procedure it is necessary a series of actions for determining an existence of a criminal offence, its perpetrator, and what is very important, collecting evidence to be undertaken. Activities undertaken by the competent authorities prior to the initiation of formal proceeding build up the preliminary investigation. Mainly, it is an administrative and criminal procedure aiming at creating conditions for commencement of the criminal proceeding.

The preliminary investigation is conducted by the bodies of internal affairs and the public prosecutor, and as an exception, by 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, issues them orders, receives reports from them and at the end decides whether to initiate an investigation i.e. to formally initiate the criminal proceeding.

2.3.1. Timeframe from the moment of the first actions until the moment of discovery of the offence

The efficiency of the fight against crime involves prompt discovery of the performed criminal offences, their documentation and processing with passing a judgement. The feature of the corruption related criminal offences is the higher level of discretion and secrecy and therefore they are more difficult to be discovered and there is large dark number of such criminal offences. This may also be concluded from the data derived from the monitoring. Namely, from the data available to the Coalition, similar to last year's research, in 50% of the cases, the criminal offence was discovered up to a year after it had been committed, while for the remaining 50% of the cases this was done over a year after it had been committed.



Repetition of such data is not encouraging and it is an indicator that the law enforcement bodies, especially the ones dealing with corruption related criminal offences need to put additional efforts for faster and more efficient fight against this form of criminal misbehaviour.

2.3.2. Issuing indictment

According to article 16 of the CPL, the criminal proceeding is initiated at the request of the authorized prosecutor (accusation principle). Thus, for offences that are prosecuted ex officio or upon the proposal of the injured party, an authorized prosecutor is the public prosecutor, while for offences that are processed upon a private lawsuit - the private litigant.

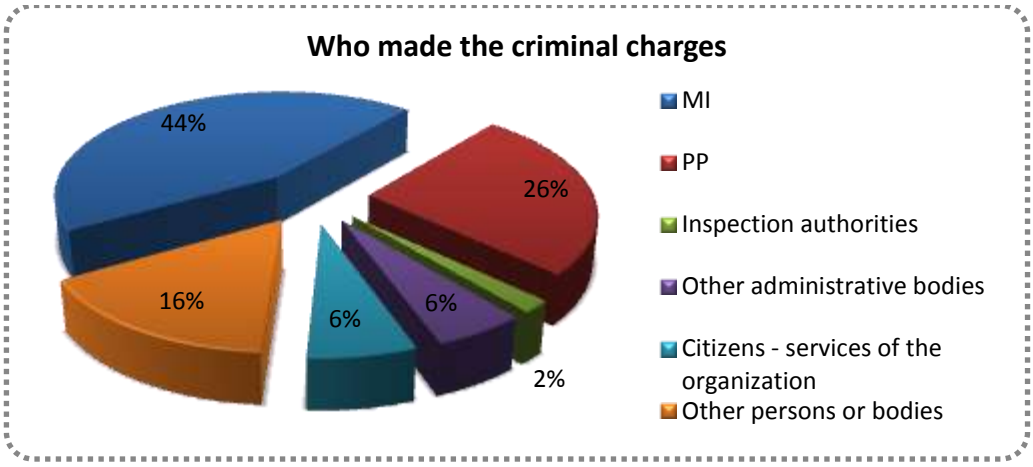
In order the authorized prosecutor to be able to initiate the criminal proceeding, he needs to have information that a criminal offence has been committed. There are several bases or sources that initiate the public prosecutor's activity, as an authorized prosecutor of criminal offences prosecuted ex officio, for initiation of a criminal proceeding such as: criminal charges, direct observation by the public prosecutor, voice and notoriety.

A charge or a criminal charge (notitiocriminalis, denuntiatio) is an act by which a person or an authority informs the authorized public prosecutor for a committed criminal offence prosecuted ex officio.

Striving to strengthen the fight against rising crime, our legislator has introduced an obligation for all citizens to report criminal offence that is prosecuted ex officio. According to article 142 paragraph 3 of the CPL everyone is obliged to report a criminal offense which is prosecuted ex officio. However, the legislator especially underlines this obligation for the state bodies, institutions performing public authorizations and other legal entities, if in the course of their operation are informed or find out in some other way that a criminal offence prosecuted ex officio has been committed.

Fundamental right and duty of the public prosecutor according to article 42 paragraph 1 of the CPL is to prosecute criminals. This means that his role is not passive i.e. only to wait submission of charges by the state bodies and the citizens, but rather to take necessary measures for providing information on committed criminal offences by himself. It is possible the public prosecutor, outside the scope of his duties to witness committal of a criminal offence and the question arises how to proceed, should he wait for submission of charges by some body or initiate the proceeding him. In such a case, there is no need for waiting a reaction of a body or a person, but the public prosecutor himself initiates the proceedings, in order to save time, as well as to provide the required evidence on time.

During the monitoring, the monitors were interested in the criminal charge, as a trigger, and the subject making it. It is noted from the data that the MI has a dominant position in making criminal charges (44%), which results from its operational structure, specific duties as well as the large number of staff, mostly employed at operational positions. Nevertheless, just as reminder, the contribution of the MI in making charges last year has been 62%. On the other hand, the role of the public prosecutor in initiation of the proceedings has increased i.e. from the last year's 14% has increased to 26%. Such situation is welcomed having in mind the fact that the new Criminal Procedure Law, whose implementation will commence as of November 2012, provides inter alia an emphasized role of the public prosecutor, in particular by the implementation of the prosecutor's investigation.

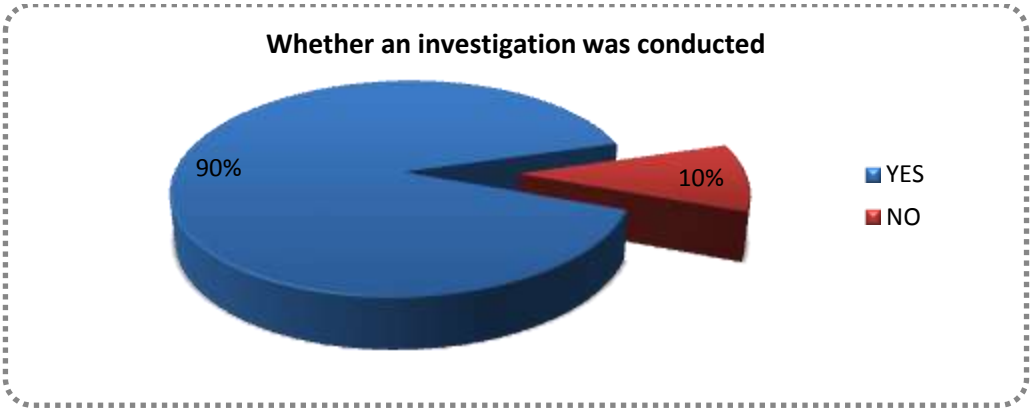


The remaining 30% of the initiative for making criminal charges came from citizens and other bodies. Similar to last year, there has been a negligible engagement of the inspection authorities (only 2%), which in itself is an indicator of the need for undertaking measures for improving the situation. In fact, the corruption by its nature is a clerical crime that inevitably requires an enhanced engagement of the inspection authorities. For the reasons that lead to such a result, data was provided during the monitoring, which should not be missed in the next research. Namely, the next research should determine why the inspection authorities contribute with only 2% in the detection of corruption offences.

2.4. Investigation

The investigation or the preliminary proceeding is the first stadium of the regular criminal proceeding. Its primary goal is collecting evidence and data necessary for making a decision whether there are grounds for issuing an indictment or there are no such grounds and the proceeding has to be stopped. The authorized prosecutor decides whether to issue an indictment or stop the procedure, relying on his assurance based on the gathered evidence and data. In other words, during the investigation the authorized authorities undertake procedural actions directed towards determining the existence of a criminal offence, discovering the perpetrator and gathering the necessary evidence.[10]

In most cases, the issuing an indictment is preceded by an investigation and only upon its completion issuing an indictment as a second stage of the criminal proceeding begins, known as indirect indictment.



However, in our criminal procedure there is direct indictment as well, so according to article 163 paragraph 1 of the CPL, the investigative judge may agree with the public prosecutor's proposal not to conduct an investigation if the collected data relating to the criminal offense and the perpetrator provide sufficient grounds for issuing an indictment.

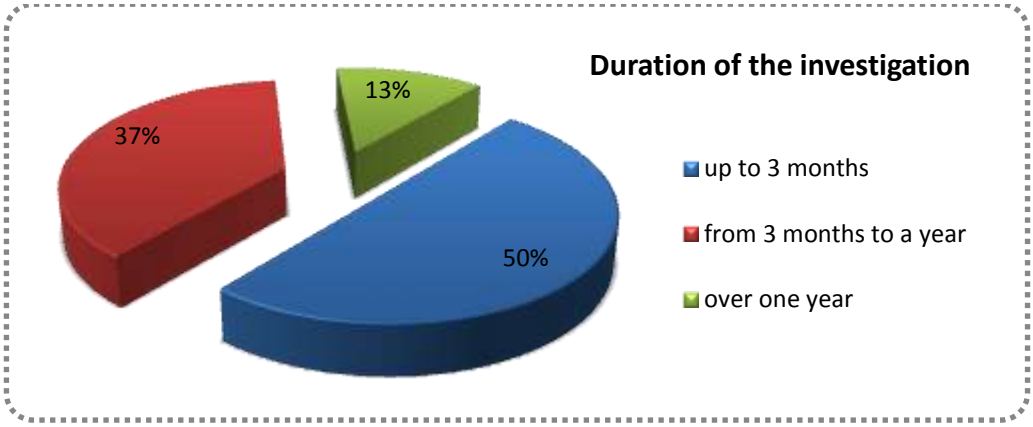
The direct indictment simplifies and accelerates the procedure so that its first stage - the preliminary proceeding is left out and the proceeding commence with the indictment.

[10] The new Law on Criminal Procedure is published in the "Official Gazette of R.Macedonia" No. 150/10 of 18.11.2010. As one of the most important novelties introduced in the law is the introduction of the prosecutor's investigation that shall replace the current court investigation (its implementation will commence as of November 2012)

According to the data available to the Coalition, an investigation has been conducted in 90% of the cases, while in 10% of the cases there has not been an investigation i.e. there was a direct indictment. Having in mind the fact that such situation was noted last year as well, we may conclude that in indirect indictment dominates in the monitored corruption cases i.e. the investigation is conducted as a first stage in criminal proceeding.

In terms of quality of evidence, the above-mentioned conclusion is not commendable since the direct indictment involves qualitative support of the charges with evidence so that an investigation is not necessary and such cases are only 10% of the monitored cases. In 90% of the cases the investigation should provide the evidence that has not been provided in pre-trial proceeding. This information should affect the law enforcement authorities when taking the initial actions to provide better quality of the evidence as possible, because the final outcome of the case largely depends on this stage.

The duration of the investigation does not have specific time limit, namely it is conducted as long as there are substantive and procedural presumptions that justify it and its goal is accomplished. However, if the investigation is not completed within 90 days, the investigative judge shall inform the president of the court of the reasons for which the investigation has not been completed, upon which the president of the court shall undertake measures for completion of the investigation (article 178 of the CPL).



The investigation ends the moment the investigative authorities will stop their activity, namely it may end in two ways: by stopping or completing. The investigation is stopped when the bases for further prosecution of the defendant for a concrete criminal offense cease to exist, it is completed when

the investigative judge finds that the state of affairs is sufficiently explained i.e. the facts are accurately determined and based on them the public prosecutor may make a decision (article 177 paragraph 1 of CPL).

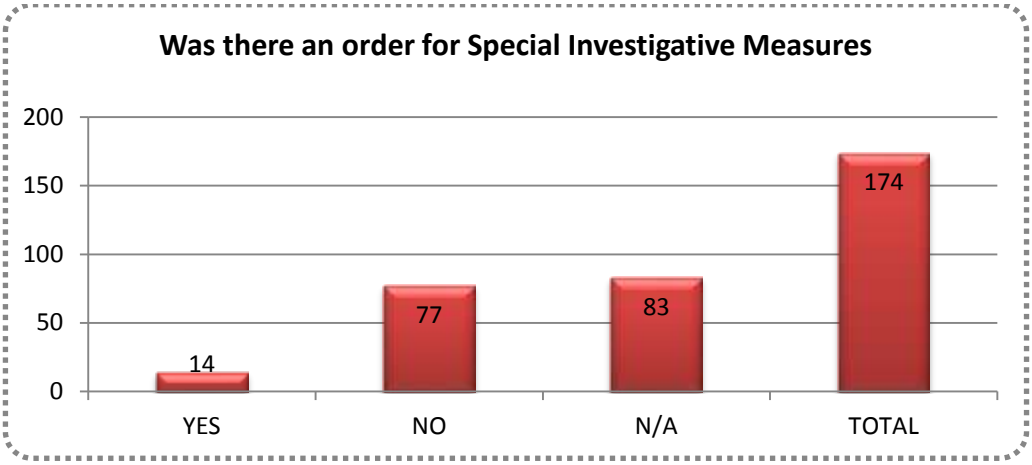
From the data the Coalition has on its disposal, one may note that in half of the cases the investigation lasted up to three months, which is consistent with the intention of the law, but also with some principles requiring efficiency of the procedure, especially the request for trial within a reasonable time. In 37% of the cases, the investigation lasted from 90 to 365 days that may be justified as excesses due to the specifics of the cases and the need for a specific manner for realization of the investigative activities. However, in 13% of the cases the investigation lasted over a year, which is difficult to be justified. Especially difficult for acceptance is the data that in one case the investigation lasted for 57 months, while for another case extremely long, even for 120 months. Recent data open a series of dilemmas on the work of the investigative judge i.e. why did he accepted the request for investigation and then the same lasted for 50 or 120 months; what did the president of the court do to overcome this phenomenon etc. Nevertheless, with the launch of the prosecutor's investigation the situation will significantly change since the subjects for initiating actions change as well.

2.5. Application of Special Investigative Measures

The regulation by law of the special investigative measures aims at creating a precise legal framework and adequate procedural guarantees against their abuse for the purpose of gathering data and evidence necessary for conduction of the criminal proceeding and facilitating the prosecution of perpetrators of criminal offences, particularly offences of organized crime, corruption, money laundering, illegal trafficking of people, weapons and drugs and other serious forms of crime.

The main goal to be achieved when ordering special investigative measures is obtaining data and evidence necessary for successful conduction of the criminal proceeding, which can not be collected otherwise or their collection would incur greater costs, for criminal offences for which sentence imprisonment at least for 4 years is prescribed and for offences for which a reasonable doubt exist that they have been committed by an organized group, gang or other form of criminal association. We are talking about eight measures that have to enable gathering an evidentiary material in cases where the common criminal methods will not be successful, each of them with a special character and objective (the new LCP increases the number of

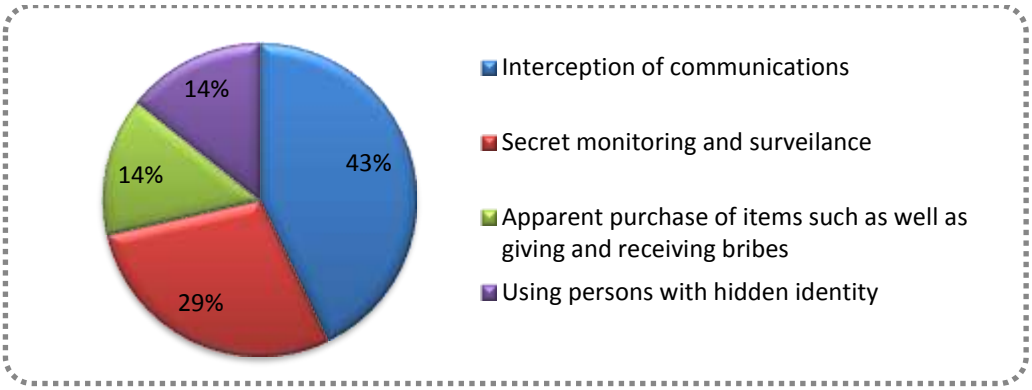
special investigative measures to 12, mainly due to dividing some of the current measures, chapter XIX, article 252).



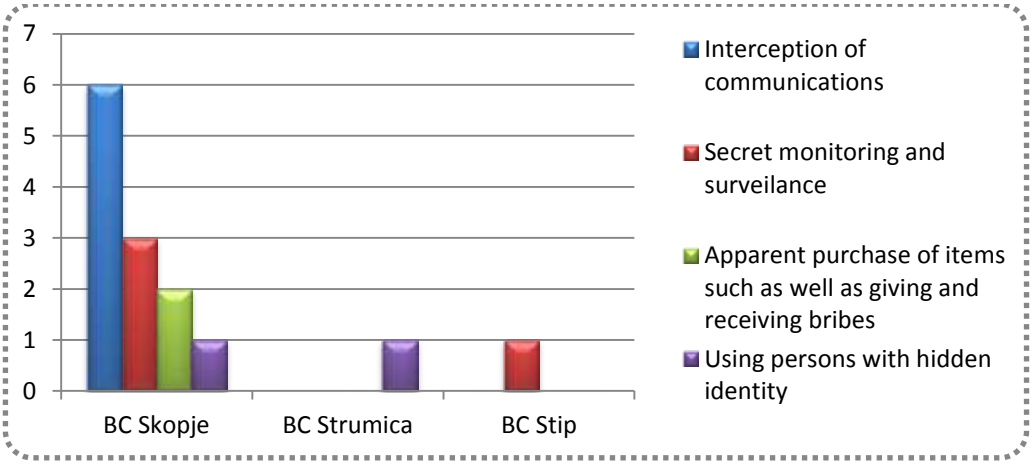
Out of the special investigative measures, the one attracting the attention the most is the measure interception of communications that is regulated by a separate law and a special parliamentary commission consisted of five members has been established for supervision over its use. Article 8 of the Law on Interception of Communications defines a list of corruption criminal offences for which this measure may be applied (receiving bribe in article 357, giving bribe in article 358, illegal interceding in article 359, money laundering and other unlawful property gain in article 273, abuse of official position and authority in article 353, embezzlement in office in article 354, fraud in office in article 355, using property of the office in article 356 of the CC).

During the monitoring, the observers were interested in the application of the special investigative measures in the monitored cases, and whether they were applied, and if they were, which of the measures were applied.

It was determined that of 174 cases, the special investigative measures were applied in 14 cases, in 77 cases they were not applied, while for 83 cases there is no data whether special investigative measures were applied or not. Initially, we would conclude that the application of measures is insignificant, less than 10% of the cases, but for approximately 50% of the cases there is no data available on this issue, which influence the making of the conclusion on their application.



Of a total of eight special investigative measures, application of only four of them was noted in the monitored cases. Thus, an uneven application is noted, so the measure interception of communications has been used in 6 cases that is 43% of the cases for which data on special investigative measure is available. The measure secret monitoring and surveillance is next - it was applied in 4 cases that is 29%, while the measures apparent purchase of items as well as giving and receiving bribe and the measure using persons with hidden identity were applied in 2 cases or 14% each. Similar to last year, most of the measures were applied in cases processed before the BC Skopje I.



Namely, of a total of 14 basic courts included in the monitoring, only three courts applied special investigative measures in corruption cases, being the following: the BC Skopje I, Strumica and Stip. Furthermore, of a total of 14 cases, 12 have been processed before the Basic Court Skopje I or interception of communications has been applied in 6 cases, secret monitoring and surveillance in 3 cases, apparent purchase of items as well as giving and receiving bribe in 2 cases and using persons with hidden identity in one case.

On the other hand, in the BC Strumica there was one monitored case with applied measure using persons with secret identity and in the BC Stip there was one monitored case with applied measure secret monitoring and surveillance.

From the data at our disposal, it may be noted that the special investigative measures do not have large application in the monitored corruption cases, there is a great disparity among the basic courts regarding their application and cases with such measures are mainly pound in the BC Skopje I. However, it should not be forgotten that for about 50% of the monitored cases there is no data on the application of special investigative measures. This has an essential influence over the result so for the following researches a proactive approach towards data collection is recommend.

2.6. Indictment and objection to indictment

The issuing an indictment is a unilateral procedural action with strong expression of the accusatory principle, since the issuing an indictment fully depends on the activity of the authorized prosecutor. The indictment has two meanings, the first meaning consists of the circumstances that it serves as a procedural presumption for the further course of the criminal procedure, namely it serves as a presumption for determining and holding the main hearing. The second meaning of the indictment consists of the fact that it determines the case and the scope of the mean hearing i.e. subject of the main hearing will be only the offence and the person referred to in the indictment.

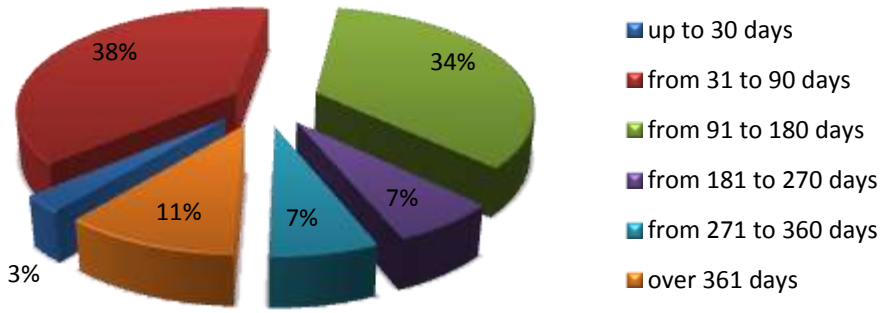
The indictment may be direct and indirect. It is indirect when submitted based on previously conducted investigation i.e. based on preliminary proceeding. It is direct when submitted based on criminal charges or some other grounds, without conduction of an investigation. Direct is the indictment issued directly, based on criminal charges or any other occasion, without conducting a preliminary proceeding. The indictment as a formal act may occur in three types:

- Indictment,
- Indictment proposal and
- Private lawsuit

The indictment is a type of accusation made in a regular procedure by which the authorized prosecutor asks the court to decide upon a criminal case.

A feature of the criminal procedure is the procedural form or the procedural actions undertaken in the manner and time stipulated by law. Therefore regarding the time period from issuing of the indictment until scheduling the first hearing the law prescribes that the president of the panel shall schedule the main hearing no later that 30 days upon admission of the indictment in the court, and in case of a request by the president of the panel for a review of the indictment according to article 291 of the CPL, a main hearing may be scheduled, taking into consideration the decision of the panel. If the president of the panel does not schedule the main hearing within such deadline, then he shall inform the president of the court on the reasons for not scheduling the main hearing in writing. In such case, the president of the court shall take measures if necessary in order the main hearing to be scheduled (article 295 paragraph 2 of the CPL).

How much time has passed from the issuing the indictment untill the first hearing is scheduled



The results from last year on this issue have almost repeated. Namely, the monitoring data indicate that the statutory deadline has been met only in 3% of the cases. Most of the cases are in the groups from 31 to 90 days (38%) and from 91 to 180 days (34%) or they jointly account for 72% of the cases, while the last measurement unit is the most extreme – over 361 days (11 %).

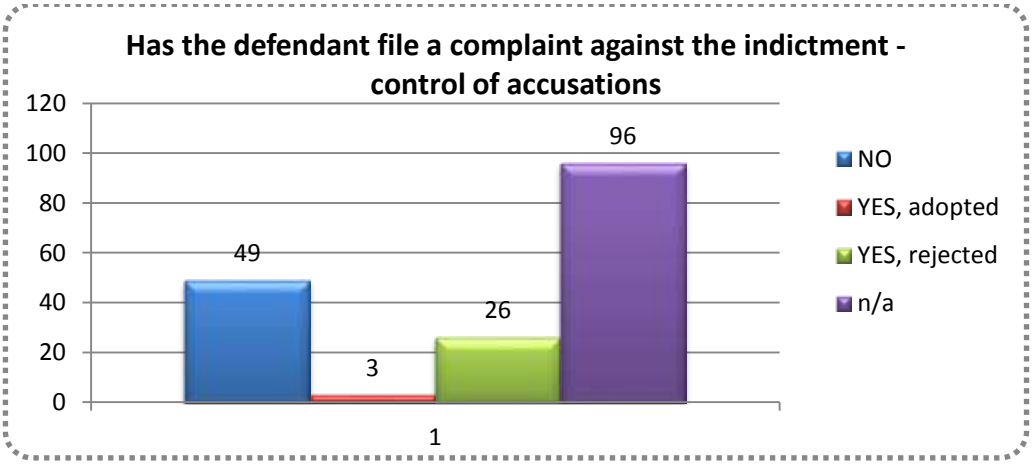
Such situation is concerning, having in mind the fact that it is being repeated in a sequence and that the situation is deteriorating instead of improving. In addition, this part of the procedure is taken into consideration when assessing trial within a reasonable time and thus compliance with

Article 6 paragraph 1 of ECHR. The president of the panel bears the responsibility for the situation namely it is unacceptable for every tenth case the main hearing to be scheduled one year from the receipt of the indictment. It is understandable that the judge should examine the case but with some reasonable exceeding of the deadline, e.g. from 31 to 90 days (though it is not justified), but a period of one year is unacceptable.

The indictment is unilateral procedural act that contains the opinion and the proposal of only one processing party i.e. the prosecutor's. However, the accusation itself and taking citizens to court may have negative consequences on their human rights, freedoms and interests. Therefore, to prevent unjustified taking of citizens to court it is necessary the grounds and lawfulness of the indictment to be examined.

The previous investigation or control of the indictment is conducted in the following manners: ex officio, upon the initiative of the defendant, by review of the indictment upon a complaint filed against the indictment and at the request of the president of the panel when no complaint against the indictment has been filed (article 291 CPL).

A complaint against the indictment is a legal instrument by which the defendant may ask the court to examine the grounds and the lawfulness of the indictment and may prevent the case from reaching the phase of holding a main hearing. The examination of the indictment on the grounds of filed complaint is versatile and done in respect of its grounds, both formal and material, and in respect of the subject matter and territorial jurisdiction.



The data obtained by the research show that of 174 cases, a complaint against an indictment was filed in 29 cases or 17% of the cases out of which 26 complaints were rejected and only 3 complaints were accepted.

The practice shows that complaints are accepted only in rare occasions. Thus, the monitoring for 2010 also shows that complaints against indictments were filed in 23% of the cases and they were all rejected. In 2009 18 complaints are registered and they were all rejected. The monitoring for 2008 shows similar results where out of 75 filed complaints, only 2 were accepted. These data go in favour of the work of the public prosecutor, namely show that the public prosecutor prepares quality indictments and therefore the complaints against them are rejected.

However, the fact should be noted that in the monitoring of 2011 for 96 cases (55%) lack data whether a complaint against the indictment has been filed, which certainly affects the final conclusion.

2.7. Measures for securing attendance of the defendant during criminal proceeding

For the criminal proceeding to be possible, it is necessary certain parties to attend (defendant, witnesses, experts) and the court to have unimpeded access to the objects that can serve as a evidence for passing a judgment.

The attendance of the above stated categories when undertaking certain actions within the criminal proceeding is ensured by determining a legal obligation for these individuals to respond to the court summon, as well by the duty of the holders of objects of relevance for adjudicating a specific criminal case, to deliver such objects at the request of the court.

In cases when the obligation to respond to the summons is not met voluntarily or the requested objects are not delivered, certain force measures for securing the attendance of these persons shall be applied. However, the application of force should be reduced to an exceptionally narrow frames, i.e. a citizen should be protected from unnecessary and ungrounded restriction of citizens' freedoms and rights and at the same time to disable the citizen who seeks to disrupt and disable the right course of the criminal proceedings. Therefore it is necessary to align individual and general interest and this is achieved only when the force measures and the conditions for their application are precisely prescribed by law, their application is reduced to a

minimum (to be applied only in exceptional cirumstances) and at the extent necessary to ensure the right course of procedure.

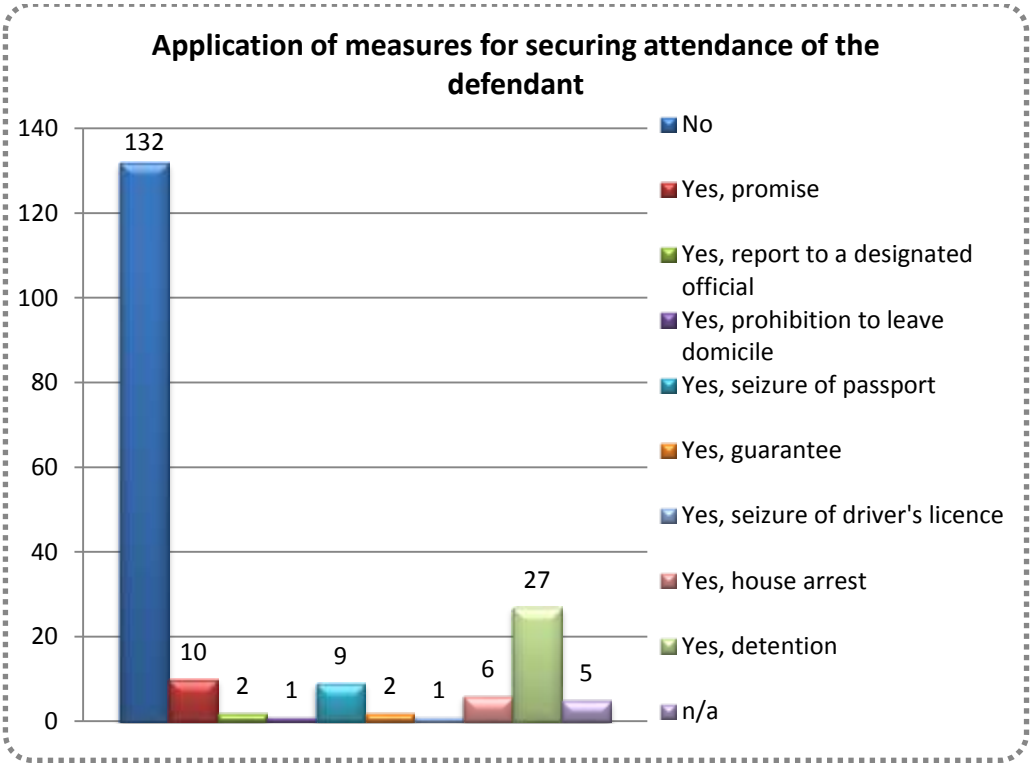
To that end, the Criminal Procedure Law foresees some basic principles for application of force measures, including:

- a necessary condition for application of any force measure against the defendant is an existence of a reasonable doubt that a criminal offence has been committed and that a criminal proceeding against the defendant has been initiated, with the existence of a possibility of damage if such measures are not applied;
- only the force measures listed in the law are allowed;
- CPL lists several measures for securing attendance of the defendant and unimpeded conduct of the criminal proceedings and the competent authority may choose the most appropriate measure for a concrete case paying attention not to apply a more severe measure if a more lenient one may serve the same purpose;
- when the reasons for application of the force measure cease to exist, the competent authorities shall cancel it ex officio or replace it with another, a more lenient measure.

Although these measures are intended for persons in different roles, the defendant is the principal figure. Thus, the CPL foresees several measures for securing attendance of the defendant and for successful course of the proceedings, so the competent authority may choose the most appropriate measure for a concrete case. Summons is the most lenient measure, followed by defendant's promise that he would not leave the place of residence or stay; preventive measures such as prohibition to leave the place of residence or stay, obligation on part of the defendant to periodically report to a designated official or to the competent state body; temporary seizure of passport or other document for crossing state borders, or a ban on its issuance, temporary seizure of driver's license, or a ban on its issuance; guarantee; house arrest and detention.

According to the data obtained by the research, measures for securing attendance of the defendant are not applied in most of the cases. Namely, out of 174 cases included in the monitoring in 132 cases there was no application of any measure for securing attendance. However, it should be noted that data on application of such measure is missing for 5 cases.

Based on the aforementioned, one may conclude that the measures for securing attendance were applied in the remaining 37 cases and in some of these cases, several measures of same or different type were applied. Thus data show that the measure detention was issued in 27 cases, followed by the measures promise and seizure of passport, used in 10 cases i.e. 9 cases respectfully. The remaining measures were used more rarely: house arrest – 6 cases, guarantee – 2 cases, reporting to an official – 2 cases, while the measures prohibition to leave domicile and seizure of driver's license were used in 1 case each.



The eight types of measures for securing attendance of the defendant during the procedure were issued in 37 out of 174 monitored cases. However, having in mind the fact that they are combined, i.e. in some cases two or more measures have been used, it turns out that their application is higher i.e. that they were used in 58 cases.

The research showed once again that judges use the measure guarantee rarely, only in 2 cases, which leaves space for discussion on the reasons, whether it is lack of confidence in this measure or something else in question. In the western countries this measure has large application since

with its application the defendant is released, but deposits (personally or by third parties) a certain sum that in case of defendant's fleeing the country is transferred on state account and the proceedings against the defendant continues. The measure guarantee is the most appropriate replacement for the detention and the research showed that detention imposed to 47% of the defendants, which represents really high percentage, especially since the measure guarantee could have been applied for some of the defendants.

2.7.1. Application of the measure detention

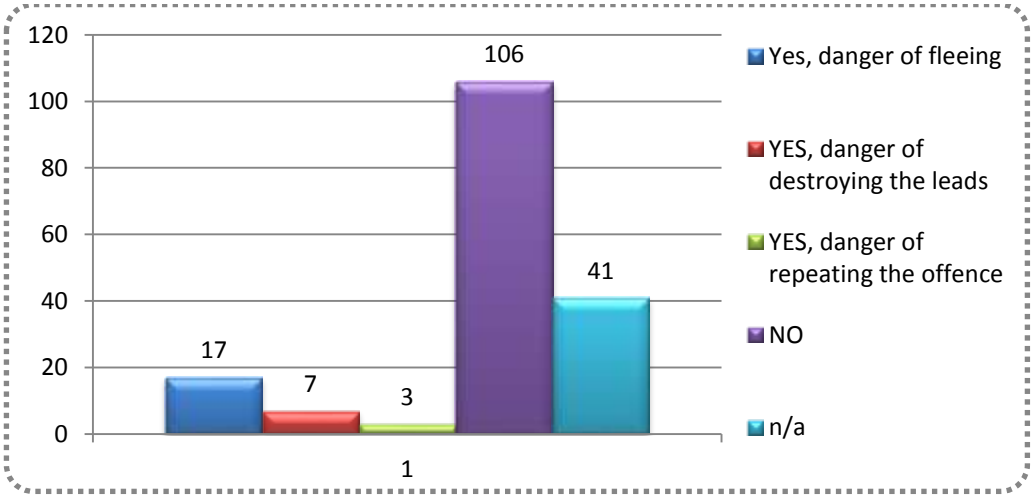
The measure detention is the toughest measure for securing the attendance of the defendant in the criminal proceedings. Its application restricts the defendant's freedom of movement even though the defendant's criminal reliability has not been yet determined by a final court judgement that is the presumption of innocence for such defendant still applies. The measure detention consists of depriving the defendant of its personal freedom, detaining the defendant in certain facilities aiming at securing attendance of the defendant during the criminal proceeding, as well as preventing the defendant to influence the process of presenting the evidence.[11] Therefore, it is the toughest measure of procedural enforcement and as such may be applied only when the interests of the criminal proceeding can not be protected with another more lenient measure.[12]

According to article 199 of CPL, in case of founded suspicious that a certain individual has committed a criminal offence, a detention may be used as a measure if such individual is hiding, his identity cannot be determined or there are other circumstances that point out to danger of the defendant fleeing; if there is a founded fear that the defendant will destroy the leads of the criminal offence or influence witnesses or collaborators and therefore impede investigation and if particular circumstances justify the fear that the defendant will repeat the previous criminal offence or complete the attempted criminal offence or will perpetrate the criminal offence he is threatening to do. The measure of detention may be applied only on conditions and in cases prescribed by law and the duration of the detention should be set to the shortest time necessary.

[11]Stevanovik Cedomir, Penalty process law SFRY, Savremena administracija, Belgrade 1982,page 282
[12]Matovski Nikola, Penalty process law, Law faculty "Justinian I" Skopje 2003, page 357

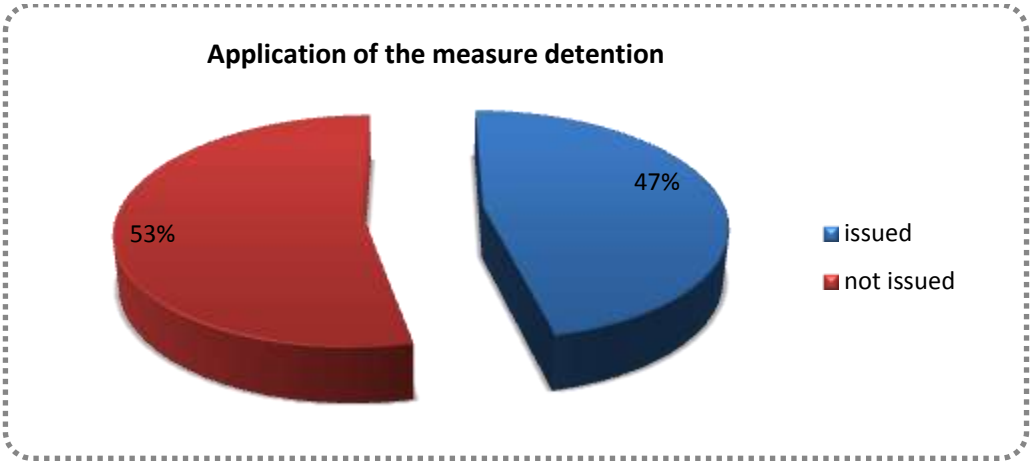
Type of criminal offence for which a proceeding is conducted	YES, danger of fleeing	YES, danger of destroying evidence	YES, danger of repeating the criminal offence	NO	Total
247 Fraud	1	0	0	33	34
353 Abuse of official position an authority	10	5	1	56	72
273 Money laundering and other revenues	0	1	0	0	1
279 Tax evasion	0	0	0	1	1
357 Receiving bribe	0	0	0	1	1
354 Embezzlement in office	0	0	0	3	3
361 Forgery of official document	0	0	0	2	2
394 Criminal association	4	1	1	0	6
215 Unauthorized production and placing....	1	0	1	0	2
239 Embezzlement	0	0	0	1	1
257 Damaging or providing privileges to creditors	0	0	0	6	6
276 Illicit manufacturing	1	0	0	0	1
368a Illegal influence on witnesses	0	0	0	1	1
359 Illegal interceding	0	0	0	2	2
n/a	0	0	0	0	41
Total	**17**	**7**	**3**	**106**	**174**

From the data it may be concluded that of the total of 174 monitored cases, the measure detention was applied in 27 cases. The reason for its application in 17 cases was danger of defendant fleeing, in 7 cases – fear that the defendant will destroy the leads of the criminal offence, while in 3 cases - fear that the defendant will repeat the criminal offence (in 106 cases detention has not been applied, while for 41 cases no data is available).



In the monitored cases, there is no equity in applying the measure detention. So in the cases for the criminal offence abuse of official position and authority, penalized under article 353 of the CC, this measure was used more often – in 16 cases. However, maybe we should mention the offence criminal association first, article 394 of the CC, since the measure detention was applied in all cases for this offence (6 cases). Despite the aforementioned cases, the measure detention was applied in other cases: unauthorized production and putting in circulation of narcotics, psychotropic substances and precursors – 2 cases, money laundering and other unlawful property gains – 1 case, illicit manufacturing – 1 case and for the offence fraud - 1 case.

According the data obtained from the monitoring, the measure detention was issued in 27 cases. If we take into account the fact that 174 criminal proceeding were monitored, maybe one will conclude that its application does not have large proportions, but if we point out that out of 548 defendants detention was imposed to 255 (47% of the defendants) then a different picture is received.

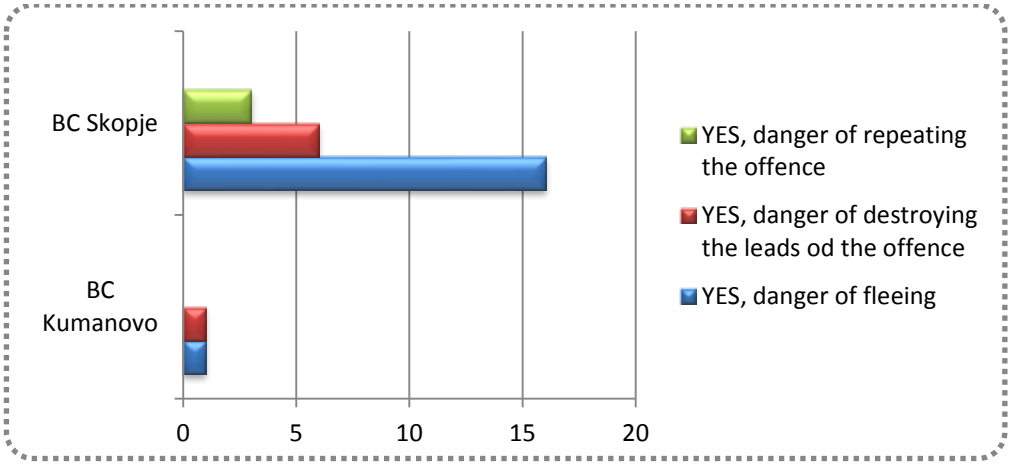


Just as comparison, in 2010, 154 cases were monitored and detention was imposed to a larger number of defendants namely to 218 out of 468 defendants.[13] In 2009, 110 cases with 256 defendants were monitored and the measure detention was imposed to 58 defendants. In 2009, out of 110 cases only 10 cases had a character of "detention cases", in 2010 out of 154 cases 20 cases had such character, while in 2011, 27 out of 174 have such

[13]In 2010 the ratio between the defendants with imposed measure detention and those without was 47%-53%, i.e. same as the reatio for 2011, Judicial efficiency in fighting corruption for 2010, 2 Avgust S,January 2011,

character. Briefly, the level of corruption cases in the monitored material for 2010 and 2011 is approximately at the same level.

Although the number of basic courts included in the research increased in 2011 (eight basic courts were included in 2010 and 14 basic courts in 2011), still when it comes to the application of the measure detention, the BC Skopje I is the leader. Namely, last year all 20 cases where detention was imposed were processed before the Basic Court Skopje I, while none of the remaining courts imposed the measure detention. The situation is similar for 2011 and only the BC Kumanovo distorts such picture in a small percentage. Of a total of 27 detention cases, 25 were processed before the BC Skopje I and the remaining 2 before the BC Kumanovo. As far as the grounds for imposing detention, the situation for the cases processed before the BC Skopje I is as follows: in 16 cases the ground was danger of defendant fleeing, in 6 cases before the BC Skopje I the ground was danger of destroying the leads of the criminal offence, while in 3 cases - the danger of repeating the criminal offence. In the BC Kumanovo, the ground for imposing detention in the first case was the danger of defendant fleeing, while in the second - the danger of destroying the leads of the criminal offence by the defendant.



The CPL stipulates precise deadlines for the duration of the detention. Its total duration within the investigation shall not exceed 180 days, while after making charges the detention shall not exceed one year for offences that may be sanctioned with penalty imprisonment up to 15 years, i.e. shall not exceed two years for offences that may be sanctioned with penalty life imprisonment (article 207 CPL).

According to the data available to the Coalition, it is evident that detention with the longest duration of 385 days is imposed in one case which contains several criminal offences in a real plurality of offences (abuse of official position and authority, tax evasion, forgery of document, criminal association), in two other cases the duration of the detention amounted to 360 days, while in the remaining cases the duration varies in the interval from 59 to 180 days.

Each detention case has its own characteristics that affect the duration of the measure. However, efforts should be vested for its application to be as short as possible. In this context the request for efficiency of the procedure, the principle of urgency and the commitment for respect of human rights and freedoms have an impact of their own.

2.8. Main hearing

The main hearing is the third stage of the criminal procedure, in which according to the principles of publicity, contradiction, orality and immediacy, the competent court processes the charges of the authorized prosecutor and passes a judgment. It has an essential meaning and takes the central position because all the other stages of the criminal procedure are in it its function; the realization of their specific objective contributes to achieving the objective of the main hearing. Thus, the preceding procedure and the indictment aim to ensure the unimpeded holding of the main hearing, while the phase of legal remedies aims to control regularity of the decision adopted on the main hearing.[14]

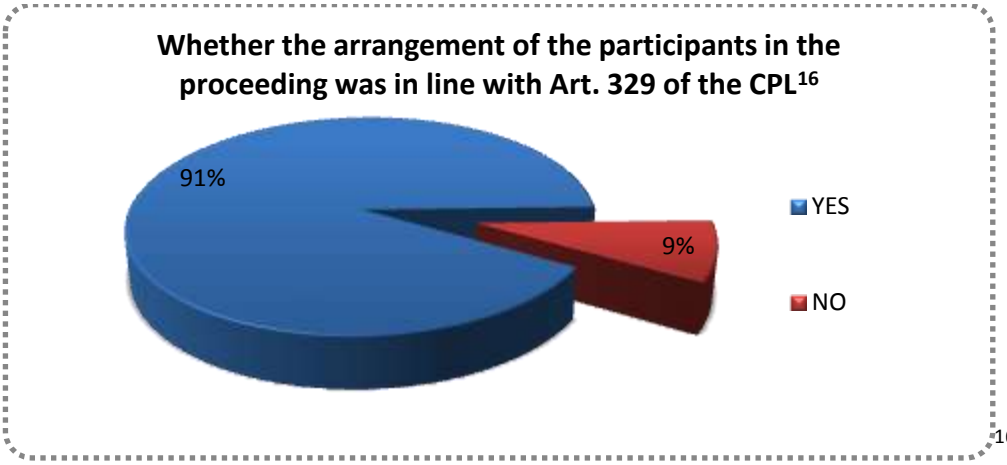
The main hearing is a stage of the first instance criminal proceeding, which discusses the grounds of criminal and legal request, stipulated in the indictment of the authorized prosecutor, as well as the accompanying property and legal requests, in order to pass a judgement.[15] Although during the main hearing numerous and various activities are undertaken, they all represent a single and indivisible whole. In fact, the main hearing is an integral component of a broader concept known as a Session. Namely, the main hearing represents only a part of the session of a criminal case, so, from the opening of the session until the beginning of the main hearing (it starts with reading the indictment), there is a series of procedural actions aimed at checking whether the assumptions for holding the main hearing are fulfilled,

[14]Marina Panta, Criminal procedure of SFRY, Kultura, Skopje 1979., page 411

[15] Vasiljević Tihomir, System of the criminal process law of SFRY, Savremena administracija, Belgrade 1981, page 531

and upon its completion the adoption and the publication of the judgement, which is within the session. This stage is a three-way relationship between the court and the parties, each with concretely defined rights and obligations of the participants, with the main goal - making a lawful and proper decision.

The main hearing is a phase that is held in a previously determined lawful order. In this regard, there are precise rules for the place and the role of the parties during the main hearing, so according to article 329 of the CPL, the parties and everybody else present in the courtroom meet the panel of judges standing, after which the parties sit across the president of the panel of judges as follows: the defendant and his defence counsel on his left-hand side and the authorized prosecutor, the injured party and his proxy on his right-hand side. The defendant, the witnesses and expert witnesses are heard from a position designated on the right-hand side of the president of the panel of judges, facing the prosecutor and the defendant.



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The monitoring team also carried out monitoring of the seating arrangement of the participants in the proceedings. From the data, one may conclude that in most cases, the legal provisions were respected, or in 91% of the monitored hearings, the arrangement was in accordance with law. However, in 9% of the monitored hearings, the arrangement was not in line with the law, which is not negligible since at almost every 10th hearing this formal obligation of the court was not respected.

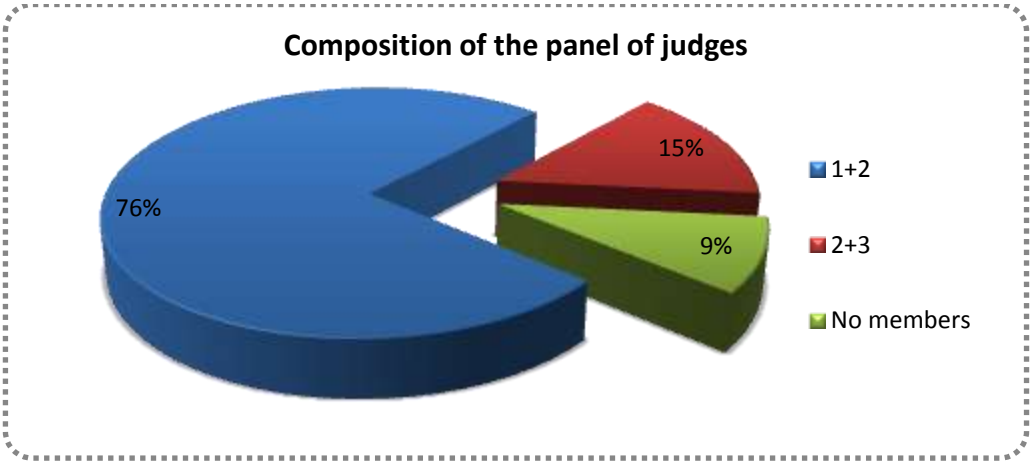
For the criminal proceedings it is essential to determine which court has subject-matter and territorial jurisdiction to proceed and decide upon a

[16]Criminal Procedure Law (cleared text), Official Gazette of RM, number.15/05

particular criminal case, because the success of fighting crime depends a great deal on it, and also the protection of the fundamental human rights and freedoms, and thereby unnecessary and harmful delays in the proceedings will be avoided. In addition, the court has the legal obligation, ex officio, to examine its jurisdiction, and as soon as it determines a lack thereof, to declare itself incompetent and, after the ruling on competence becomes final, to refer the case to the court which has the jurisdiction.

The subject-matter jurisdiction is a determined by law right and obligation of the court in criminal proceedings to undertake certain procedural actions and to pass a judgement on a specific criminal offence, given the character of such criminal offence.

Namely, article 22 of the CPL regulates which criminal offences are judged at first instance by an individual judge, and which criminal offences are judged in panel of judges as well as the number of panel members. An individual judge judges in first instance criminal offences for which a fine or a sentence of up to a three-year imprisonment sentence is prescribed. In first instance criminal proceedings, a panel of two judges and three lay judges judge for criminal offences for which an imprisonment sentence of fifteen-years or a sentence of life imprisonment is prescribed by law, while, a panel of one judge and two lay judges judge for criminal offences for which a lenient sentence is prescribed by law. So, proceeding in criminal proceedings of first instance depends on the severity of the offense and the penalty prescribed for the perpetrator of that offense. The Constitution of the Republic of Macedonia determines that lay judges participate in the trial when it is established by law (article 103 paragraph 3 of the Constitution of RM).



Starting from the data obtained by the monitoring one may conclude that over ¾ of the trials were judged by panels comprised of one professional judge and two lay judges. Then, 15% of the trials were judged in panels consisted of two professional judges and three lay judges, while 9% were judged by an individual judge. The above data almost entirely repeats the last year's results allowing us to conclude that panels comprising one judge and two lay judges process most of the corruption cases.

The inclusion of lay judges in criminal cases purports to impose the civil factor in the decision making. However, the criminal cases require serious preparation of all participants (prosecutor, defence counsel) and especially of those who perform the function of judging, because the values of the defendant that are in question (liberty, property) and the values of the injured party, (life, body, property etc.) are very sensitive. The preparedness implies existence of special education, experience, additional training, seminars, counselling, things that are included in the work career of the professional judge (the Academy for Training of Judges and Public Prosecutors, that has an important contribution to achieving the stated aim should be mentioned) and therefore he is the real bearer of the decisions, while the lay judges participate from another aspect in the trial – the civil one.

The defence represents a procedural activity of opposing the indictment, fully or partially denying that a crime has been committed and the responsibility for it, highlighting the arguments that refute the thesis of the indictment i.e. defence is a sum of those actions in the procedure undertaken in order to present everything that is in favour of the defendant.[17]

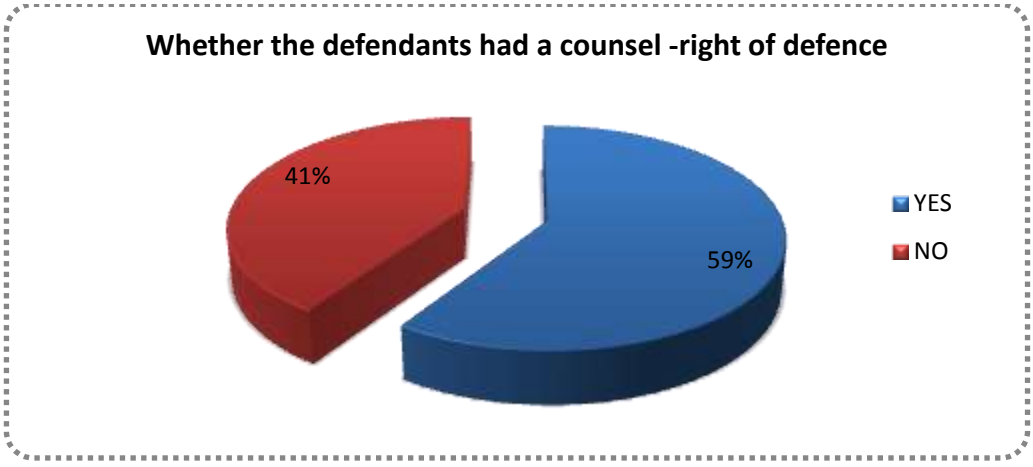
The legislator envisaged that the defendant himself is the most called for to represent and ensure his defence, since the indictment is directed against him. In addition, the law obliges all state bodies participating in the criminal procedure, in any of its stages, to ensure a full and careful reviewing and evaluation of all the facts and evidence in order to make a lawful and correct decision (the principle of seeking the material truth). However, despite the possibility of the defendant to defend himself personally, as well as the obligation of the court and the other state bodies (also known as a material defence), the law also foresees the so called formal defence; namely, the possibility that the defendant is in his name defended by a defence counsel. But, the law also envisaged situations when it is necessary that the defendant is represented by a defence counsel, so, if the defendant does not

[17] T. Vasiljevic, 1971, page 166

provide a counsel himself, a counsel shall be assigned ex officio (known as a mandatory defence). Thus, our criminal legislation qualifies the defence as material and formal (depending on who performs it) or facultative and mandatory (depending on whether there is an obligation for representation by a counsel).

Mandatory defence obliges that the defendant has a counsel during his first interrogation, the same being in close relation with the corruption criminal offences. Mandatory defence is used under the following circumstances: if the defendant is mute, deaf or incapable to defend himself successfully or if a criminal procedure is conducted against him for a criminal offence for which a sentence of life imprisonment is prescribed by law. In these cases, the defendant must have counsel during the entire course of the criminal procedure. Also, if detention is imposed on the defendant, he must have a counsel during the detention period. Mandatory defence is stipulated in the cases of indictments regarding a criminal offence for which a sentence of ten years imprisonment or a more severe sentence is prescribed by law, as well for the defendant who is tried in absence.

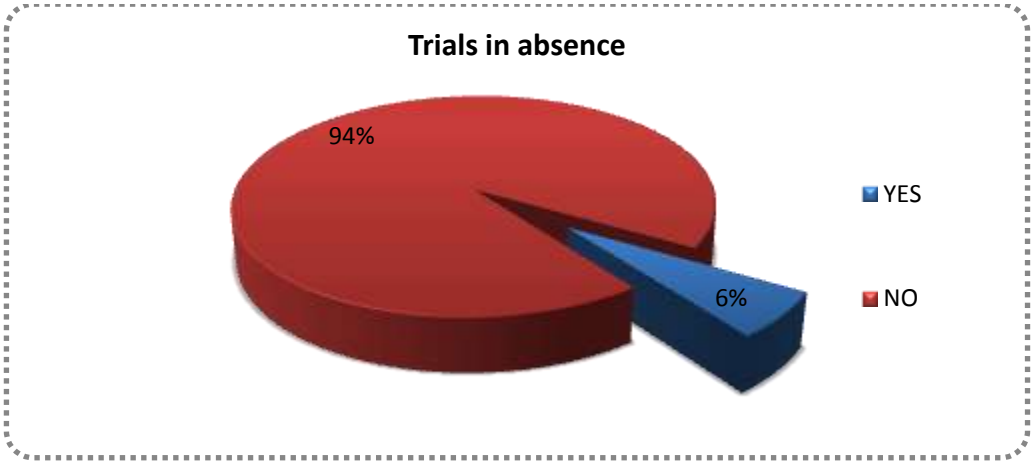
Besides the optional and mandatory defence, there is a so called defence for the poor, when there are no conditions for obligatory defence and the procedure is conducted for a criminal offence for which the law prescribes a sentence of over one year imprisonment, and the defendant's economic situation does not allow him to bear the expenses for his defence counsel. In that case, the defendant may be assigned a counsel upon his request and such expenses shall be borne by the state budget.



The role and task of the defence counsel in criminal proceedings is very important, especially if you consider that he has extensive authorizations, since he has all those rights that during the procedure the defendant has himself, but also his task is very responsible because the success of defendant in the criminal proceedings, to a large extent depends on his ability to fight the indictment.

The conducted monitoring showed that of a total of 548 defendants covered in the monitored cases, 325 or 59% had a counsel, including the cases of mandatory defence, whereas 223 or 41% did not use the right of formal defence i.e. they did not have a counsel. Almost the same ratio was recorded in the last year research i.e., 60% - 40% in favour of the defendants who had a counsel.

The proper application of the principles of contradiction and immediacy imply that at the main hearing, the attendance of the defendant is obligatory, i.e. his attendance is a pre-requisite for holding the main hearing. Still, under exceptional circumstances, the defendant may be tried in absence in regular proceedings, only if he is fleeing or is otherwise unavailable to the state bodies and at the same time, there are especially important reasons to proceed with the trial although he is absent. The decision to hold the trial in absence of the defendant is made by the panel of judges upon proposal of the prosecutor (article 316 paragraph 3 and 4 of the CPL).



The Coalition's monitors carried out a monitoring of 528 hearings, and recorded that in most of them the defendant was present. In fact, in 94% of the monitored hearings, the defendant was present which implies that he had the opportunity to participate directly and immediately in his defence, while

in 6% of the hearings the defendant was tried in absence. In these 6%, when the hearings proceeded in the defendant's absence, most often, the unavailability of the defendant occurred as a reason (there are important reasons to proceed the trial in absence), and the fleeing of the defendant rarely occurs as a reason. The mentioned ratio should not be surprising because to 47% of the defendants detention was imposed, which means that it ensures the attendance of the defendants during the proceedings. In addition, in 37 cases other measures to ensure attendance were applied as well.

In order to achieve the objectives of the proceedings, it is necessary that the main hearing is prepared, the case examined in detail by the presiding judge, that during the trial all legal rights of the parties are respected, but at the same time to prevent the attempts to delay the hearing. In order to achieve the above mentioned, the judge needs to have full control over the case, i.e. to be a judge- manager, thus, his behaviour will have the character of managing the court case. In fact, respecting the principle of trial within a reasonable time is considered as one of the key elements of good judicial management. This obliges the judge to promptly take the process activities and to successfully direct the process. The postponement and recess of the main hearing inversely affect the judicial efforts for a reasonable duration of the proceedings.

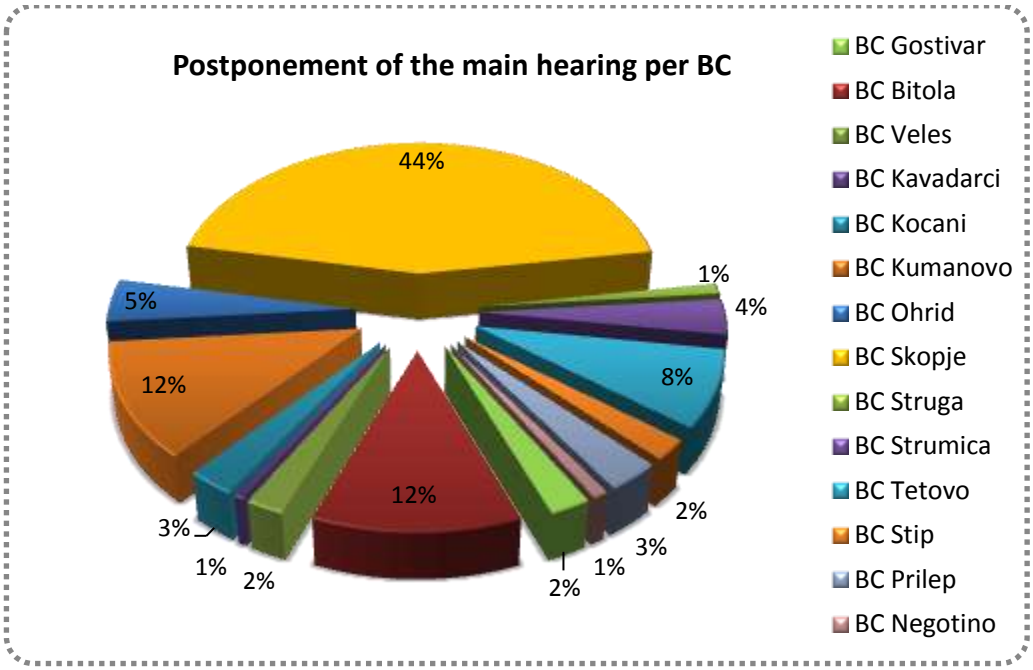
- **Postponement of the main hearing**

The postponement of the main hearing means failure to start the main hearing on the day it was scheduled for but on some other day or if the main hearing has already started - its recessing for a longer period of time. If the postponement lasted for more than 60 days or if the main hearing is taking place before another president of the panel, then the main hearing has to start from the very beginning and all the evidence have to be presented again.

The grounds for postponement of the main hearing include the following:

1. if the public prosecutor or his substitute fails to appear at the main hearing that has been scheduled on the bases of an indictment prepared by the public prosecutor (article 315 paragraph 1 of the CPL);
2. If the defendant who is properly summoned, fails to appear at the main hearing and cannot be brought immediately by force (article 316 paragraph 1 of the CPL);

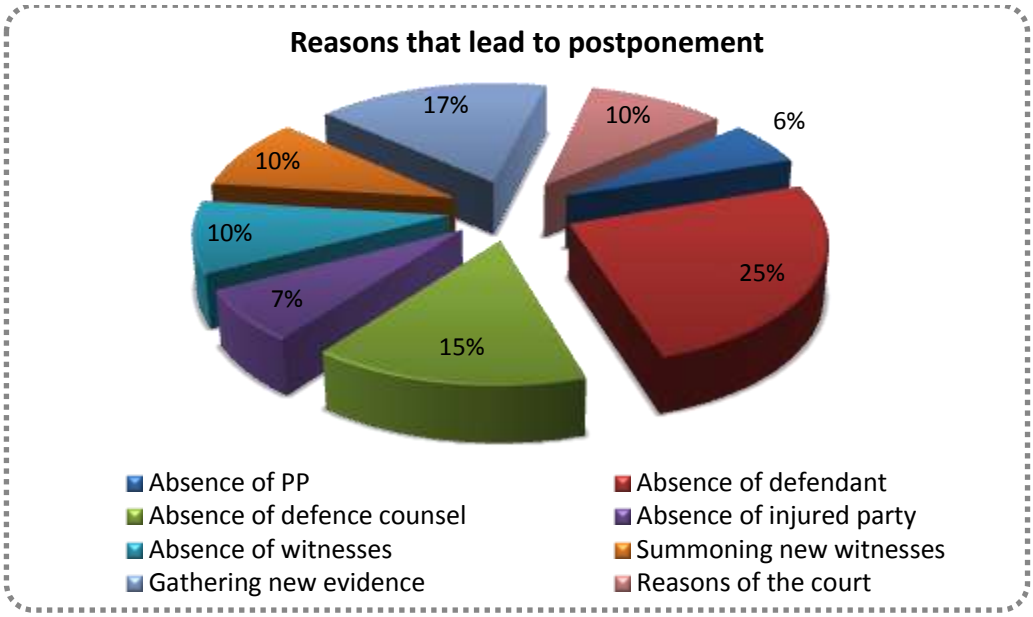
3. If the defence counsel fails to appear at the main hearing, although properly summoned or if the defence counsel leaves the main hearing without an approval, and there is no possibility to assign a new counsel immediately without any detriment to the defence (article 317 of the CPL)
4. in some cases, if a witness or an expert witness fails to appear this may provoke a postponement of the main hearing, in cases where their testimony is crucial to resolve legally relevant facts (article 319 of the CPL).
5. if during the main hearing it is necessary to collect new evidence (article 321 paragraph 1 of the CPL);
6. if during the main hearing it is determined that after the criminal offence has been committed, the defendant became temporary mentally ill or temporary mentally incoherent;
7. if there are other serious obstacles for the main hearing to be successfully held.



The monitors during the monitoring registered a total of 543 postponements of hearings, most of which occurred in the Basic Court Skopje I - 241 postponements, that is, 44%. The Basic Court Kumanovo follows – 66 postponements, that is, 12% and the Basic Court Bitola – 65 postponements that is 12%. Least postponements are encountered in the courts in Struga – 6 postponed hearings, Negotino – 5 postponements and Kavadarci – 3

postponed hearings that is all of them participating with 1% in the total percentage of postponements of hearings.

The reasons for postponement are various, though most frequent are: absence of the defendant (25% or 138 postponements), the need for obtaining new material evidence (17% or 93 postponements) and absence of the defence counsel (15% or 82 postponements). Rarely as reasons for postponement of the hearings occur the absence of the injured party (7% or 38 postponements) and the absence of the public prosecutor (6% or 32 postponements).

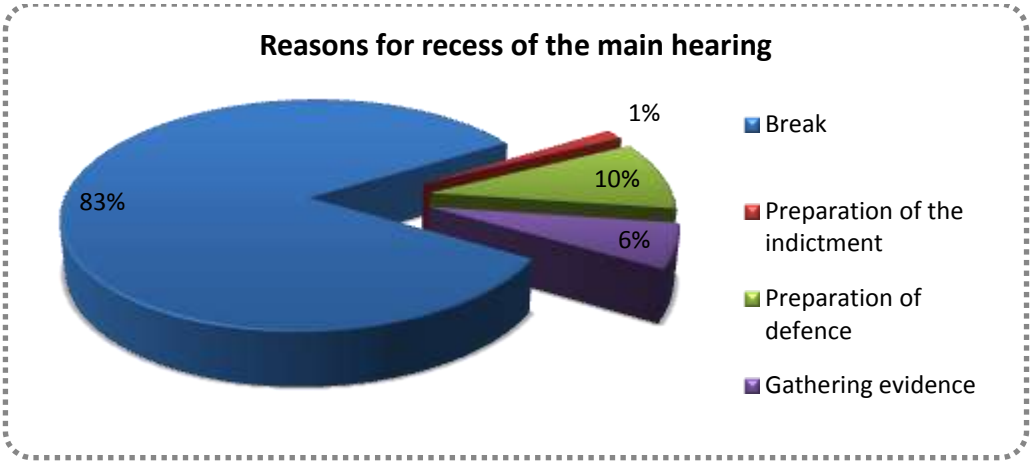


If we make a comparison to last year, we may notice significant movements in the reasons for postponement of hearings, thus gathering new material evidence as a reason for postponement participated with 28% last year, while this year it has been reduced to 17%, summoning new witnesses (has been reduced from 26% to 10%), or absence of witnesses (has been reduced from 17% to 10%). On the other hand, the absence of the defendant from 12% has increased to 25% of the postponed hearings, the absence of the defence counsel from 4% to 15%.

- **Recess of the main hearing**

Recess of the main hearing is adjourning it for a shorter period of time, no longer than 8 days. The reasons that may provoke the recess of the main hearing may be various, but still, they are divided in two groups, ordinary and

extraordinary. The president of the panel sets the ordinary recess, while the extraordinary recess is a result of the panel's decision. The need for break or the end of working hours is considered as ordinary reasons. There are several extraordinary reasons such as: gathering certain evidence, preparation of the indictment, preparation of the defence. According the article 323 paragraph 2 of the CPL, after the recess of the main hearing, it continues where it had stopped, before the same panel.



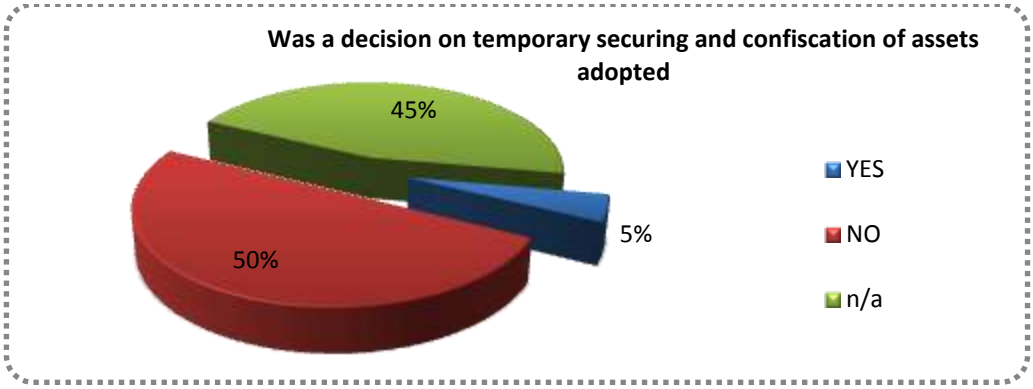
During the monitoring, the monitors registered 146 recesses of the main hearing, where the need for a break occurred as a reason in 121 cases or 83% of the recesses, the purpose of preparation of the defence - in 14 cases or 10%, the obtaining of evidence - in 9 cases or 6% and the purpose of preparation of the indictment – in 2 cases or 1% of all recesses of the main hearing. If we make a comparison with the last year's results, we may conclude that the need for a break, as a reason for recess, from last year's 69% has increased to 83%, while the recess due to obtaining new evidence has decreased from 20% to 6%. The data for 2011 regarding the reasons for recess of the main hearing are more optimistic compared to the ones for 2010, because the recesses due to obtaining evidence have decreased, and the reasons for recess are mainly reduced to the need for a break.

According to article 219 of the CPL, the objects which should be confiscated in accordance with the CC or which may serve as evidence in the criminal procedure, will be temporarily confiscated and handed to the court or their keeping will be otherwise secured. Further more, this confiscation of objects is only temporary, because after the criminal procedure ends, it is decided what to be done next with the confiscated objects i.e. whether they

will be permanently confiscated, destroyed or returned to the person they were confiscated from.

Starting from the material law, objects that are used or were intended for committing a criminal offense or are a product of the committing a criminal offense, shall be temporary confiscated, if they are owned by the perpetrator. In addition to the above mentioned objects, any other objects that may serve as evidence during the criminal proceedings, i.e. all those objects that are important for determining the legally relevant facts of significance for the proceedings, may also be confiscated regardless of who the owner is.

Besides confiscation of such objects, the court may adopt a decision for freezing of the assets, accounts and funds suspected to represent revenues of an committed criminal offense (article 220 paragraph 2 of the CPL), i.e. temporary securing. Thus, the investigative judge or the panel may adopt a decision for temporary securing of property or assets that are related to a criminal offence. The property or the assets that are subject to securing are put under court supervision. The temporary securing of property or assets may also imply temporary freezing, confiscation, retention of funds, bank accounts and financial transactions or revenues acquired from the criminal offence. In order to achieve uninterrupted execution of the court decision for temporary securing, the possibility of reference to bank secrecy is excluded i.e. no one may refer to it. From the monitoring data acquired from the monitors, there was an insignificant application of the measures for temporary securing and confiscation of property and assets.



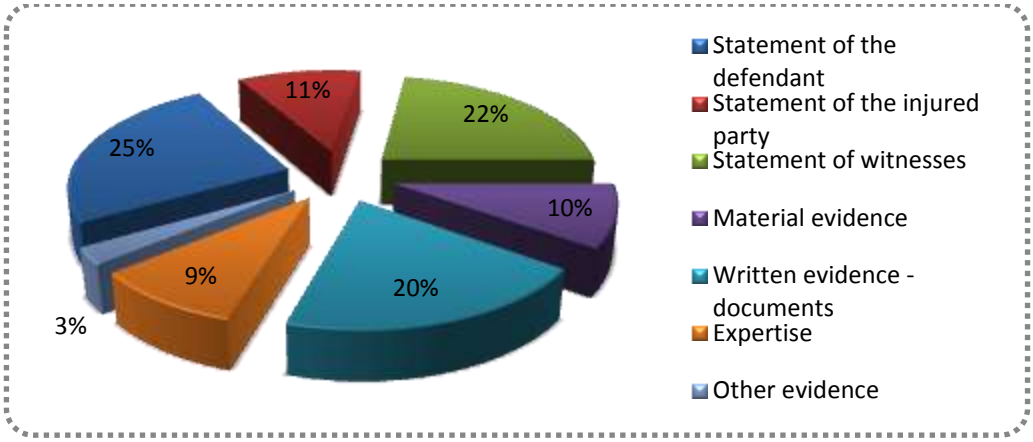
Namely, only in 8 of the total of 174 monitored cases that is in 5%, a decision for temporary securing or confiscation was adopted, while in 87 cases that is in 50 % there was no decision for application of any of the

measures for securing or confiscation. These data are disappointing especially if it is known that in dealing with corruption, the law enforcement bodies are obligated to initiate and the courts more frequently to apply the temporary measures because they have an essential role in realization of the criminal policy for this type of criminality.

This situation should be taken with a certain amount of reserve because for 79 cases, that is, 45%, we have no data on the adoption of a decision for application of any of the measures for securing or confiscation, i.e., it is a percentage that may seriously affect the whole picture.

The legally relevant facts in the criminal proceedings are determined through the evidentiary material, and under this term, we understand sources that provide the evidentiary grounds.[18] Hence, the evidentiary material is source for obtaining data during the proceedings i.e. facts that are evidentiary grounds are discovered.[19]

For each separate criminal offence, there is a special subject that needs to be proven, which involves facts that are determined during the procedure by proving. Therefore, which evidentiary material will be used in a specific case depends on the circumstances and the characteristics of the case, while the judge is the one deciding which evidentiary material will be used, taking into account the obligation of the court to duly evaluate each evidence separately and in relation with the other evidence and only then to adopt a conclusion whether a fact is proven.



[18] Vasiljević Tihomir, System of the criminal process law of SFRJ, Savremena administracija, Belgrade 1981,page 301,

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

According to the monitoring data, we may draw conclusion that of the 841 presented evidentiary materials, most were statements of the defendants - 25% and statements of witnesses - 22%, followed by the written evidences – documents – 20%. The second group of evidence includes the statement of the injured party – 11%, material evidence - 10% and expertise – 9%. Only 3% of the presented evidences account to other evidentiary material.

If we make a comparison with the results on this issue from the previous two years, we will conclude that the results are identical, i.e. in both 2010 and 2009, most frequently used evidentiary materials were statements of the defendant and statements of the witnesses, with their joint average being approximately 50% of the presented evidentiary materials. Unlike the previous two years when the expertise was used rarely (3-4%), in 2011 it had a more significant application or 9% of the presented evidence.

From the above, one may conclude that in the adjudication of corruption offenses the courts still, mainly rely on the statement of the defendant and the statement of witnesses. The statement of the defendant is a means of evidence that allows the defendant to present his arguments regarding the event and assist the defence counsel in building the defence. On the other hand, a witness is a natural person who is summoned during the criminal proceeding by the court, and as a witness is obligated to answer to the summons, and is a person who is likely to be able to give notification on the criminal offence, on the perpetrator and on other important circumstances, based on his sensory perception of all the facts that are subject to proving.

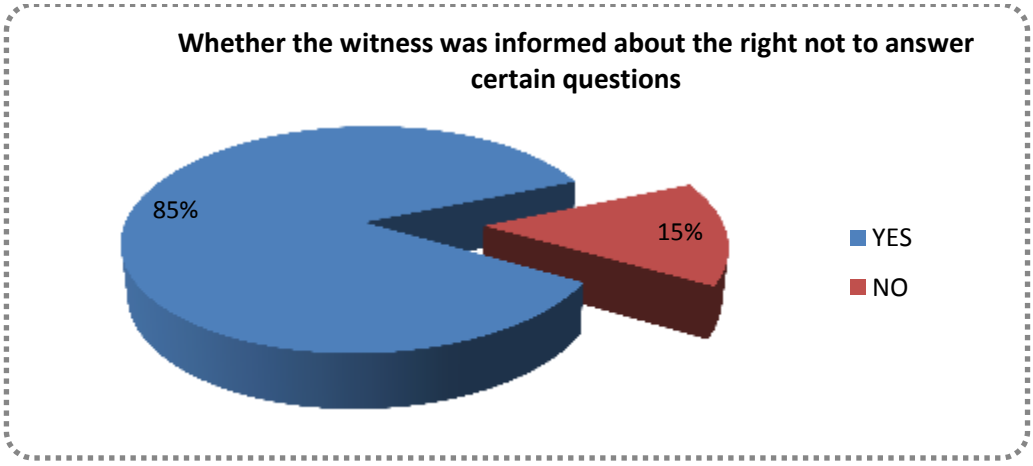
The character of the corruption offences, particularly the most common ones - abuse of official position and authority and fraud, requires that written documents and material evidence have the central position in the proving process. The statement of the defendant is a means of evidence, but as a subject in the procedure he has certain procedural rights, that distinguish him from the rest of the participants, rights on which he should be informed. The written evidence – documents, account for 20% of the presented evidence in 2011 (in 2010 – 17%), while the material evidence account for 10% (in 2010 – 17%). It is necessary to increase their participation, which demands greater efficiency of the law enforcement bodies in detecting and securing this type of evidence. Namely, the written evidence – documents, may be found in most of the monitored criminal offenses – particularly in the most frequent ones, the abuse of official position and authority and fraud, include an action for perpetration which also encompasses creation of certain

written documents (forged documents), which afterwards are subject to judicial proving and determination of the liability. The material evidence is on a similar line, this type of evidence is a permanent witness of the offence, which is capable to show the criminality and responsibility for harmful conduct even after longer time.

Even though this year there has been a significant use of expertise as evidentiary means, it still has a minimal contribution, and that leads us to the conclusion, that the facts were largely determined by previous evidence so there was no need for expertise or the serious financial expenses for their execution were the reason for the smaller number of expertises.

A witness is a natural person who is summoned during the criminal proceeding by the court, and as a witness is obligated to answer to the summons, a person who is likely to be able to give notification on the criminal offence and the perpetrator and on other important circumstances, based on his sensory perceptions of all facts that are subject to proving. The notification that the witness gives in the criminal proceeding is named a statement of witness. With the statement, the witness conveys to the court all his immediate knowledge he acquired by the use of his senses for sight and sound, that are related to the specific criminal case.

According the articles 241 and 243 paragraph 2 of the CPL, the witness is not obligated to answer certain questions if he is likely to expose himself or a close relative to a serious embarrassment, significant material damage or criminal prosecution. Regarding such right, the witness is informed by the president of the penal and this is noted in the minutes.



Regarding this issue, the monitors noted that in 85% of the cases the witnesses were informed about this right, while in 15% that did not happen. Similar to last year, the data point out that the judges mainly respect the mentioned articles from the CPL, but the situation needs further improvement because the law imposes absolute respect of the norms.

In 96% of the hearings where a witness was examined, the action was taken in the presence of the defendant, while in only 4% of the hearings the witness refused to give a statement in presence of the defendant. At the same time, in 2/3 of the cases, when the witness refused to give a statement in presence of the defendant, the defendant was not temporarily removed from the courtroom, which is a negative moment in implementing the above process action.

According to article 293 of the CPL, when there is danger of being exposed to intimidation, threat of retaliation or serious life-threatening risk, risk to their health or to their physical integrity, or when there is a need of their protection during the proceedings, the public prosecutor, the investigative judge or the president of the panel take action to ensure effective protection of the witnesses, the collaborators of justice, the victims if they appear as witnesses in the course of the proceedings. Thus, the monitoring data show that in 85% of the cases where witnesses gave statements, there was no application of measures to protect the witnesses, while in 15% of the hearings there was witness protection. In those 15% of the hearings, the examination of the witnesses was conducted in a special manner i.e., the defendant and his defence counsel had the possibility to examine the witness through the court. This kind of questioning is in accordance with article 293 paragraph 2 and 3 of the CPL, that stipulates that in order to protect these persons, a special manner of examination and participation in the proceedings is conducted; so in that sense, the witness is examined only in the presence of the public prosecutor and the investigative judge or the president of the panel, in a place that guarantees the protection of his identity, unless in agreement with the witness the panel decides otherwise, the questioning to be made through the court or by using other technical means of communication.

The CPL introduced another essential manner for witness protection, being by the inclusion in the witnesses protection program. The competent public prosecutor, the investigative judge or the president of the panel may submit a request for inclusion in the witness protection program to the Public Prosecutor of Republic of Macedonia. If the Public Prosecutor of Republic of

Macedonia decides that the request is well founded, then he submits a proposal to the competent body for deciding on inclusion in the witness protection program (article 294 of the CPL). However, in 2011, same as the previous 2010, according to the data from the monitoring, there was not a single case where a request for inclusion in the witness protection programme was submitted, i.e. this mechanism for quality protection of witnesses and proving legally relevant facts in corruption crimes is not being used.

2.9. Judgment and penalty policy

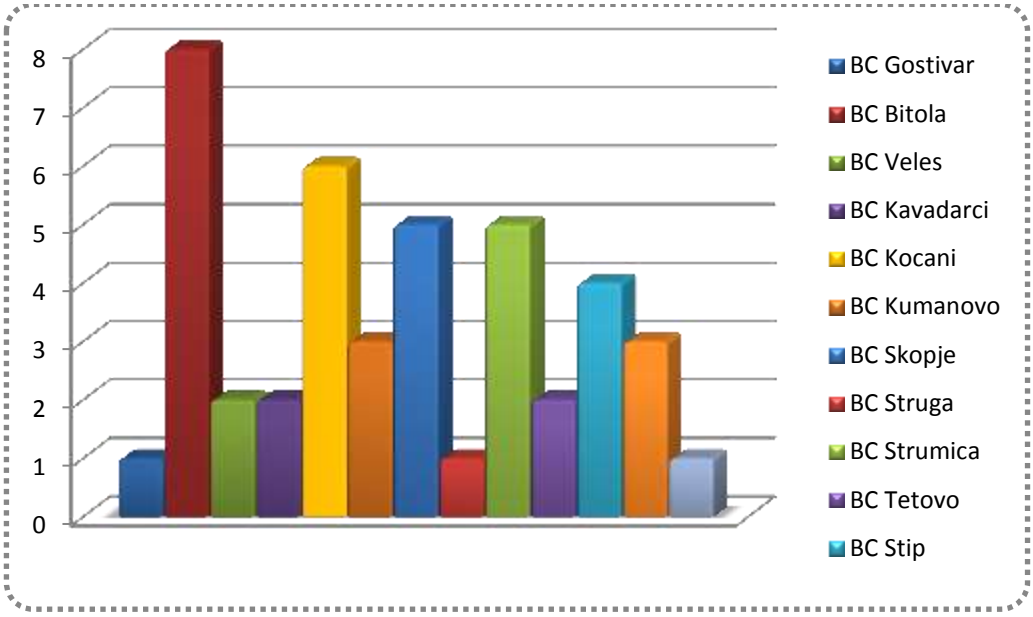
The most important act that is adopted in criminal proceedings is the judgment. Namely, all process activities undertaken in the course of the proceeding are directed towards adopting a judgment. In fact, the judgment is a type of a decision with which the court completes a certain criminal case. The judgment, as an act of a competent state body, contains the answer to the question did the defendant perform the offence and is he criminally responsible. The judgment and the adoption of the judgment may not be seen simply as the resolution of a criminal case between the parties, but should be rather seen as an activity that applies the law in specific cases.

The importance of the judgment is multiple, i.e., it is not exhausted only in its effect on persons who are directly affected by its content. Thus, after its adoption and publication, the judgment becomes public to all citizens and thereby it influences the strengthening or weakening of the special and general prevention, so, in adopting the judgement the court must not leave any room for doubt that the law is applied incompletely or improperly, or that there are some other omissions. The judgment is pronounced after the main hearing is completed, namely, it is the time when the court panels retreats for counselling and voting (article 362 paragraph 2 of the CPL). The counselling and the voting are secret, thus a separate report is prepared describing the course of the counselling and the outcome of the voting.

The judgment may relate only to the accused person and only to the offence that is the object of the indictment-stipulated in the filed indictment, i.e. the indictment as amended or expanded at the main hearing (article 364 paragraph 1 of the CPL). The relationship between the judgment and the indictment implies that there must be a subjective and objective identity between them i.e., a guarantee that citizens may be tried only when charges against them have been made and they may be prosecuted only for the offense specified in the indictment.

The court bases its judgment only on the facts and evidence presented during the main hearing (article 365 paragraph 1 of the CPL). Hence, any evidence that was not presented at the main hearing and that was not a subject of direct examination by the court could not serve as a bases for passing a judgment.

According the data at disposal to the Coalition, 43 out of 174 monitored cases were completed at first instance.[20] Most of them were processed by the Basic Court Bitola – 8 cases (last year there were 16), then by the Basic Court Kocani – 6, the Basic Court Skopje I as well as the Basic Court Strumica had 5 completed cases each, the Basic Court Stip - 4 cases, while the rest of the courts have less such cases.



According to article 366 paragraph 1 of the CPL, there are three types of judgments:

- Judgment with which the charges are rejected (rejection judgment),
- Judgment with which the defendant is acquitted (acquittal judgment), and
- Judgment with which the defendant is found guilty (conviction judgment).

[20] For comparison last year 60 cases out of 154 monitored cases, within the research period were completed in first instance.

These three types of judgments may be divided into two groups: formal and material. A formal judgment is the judgment for whose adoption the court does not engage in resolving the dispute i.e., the court does not examine the grounds of the charges, but only the formal elements and determines that there are no assumptions for trialling the case itself. The judgment that rejects the charges i.e. a rejection judgment is considered a formal judgment.

Type of judgement for the accused	BC where the case is processed	Type of criminal offence					
		Art.247	Art.353	Art.394	Art.239	Art.257	Art.276
Rejection judgment	BC Gostivar	0	0	0	0	0	0
	BC Kocani	0	1	0	0	0	0
TOTAL		**0**	**1**	**0**	**0**	**0**	**0**
Acquittal judgment	BC Bitola	0	1	0	0	0	0
	BC Kavadarci	1	0	0	0	0	0
	BC Kocani	1	0	0	0	0	0
	BC Kumanovo	0	2	0	0	0	0
	BC Strumica	1	0	0	0	0	0
	BC Tetovo	1	0	0	0	0	0
	BC Stip	0	2	0	0	1	0
	BC Prilep	0	1	0	0	0	0
TOTAL		**4**	**6**	**0**	**0**	**1**	**0**
Conviction judgment	BC Gostivar	0	1	0	0	0	0
	BC Bitola	1	0	0	0	0	0
	BC Veles	0	2	0	0	0	0
	BC Kavadarci	1	0	0	0	0	0
	BC Kocani	0	3	0	1	0	0
	BC Kumanovo	0	1	0	0	0	0
	BC Skopje	0	3	1	0	0	1
	BC Strumica	1	3	0	0	0	0
	BC Tetovo	1	0	0	0	0	0
	BC Stip	1	0	0	0	0	0
	BC Negotino	1	0	0	0	0	0
TOTAL		**6**	**13**	**1**	**1**	**0**	**1**
TOTAL		**10**	**20**	**1**	**1**	**1**	**1**

A material judgement is the judgment for whose adoption the court engages in substantive examination of the dispute i.e., the court decides on the request contained in the indictment and according to its assurance, may find that the charge is unfounded and release the defendant of the charges, or that the charge is founded, the defendant is declared guilty and the court

determines a sanction to be applied. The material judgments include: the acquittal judgment and the conviction judgment. Of a total of 43 cases with first-instance court judgements, a conviction judgment which found the defendant guilty was passed in 22 cases, an acquittal judgment was passed in 11 cases, in 1 case there was a rejection judgment, while in 9 cases there is no data on the type of the judgment passed.

According to the data available to the Coalition, all 5 judgments passed by the BC Skopje I were conviction judgments; in the BC Bitola there was one conviction judgment, one acquittal judgment, but for 6 judgments there is no data on the type of judgement, while in both the BC Strumica and the BC Kocani we encounter 4 conviction and one acquittal judgment per each. Moreover, the only rejection judgement was passed by the BC Kocani. In this group we would mention the BC Stip with 4 passed judgments, out of which 3 acquittal and one conviction judgement. The remaining courts have less representation in the passed - 43 judgments. So, in each of the basic courts in Gostivar, Kavadarci, Kumanovo, Tetovo and Negotino, there was only one passed conviction judgment, while in the BC Veles there were two conviction judgments. On the other hand, there was one acquittal judgment in each of the courts in Kavadarci, Tetovo and Prilep, while in the BC Kumanovo there were two acquittal judgments. Moreover, it should be noted that of the 9 judgments for which there is no data available, two were passed by the BC Prilep and one by the BC Struga.

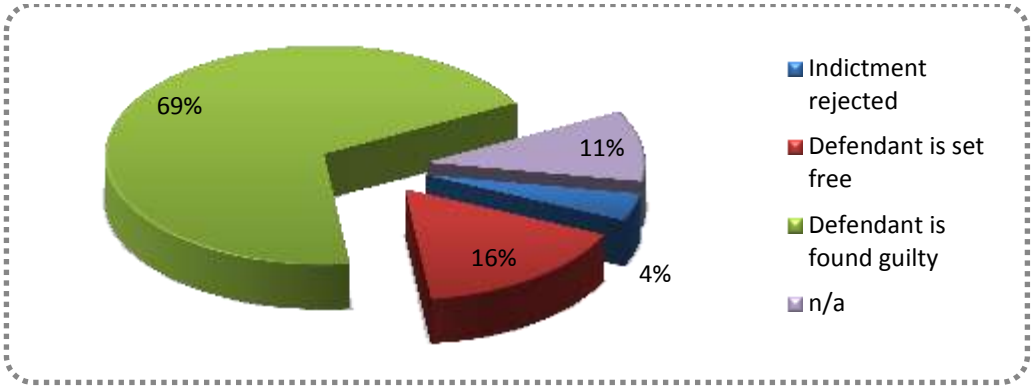
The gathered data on the type of judgment indicate that prosecutors resenting the indictments in the BC Skopje I, Strumica and Kocani, always or most of the time, have prepared quality indictments. This can not be said for the prosecutors in the BC Stip and Kumanovo, where several acquittals were passed. It is recommended to improve the quality of the indictments, as well as the support with evidence and fortunately, in 2012, the prosecution investigation will commence, thereby the prosecutor will have full responsibility for the quality of evidence. In fact, if we claim that the judge manages the main hearing, then we may say that the prosecutor (will) manages the investigation, his abilities to detect and use the evidence have (and will have) a decisive influence on the type of judicial decision.

The largest part of the passed judgments, for which there is available data i.e., 20 judgments were passed for abuse of official position and authority, stipulated and punishable under article 353 of the CC. Of those, 13 judgments were convictions, 6 were acquittals and one was a rejection. The basic courts Strumica, Kocani and Skopje I for such offence passed 3

conviction judgments each, the BC Veles passed 2 conviction judgments, while both the BC Gostivar and the BC Kumanovo passed one conviction judgment each. Both the BC Kumanovo and the BC Stip passed 2 acquittal judgments for cases prosecuted under article 353, while the BC Prilep and the BC Bitola passed one acquittal judgment each. The BC Kocani passed the only rejection judgment for a proceeding under article 353. There were 10 judgments passed for the criminal offence – fraud, stipulated and punishable under article 247 of the CC, of which 6 convictions and 4 acquittals. The above situation is quite logical having in mind the fact that most of the 174 monitored cases were related to the criminal offenses - fraud and abuse of official position and authority.

For the offence stipulated and punishable under article 394 of the CC, criminal association, there was only one conviction judgment passed by BC Skopje I. The same court has passed the only judgment for the offence – illicit manufacturing, article 276 of the CC, also a conviction. The BC Kocani has passed one conviction judgment for the criminal offence embezzlement, stipulated and punishable under article 239 of the CC, while the BC Stip has passed one acquittal judgment for the offence damaging or providing privileges to creditors, article 257 of the CC.

The 43 cases that were completed in first instance regarded 123 defendants. Of those, 85 persons that is 69% have been found guilty in first instance, 20 defendants that is 16% have been acquitted, while for 5 defendants that is 4% the indictment has been rejected. Still we need to have in mind the fact that for 13 defendants that is 11%, there is no data on the type of judgment.

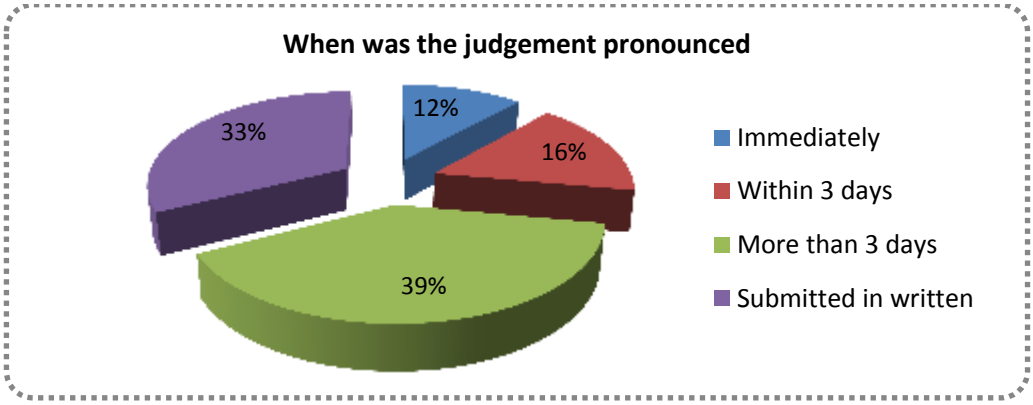


From the abovementioned, one may conclude that the first instance courts in general have passed conviction judgements in cases regarding

corruption criminal offences. This conclusion arises upon two bases, on the base of the total number of completed cases, i.e., 22 cases that is 51% of the 43 completed cases ended with conviction judgments, and on the base of the total number of convicted defendants, i.e., 85 out of 123 defendants that is 69% were found guilty.

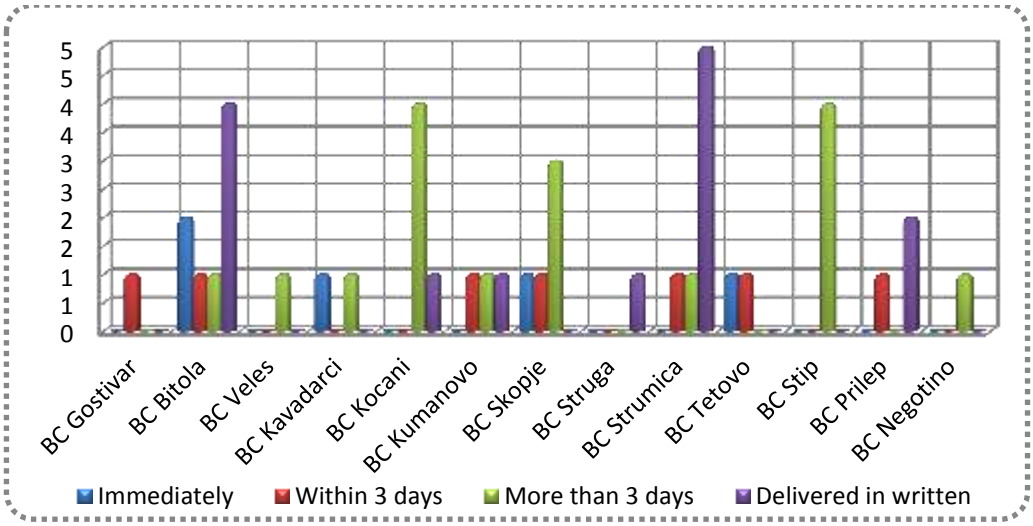
After the passing of the judgement comes its pronouncing, as the last procedural action performed by the panel on the session. The judgment is pronounced immediately after the court has passed it. However, if the court is not capable to pronounce the judgment the very same day after the completion of the main hearing, it may postpone the pronouncing of the judgment for not more than three days and it determines the time and place of pronouncing of the judgment (article 370 paragraph 1 of the CPL). The president of the trial panel pronounces the judgment in the presence of the parties, their legal representatives, proxies and the defendant's counsel. However, the judgment may be pronounced even when the party, the legal representative, proxy or the defendants counsel is absent. The trial panel may order the judgment to be orally pronounced to the defendant who is not attending by the president of the trial panel, or just delivered to the defendant (Article 370 paragraph 1 and 2 of the CPL).

The pronouncing of the judgment is performed so that the president of the trial panel reads out the previously written judgment and briefly announces the reasoning behind the judgment. Meanwhile, everybody present stands while listening to the judgment being read (article 370 paragraph 5 of the CPL). After the judgment has been pronounced, the president of the panel will instruct the parties on their right to appeal, as well as on their right to reply to the appeal. In addition, the president of the panel will warn the parties about their obligation to inform the court on any change of address until the effective completion of the proceedings.



The judgment was pronounced immediately in only 12% of the completed cases (last year this happened in 33%), in 16% the judgment was pronounced within the statutory term - 3 days, while in nearly 39% of the cases there was breach of the statutory term (last year this happened in 23%). The judgment was delivered in written form in 33% of the cases (in 2011 in 22%). If we compare these results to the 2009 results, the picture becomes even worse, since in 2009 the number of judgments pronounced immediately was approximately 53%, while the number of judgments pronounced later than 3 days was approximately 11%.

The data that in 39% of the completed cases, the judgment was pronounced later than three days, in breach of the legal provision (article 370 of the CPL) is worrying. Quite logical is the question why this happens, or why such acting constantly grows. The responsibility lies with the judge, and may be due to the fact that he is too busy, or the case is too big and complicated, but the possibility that something else is in question can not be excluded. The monitoring did not provide data on this issue, but it is recommended that following researches pay attention to it. Departing from the fact that the responsibility is individual, it is necessary to make a detailed insight into the acting of the basic courts, and to determine the ones contributing to such results.



So, unlike last year, when the BC Stip had pronounced all the judgments immediately, this year the opposite happened, namely the judgement in all 4 completed cases was proclaimed within a period longer than the statutory term of 3 days. The situation in the BC Kocani is similar, i.e. the judgement in 4 completed cases was pronounced within a period longer

than 3 days, and the judgement in one case was delivered in written form. Here we should add the BC Skopje I, where 5 cases were completed – and for 3 of them the pronouncing was carried out within a period longer than three days. The BC Veles and the BC Negotino should be mentioned, namely, they had one completed case each, and the pronouncing of the judgments was carried out within a period longer than 3 days. Among the more efficient on this issue, we should mention the BC Bitola with 2 judgments pronounced immediately, one judgment pronounced within 3 days but also with one judgment pronounced within in a period longer than 3 days, as well as the BC Tetovo with 2 judgments, one pronounced immediately and one pronounced within 3 days. Delivery in written form is mostly present in the BC Strumica, in 5 cases and the BC Bitola, in 4 cases.

The criminal sanction is an instrument of the state which seeks to protect the established system of values, the individual and his position, the state as a whole and its values, imposed by the court in a procedure established by law, and which implies deprivation or limitation of certain rights of the offender. The structure of the system of criminal sanctions, or what types of criminal sanctions will exist, depends on the needs of the society to protect its most important values which go in the direction of its existence and development.

According to article 4 of the CC, the Macedonian system of criminal sanctions consists of:

- penalties,
- alternative measures,
- security measures, and
- educational measures.

All sanctions have a contribution in dealing with crime, while in the fight against corruption especially important are the penalties, alternative measures and measures for confiscation of property gains acquired with the criminal offense. Article 33 paragraph 1 of the CC stipulates that: „For criminal offences, to the criminally responsible perpetrators the following penalties may be imposed:

- imprisonment;
- a fine;
- prohibition of performing a profession, an activity or a function;
- prohibition of driving a motor vehicle; and
- expulsion of a foreigner from the country.

In the same direction, according the article 48-a of the CC, the following alternative measures may be imposed on the criminally responsible perpetrators:

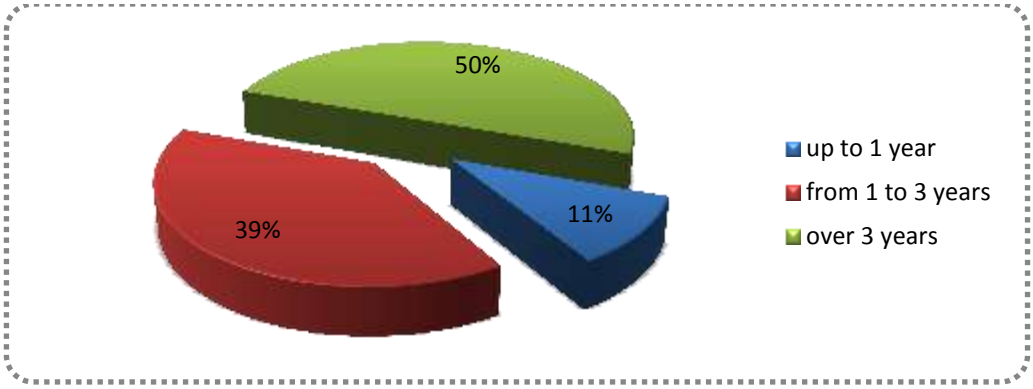
- suspended sentence,
- suspended sentence with protective supervision,
- community work,
- conditional suspension of the criminal proceedings,
- court reprimand and
- house arrest.

It is stated that the 43 first - instance judgments regarded 123 defendants, where for 85 persons a conviction judgment was passed, 20 persons were acquitted, for 5 persons the charges were rejected, while for 13 persons there was no data on the type of judgment.

Effective imprisonment penalty (in months)

Months	6	12	18	24	27	30	36	42	48	54	60	72	84	120	144	156	180
Number of penalties	2	4	1	11	1	4	5	8	7	2	3	1	2	2	1	1	1
Years	0,5	1,0	1,5	2,0	2,3	2,5	3,0	3,5	4,0	4,5	5,0	6,0	7,0	10,0	12,0	13,0	15,0

Of 85 persons who received conviction judgment, an effective imprisonment penalty was issued for 56 persons. The lowest one is in duration of 6 months and it was issued for 2 persons, while the highest imprisonment penalty was issued to one person in duration of 180 months (last year the highest penalty imprisonment was 81 months).

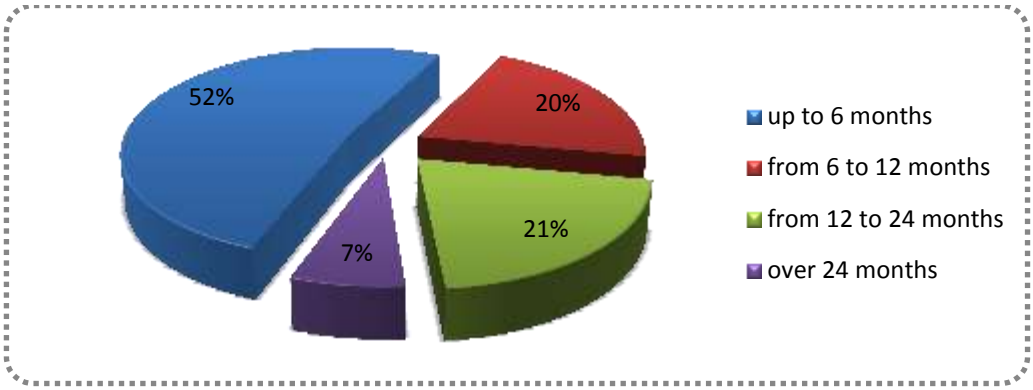


Effective imprisonment penalty with duration not longer than one year was issued for 6 persons that is 11% of the perpetrators sentenced to imprisonment. 22 persons that is 39% were sentenced to an effective imprisonment penalty in duration from 1 to 3 years. Imprisonment longer than 3 years was imposed on 28 persons that is 50% of those convicted to an effective imprisonment penalty, while one person was sentenced to imprisonment of 156 months and the longest lasting sentence of 180 months, was imposed on one person. If one makes a comparison with the situation from last year, it will be noticed that there are significant changes in percentage representation of the three measuring values. Thus, in 2010, the effective imprisonment penalty with duration not longer than one year was issued to 43% of the perpetrators convicted to an effective imprisonment, while this year it was issued to 11%; then, 48% were convicted to imprisonment from 1 to 3 years while this year 39% received the same penalty, and regarding an imprisonment penalty longer than 3 years, last year it was issued to 9% while in 2011, this penalty was issued to 50% of the persons convicted to an effective imprisonment penalty. Therefore, one may conclude that in 2011 the courts imposed longer effective imprisonment penalties compared to 2010, which in itself means a more serious social reaction of the courts in the fight against corruption, with stronger expressed elements of special and general prevention.

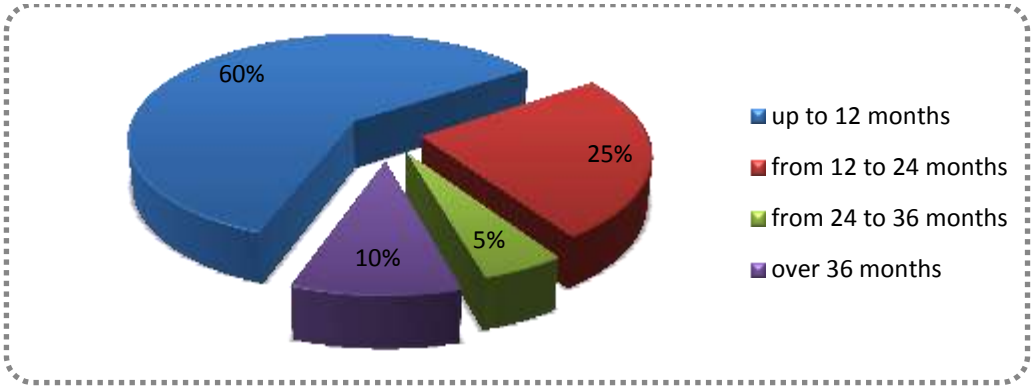
Suspended imprisonment penalty (in months)

Months	6	8	12	19	24	36	48
Number of penalties	15	2	4	1	5	1	1
Years	0,5	0,7	1,0	1,6	2,0	3,0	4,0

The alternative measure – suspended sentence, was issued to 29 individuals and it provides an opportunity to the perpetrators to re-socialize through a treatment outside the institutions, i.e. in the community. With the suspended sentence, the court determines the penalty for the perpetrator and at the same time it determines that this penalty will not be executed if the perpetrator does not commit a new offence during a period which the court determines, which can not be less than one or longer than five years (probation period).



According to the monitoring data, the suspended sentence was most often issued for duration of 6 months, i.e., it was issued to 15 convicts or 52% of the total number of persons on which a suspended sentence was imposed. For 6 convicts or 20,5%, the suspended sentence was issued for a duration from 6 to 12 months, and for the same number of convicts the suspended sentence was issued for a duration from 12 to 24 months, while for 2 convicts or 7% of the entire population of convicts on suspended sentence, its duration is over 24 months, respectively for the first one - 36 months, and for the second one - 48 months. It should be taken into consideration that a suspended sentence may be imposed when the perpetrator is determined a penalty of imprisonment of up to two years or 24 months, which means that for the two convicts there is a significant deviation of the normative solutions and in both cases another type of penalty should have been issued, as a more severe sanction.



Most often, the probation period has been determined to last up to 12 months (60% of the convicts on suspended sentences), for 25% the control period has been determined to last from 12 to 24 months, for 5% it is in the interval from 24 to 36 months, while for 10% of the convicts on suspended

sentences the control period has been determined to last from 36 to 48 months.

The fine as a penalty was determined for 17 persons, and since it may be imposed as a main or secondary penalty, it means that in some of the cases the convicts at the same time were convicted to imprisonment and a fine. Unlike last year, in 2011, there was an increase of the amounts of the fines, which goes in line with last year's recommendations to impose higher fines, having in mind the nature of the corruption crimes. Therefore, three convicts were convicted to a fine of up to 20,000 denars, 13 convicts were convicted to a fine in ranging from 40.000 to 45.000 denars, while the highest fine was 275.400 denars, imposed to only one convicted person.

Just like last year, in 2011 the court took account of reckoning the time spent in detention in the determined duration of imprisonment, otherwise there would be elementary violations of the human rights and freedoms.

Generally speaking, compared with last year, in 2011 the courts practiced stricter sanctions on the perpetrators of corruption offences, such as longer effective imprisonment penalties and higher amounts of fines (other penalties were not applied). Last year one of the weaknesses was the imposition of relatively lenient sanctions penalties on the perpetrators of corruption offences, while in 2011 there was a significant improvement regarding this issue, which implies there was more a serious social reaction of the courts in the fight against corruption, with more strongly expressed elements of special and general prevention.

The confiscation of property and property gains is a fiscal measure that intends to prevent the enrichment of individuals through crime. In line with article 97 of the CC, no one is allowed to acquire material benefit in a criminal manner because such behaviours shatter the basic economic principles that govern the society and also jeopardize or violate the most important values of the society. The amendments of the CC (Official Gazette of the Republic of Macedonia No.114/09) with article 98-a introduced the expanded confiscation, namely for more severe offences is prescribed confiscation of the property of the perpetrator or third parties which was acquired in the time frame of up to 5 years before the offence is committed (this includes most of the corruption offenses covered with the research).

From the data available to the Coalition, one may conclude that the measure for confiscation of property acquired in a criminal manner was

applied to 26 convicts. This fact is favourable because the suppression of corruption offenses should act on the system: motive – counter motive. Namely, the acquisition of material gain is the motive for committing the criminal offence, so the confiscation of property, the seizure of material values, should be the counter motive. Thereby it is acted in a generally preventive way, to influence the awareness of citizens that criminal behaviour is not cost-effective.

The expanded confiscation still remains a week point, so last year the measure was used in one case, while in 2011, according the monitoring data it has not been applied. It is a very important instrument against illegal acquisition of material goods, which requires a more profound analysis of the case to prevent the various transactions for concealing the criminal acquired property. Further more, its application requires greater efforts by the courts in determining the actual situation, which is their legal obligation, namely, one of the basic principles of criminal procedure is the requirement to establish the material truth.

2.10. Fair trial standards

The right to a trial within a reasonable time is a right entitled to the party during the proceedings, the court to decide on his rights and obligations i.e. on the charge of a criminal offence, without unnecessary delays. In fact, unreasonable delays imply a lack of efficiency of justice. Harmfulness of the protracted proceedings is especially present in the criminal matters (if the detention measure was imposed). The right is prescribed in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The Republic of Macedonia ratified the Convention in 1997, thereby accepting among other rights, to respect also the right to a trial within a reasonable time.

The right to trial within a reasonable time is stipulated in Article 6 of the Convention, entitled “Right to a fair trial“, where paragraph 1 states: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal…“.

The European Court of 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 with the system characteristics of the legal and judicial system of the state in question. The

content of the"special circumstances"comprise of the complexity of the case, the harm done to the injured party, the contribution of the submitter in the delay of the procedure, the contribution of the public bodies in the delay of the stages of the procedure.

In our legislation the protection of the right to trial within a reasonable time was for the first time regulated by the Law on the Courts (Official Gazette of the Republic of Macedonia No. 58/06). Namely, pursuant to the provisions of articles 35 and 36 the Supreme Court of the Republic of Macedonia decides upon the request for protection of the right. By adopting the Law Amending the Law on the Courts (Official Gazette of the Republic of Macedonia No. 35/08) the protection of the right to trial within a reasonable time was more substantially and precisely regulated (article 36 was entirely amended and a new article 36-a was introduced). The amendments to the Law on the Courts in 2010 introduced a new article 36-b that regulates the manner of payment of the compensation from the court budget.

The new Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 150/10) pays great attention to this right, so article 6 is entitled "Right to a trial within a reasonable time". Its provisions provide that the person who is subject of the procedure is entitled to be brought before a court within a reasonable time and be tried without unjustified delay. In addition, the court is obliged to conduct the procedure without delay and impede any misuse of the rights of the persons participating in the procedure.

The procedure for protection of the right to a trial within a reasonable time is processed by the SCRM in two stages, i.e. before a first-instance court panel and before an appeal panel. They are located in the Department for Protection of the Right to Trial within a Reasonable Time, as a separate department within the SCRM.[21] The judges from the Department for Protection of the Right to Trial within a Reasonable Time, within the Supreme court of the Republic of Macedonia are authorized to proceed and decide upon the requests of the parties and other participants in the proceedings for violation of the right to trial within a reasonable time, in accordance with the regulations and principles established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case law of the European Court of Human Rights as a departing point.

[21]LuisLopezGuerra(judge in the ECHR), Irrational delays, Iustitia no.3, 2010, Academy for training of judges and public prosecutors of the Republic of Macedonia, page 22

In order to determine how the right is exercised in practice, the Coalition submitted a request to the Supreme Court of the Republic of Macedonia to obtain information regarding the dealing with requests for establishing a violation of the right to trial within a reasonable time for 2011, with special emphasis on the criminal part.

From the obtained data, one may conclude that for criminal matters, 59 new requests have been received or, along with the unresolved ones from 2010, there have been 108 requests pending, out of which 92 were processed. For 25 requests a violation of the right to trial within a reasonable time was established and for 23 requests a fair compensation for damage was awarded, while for the remaining 2 accepted requests, there was no compensation was awarded because the party had not submitted such a request and the court decides upon the received request.

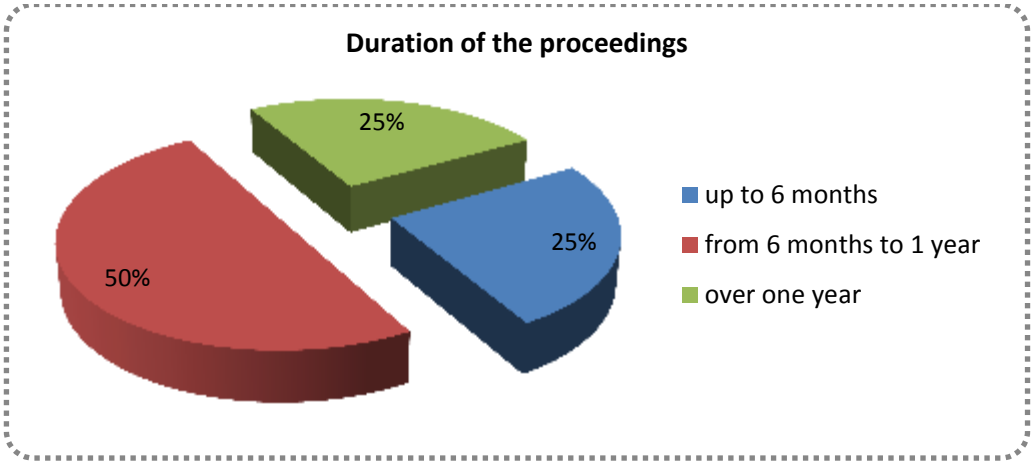
Field	Unresolved from the preious period	Newly received	Total in progress	Solved	Unresolved at the end of period	Denied	Rejected	Accepted	Other way
Register for a trial within a reasonable time - Civil	107	1529	1636	590	1046	78	364	148	
Register for a trial within a reasonable time - Appeals	32	254	286	267	19	205	14	47	1
Register for a trial within a reasonable time - Criminal	49	59	108	92	16	11	56	25	
Register for a trial within a reasonable time - Administrative	26	42	68	53	15	16	13	22	2
TOTAL	**214**	**1884**	**2098**	**1002**	**1096**	**310**	**447**	**242**	**3**

It would have been nice to see the character of the appeals i.e., how many of the 267 appeals were related to criminal matters, as well as the amount of the compensation awarded, but such data was not provided, so this should be taken into account for following researches.

Successful dealing with corruption requires efficient judicial proceedings or the procedures to last a reasonable time before an independent and impartial tribunal. The duration of the trial is a significant indicator of the efficiency of the procedure for each case, especially for

corruption cases. The longer the period from committing the offence to the court decision, the less intense are the effects of the penalty is a well known thesis. In corruption criminality, the time of discovery of the criminal offence does not match the time of committing the offence, and how long will the time period in between be depends on the professionalism and expertise of the bodies discovering it.

Analysis of data on the duration of the procedure show similar results to those of 2010. So, in 2011, 75% of the cases processed at first instance, were completed within one year, while for 25% of them the proceeding lasted longer than one year (for one case the proceeding lasted 29 months). For comparison, in 2010 the ratio was 80% -20% in favour of the cases completed within one year.



However, the percentage of cases where the procedure lasted longer than one year is large, so this data should be an incentive for the first instance courts to reinforce the efforts for efficient trial within a reasonable time because, the ECtHR when assessing the violation of the right to trial within a reasonable time takes into account the duration of the procedure in all instances, meaning that the contribution of first instance courts is part of the wider picture.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1. Conclusions

- In the monitored cases, the criminal proceeding was most often led for the offences of abuse of official position and authority and fraud. Therefore, we may conclude that the rest of the corruption related criminal offences covered with the research were rarely performed in practice or their performance creates difficulties in providing the evidence necessary to establish liability, which would not be the case with the offences abuse of official position and authority and fraud, or that the law enforcement authorities have the capacity to effectively deal with only those two mentioned corruption criminal offenses.
- The perpetrator of the corruption criminal offence has the following characteristics:
    - Lives in an urban environment;
    - At the age between 46 and 55 years;
    - Of Macedonian nationality;
    - Completed secondary or higher education;
    - Appears as a perpetrator for the first time;
    - Is a citizen of the Republic of Macedonia.
- MI has a dominant position in submitting the criminal charges (44%), due to its operational set up, the specific work tasks, and its large number of staff. Nevertheless, just as a reminder, last year the contribution of MI in submitting charges was 62 %. On the other hand, the role of the Public Prosecutor in initiating proceedings is increasing i.e., from the last year's 14% it increases to 26%. This situation is salutary having in mind the fact that as of November 2012 the implementation of the new Criminal Procedure Law begins, which provides inter alia an emphasized role of Public Prosecutor, in particular through the implementation of the prosecution's investigation.
- Investigation was conducted in 90% of the cases, while in 10 % of the cases there was no investigation i.e., a charge was brought directly. One may conclude that in the monitored corruptive cases indirect charges dominate or the investigation is conducted as the first stage in criminal proceedings. This would mean that within the detection phase, the competent authorities do not provide the necessary evidence – quality, so the evidence must be obtained during the investigation phase.
- In half of the cases, the investigation lasted up to three months, which is consistent with the intention of the law, as well as with certain principles that require efficiency of the proceedings, especially the request for trial

within a reasonable time. However, in 13 % of the cases the investigation lasted longer than 1 year, which is very hard to explain rationally.

- The application of the special investigative measures is insignificant, in less then 10% of the monitored cases, the measure interception of communication is most often used and there is a great disparity among the basic courts regarding their application, mainly we find cases with these measures at the BC Skopje I.
- The CPL determines the timeframe from the issuing the indictment until scheduling the first hearing, but the monitoring indicates that only 3% of the cases were processed according to the law, in 55% of the cases there is significant exceeding of the statutory time frame.
- Complaint against the indictment was filed in 17% of the cases, most of them were rejected and an insignificant number was adopted. This situation that has been continuously reported. It goes in favour of the operation of the Public Prosecutor i.e. shows that the public prosecutor prepares quality indictments and therefore the complaints are rejected.
- Measures of securing the attendance of the defendant during the proceeding were issued in 37 out of 174 cases, whereas in some of the cases several measures of the same or a different type were used. The detention measure was applied the most – in 27 cases.
- The detention measure was mainly used in proceedings for abuse of official position and authority, stipulated and punishable according to article 353 of the CC, and for criminal association, article 394 of the CC. The measure detention was used with 255 out of 548 defendants (47% of defendants). The majority of cases where detention was imposed were processed before the BC Skopje I. Danger of fleeing was the most common reason for application of the detention measure.
- In 91% of the monitored hearings the composition of participants in the proceeding was according to article 329 of the CPL. Most of the cases related to corruption (76%), were processed by panels comprised of one judge and two lay judges.
- About 60% of the defendants used the right of formal defence, i.e. they had a defence counsel during the criminal proceedings.
- 6 % of the hearings were performed in the absence of the defendant, mainly due to the unavailability of the defendant (there are relevant reasons for trial in the absence), less frequently due to the fleeing of the defendant. The mentioned data should not be a surprise since the measure detention was imposed to 47% of the defendants, which implies that it secures the attendance of the defendant during the proceedings, although other measures for securing attendance were used in 37 cases.

- The reasons for postponement are various, though most frequent are: absence of the defendant (25% or 138 postponements), the need for obtaining new material evidence (17% or 93 postponements) and absence of the defence counsel (15% or 82 postponements). Rarely as reasons for postponement of the hearings occur the absence of the injured party (7% or 38 postponements) and the absence of the public prosecutor (6% or 32 postponements).
- The need for a break is the most frequent reason to recess the main hearing (83% of the recessed hearings). The data for 2011 regarding the reasons for recess of the main hearing are more optimistic compared to the ones for 2010, because the recesses due to obtaining evidence have been decreased (from 20% to 6%), and mainly the reasons for recess were due to the need for a break.
- There was insignificant application of the measures for temporary securing and confiscation of goods and property. Namely, only in 8 out of 174 monitored corruptive cases or 5%, a decision for temporary securing or confiscation was adopted, which is too small a percentage because as per definition the corruption related offences are illegal acts that lead to the acquisition of enormous tangible assets.
- In the adjudication of the corruption related criminal offences the courts still rely mainly on the statements of the defendant and the witnesses. Thus, the testimony of the defendant accounts for most of the presented evidence - 25% and the testimony of the witness for - 22%.
- In 2011, same as in 2010, according to the monitoring data, a request for inclusion in the program for protection of witnesses was submitted in none of the cases, thus this mechanism for quality protection of witnesses and proving legal relevant facts in corruption criminal offences is not being used.
- The courts of first instance that deal with cases of corruption related criminal offences in most of the cases passed conviction judgments, which points to the success of the prosecutors to provide arguments for the indictments in the course of the main hearing. If we connect this fact with the fact that most of the complaints against the indictments were rejected, we may conclude that the prosecutors were at the needed level.
- The trend of reducing the number of judgements that are pronounced immediately continues, so in 2009 this was the case with 53% of the judgments, in 2010 33%, while in 2011 it was reduced to 12%. On the other hand, exceeding the statutory term of 3 days occurred in 39% of the cases (in 2010 in 23%, while in 2009 – 11%). This is a continuous negative trend that has to be stopped, so that things reverse and are in accordance with the law.

- Compared to last year, in 2011 the courts imposed stricter sanctions on the perpetrators of corruption criminal offences, such as longer effective imprisonment penalties and higher amounts of fines (other sanctions have not been applied). If last year, one of the weaknesses was the imposition of relatively lenient sanctions on the perpetrators of corruption offences, in 2011 regarding this issue there has been a significant improvement, which implies there was a more serious social reaction of the courts in the fight against corruption, with stronger expressed elements of special and general prevention.
- The expanded confiscation still remains a week point. Last year the measure was used in one case, while in 2011, according the monitoring data, it has not been applied at all. It is a very important instrument against illegal acquisition of tangible assets, which requires more profound analysis of the case in order to prevent the various transactions for concealing the criminally acquired property.

3.2. Recommendations

- In order to achieve the aims of the proceedings, it is necessary that the main hearing is prepared, the case examined in detail by the presiding judge, all legal rights of the parties during the main hearing are respected, but at the same time to prevent the attempts for delay of the hearing. To achieve the above mentioned, the judge needs to have full control over the case i.e. to be judge- manager, thus his behaviour will have the character of managing the court case. In fact, respecting the principle of trial within a reasonable time is considered to be one of the key elements of good judicial management. This obliges the presiding judge to promptly take the process activities and successfully direct the process.
- Despite the noted improvement of the situation in 2011, further work on strengthening the capacities of the PP is needed, in order to increase its activity in the detection of corruption criminal offences. The research has shown that MI is still a carrier of this process, but that the role of the PP has also improved. It should be kept in mind that starting from November 2012 the implementation of the new CPL begins, and thus begins the prosecutor's investigation.
- To enhance the capacity of the inspection bodies for identification of corruption offences and documenting them on time, since their insignificant contribution to the detection process leads to transferring the burden of detection to other bodies, as well as increasing the dark figure.

- The investigation is the first stage of the proceeding that has crucial influence on its further course. It should not be expected from the investigation to answer every question that arises in a concrete case, but only to enable a decision on the further course of the proceeding, having in mind that all the necessary facts are determined at the main hearing. Therefore, it is necessary to reinforce the tendency for its completion within 3 months.
- To conduct a restrictive policy with regard to detention. As a measure to ensure the attendance of the defendant, it has been applied in 27 of the monitored cases, but has been imposed to 47% of defendants. Once again the research showed that the judges used the guarantee measure - rarely, only in 2 cases; which leaves room for discussion about the reasons for such a position, is it a lack of confidence in that particular measure or is it something else. In the western countries this measure has a large application since with its application the defendant is released but deposits (personally or by third parties) a certain sum that in case of defendant's fleeing the country is transferred on the state account and the proceedings against the defendant continues..
- To stop the negative trend regarding the time of pronouncing judgements; since continuous increase of the percentage of judgements that are pronounced after 3 days is noted, and the difference is especially expressed if one compares it to 2009.
- To keep the tendency towards stricter sanctions for perpetrators of corruption related criminal offences, taking into account their nature. Namely, in 2011 there was an improvement in this area with the application of longer effective imprisonment penalties and higher fines. However, our system of criminal sanctions is versatile allowing the imposition of other sanctions, particularly penalties and alternative measures for the perpetrators of corruption offences.
- A great concern is that extended confiscation is not used, a measure that was expected to show significant results in fighting corruption. However, the monitoring data from 2010 and 2011 show that it has not been used or its application has been insignificant. The application of this measure requires greater engagement of the court, as well as other bodies, primarily financial, but its application will provide more detailed examination of the case and confiscation of illegal acquisition of tangible assets from third parties acquired. Therefore its application is recommended to meet the goals of sanctioning, both the general and the special.
- To respect the legal provision stipulated in article 295 of the CPL, which defines the timeframe from the submission of the indictment until the scheduling of the first hearing. According to the data from the monitoring,

only 3% of the cases were processed in accordance with the law, which strongly affects the efficiency of the proceeding. The president of the court panel has the responsibility for the situation since it is unacceptable that in every tenth case the main hearing is scheduled one year after the submission of the indictment.

- Trial in absence to be only acceptable under extraordinary circumstances (danger of obsolescence or loss of evidence) because the attendance enables the defendant to have a full view of the trial and to contribute in the construction of the defence.
- The monitoring showed an insignificant application of the measures temporary securing and confiscation of goods and property i.e., only in 5% of the cases a decision for temporary securing or confiscation was made, which is too few because, as per definition, the corruption related offences are illegal actions that lead to the acquisition of enormous tangible assets. Therefore, it is recommended to increase the use of temporary securing and confiscation of goods and property. These data are disappointing when dealing with corruption, the law enforcement bodies are obligated to initiate them and the courts must apply the temporary measures more often because they have an essential role in the realization of the criminal policy for this type of criminality.
- A significant proportion of the cases still last unacceptably long, so it is necessary to undertake additional efforts for adjudication in a shorter time frame, i.e. trial within a reasonable time, which is one of the basic principles of the ECHR. In most of the cases, the duration of criminal proceedings in first instance represents a significant part of the overall period for the concrete case, which is why it should be shortened, but without jeopardizing the goal of penalisation.
- To make efforts to provide financial means for forensic expertise (since it has a large influence on the rightful determination of the factual situation), thus the forensic expertise as evidence will be applied more often. In 2011, there was an increased use of this evidence, although it has minimal contribution to the whole of used evidences.
- The character of the corruption offences, particularly the most common- abuse of official position and authority and fraud, requires written documents and material evidence to have the central position in the proving process. It is necessary to increase their participation, which demands greater efficiency from the law enforcement bodies in detecting and proving this type of evidence.

4. ABSTRACT OF THE RECENSION MADE BY PROF.DR. LJUPCO ARNAUDOVSKI

The corruption is an intricate, complex phenomenon that appears within the criminological and penal legal phenomenology as an independent form of criminality but also as a method for performing its most complex forms. Therefore, the methodological approach is essential since it determines the quality of the obtained results, the depth of penetration into the occurrence that is being researched, its characteristics and the realization of penal action as a chosen way for "dealing" with it.

The research of corruption through the monitoring of the judicial proceedings has been designed as a longitudinal study (observational research performed over a period of years). When it comes to detection, prosecution and adjudication of this type of criminality, its value always grows with the exactness and explicitness because the activities of the law enforcement bodies and the changes in the phenomenological features of this type of criminality are being monitored with the dynamics by which it appears.

The paper entitled"Judicial efficiency in fighting corruption in the Republic of Macedonia" by author Prof. Gjorgji Slamkov, Ph.D., presents the research in the light of its subject objectives, while the evaluation of the gathered results is presented and assessed in a correct way. The author gives his views and assessments, draws conclusions and recommendations derived from the results of the research conducted and can determine the directions of further research of corruption in Macedonia. The author of the report at times makes comparisons of the results from 2010 and the results obtained in 2011, an approach that enriches the report and enables the phenomenon to be followed in its changes and conclusions to be drawn from it. Prepared like that, the report aims to identify the problems that arise in the courts before the judges and this particular criminality, to indicate their character and based on those indications to make efforts to prepare new projects that will explore the salient issues, will analyze the state of our judiciary in relation to its functioning as independent and autonomous, and in accordance with the international standards of procedural justice. The author realistically exploited and processed the research areas in compliance with the quality and richness of the obtained results. The report is written with knowledge of the issues in question, in a clear style and language understandable to those who use it.

Given the nature of this analysis, its objectives and subject of research, its content and manner in which it discusses the key issues, the reviewer

suggests that it is submitted to the courts, judges and public prosecutors as information and knowledge on how to proceed in future cases for which they decide, particularly from the perspective of international standards of procedural justice.

Prof. Ljupco Arnaudovski, Ph.D.

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