KOALICIONI КОАЛИЦИЈА KOALICIJA
СИТЕ ЗА ПРАВИЧНО СУДЕЊЕ
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JUDICIAL EFFICIENCY IN FIGHTING CORRUPTION IN THE REPUBLIC OF MACEDONIA

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

Skopje, February 2010

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Table of Contents

List of Most Frequently Used Acronyms

CCM - Criminal Code of the Republic of Macedonia

CRM – Constitution of the Republic of Macedonia

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

ICCPR – International Covenant on Civil and Political Rights

LCP – Law on Criminal Procedure of the Republic of Macedonia

MoI – Ministry of Interior

OSCE – Organisation for Security and Cooperation in Europe

Introduction and Research Methodology

It is the second year since the Project **"Corruption Trial Monitoring Programme in the Republic of Macedonia"** has been implemented in courts in the Republic of Macedonia. The project itself is based on data obtained by monitoring corruption-related court proceedings, which allowed us to find about the respect of standards for a fair and objective trial in the actions of judges upon corruption-related cases and, at the same time, make an analysis of how Macedonian judiciary tackles corruption.

Reasons for Conducting the Research

The reasons why we decided to implement this project lie in the problems of dealing with this type of crime in the Republic of Macedonia, starting from uncovering the criminal acts of corruption, to the procedure in the Public Prosecutors' Office and especially the respect for the provisions of the Law on Criminal Procedure and the respect for the standards of a fair and objective trial in court processes of this type.

The project "Corruption Trial Monitoring Programme in the Republic of Macedonia" is a continuation of the project of 2008, which was preceded by a six-months pilot phase named "Needs assessment- Development of Corruption Trail Monitoring Programme in the Republic of Macedonia", implemented during 2007 by the Coalition "All for Fair Trials" in cooperation with NGO Transparency - Zero Corruption. Within the framework of this pilot project corruption-related criminal acts were defined based on legislation and court practice, which brought to surface a number of problems prosecution authorities face when dealing with corruption-related acts. Empirical data were gathered as well, which served as a fruitful basis for further monitoring of corruption-related cases. Therefore, with previous experience, the Coalition "All for Fair Trials" continued monitoring court cases of this type during 2009 too, in order to make a more comprehensive assessment of the capacities of the judiciary and the actions of judges when handling corruption-related court cases, and to make a comparative analysis with the previous findings. The recommendations of this research will contribute to strengthening judicial capacities, court independence and efficiency as well as the fight against organised crime and corruption.

Research Objectives

The purpose of this research is to:

- Analyse the results obtained by monitoring court cases of criminal acts of corruption,
- Determine the profile of the perpetrators of criminal acts of corruption,
- Review in detail all phases of the court proceeding,
- Determine the duration of court proceedings as well as the reasons for their prolongation,
- Make an analysis of how much standards of a fair and objective trial are respected, as well as
- Obtain more detailed information about courts' penal policy through the structure of criminal acts perpetrated.

Based on the recommendations of this research, concrete measures may be taken in the fight against corruption and contribution will be made to solving serious problems, such as lack of independence and low judicial efficiency, which is part of the implementation of the recommendations of the European Commission and one of the conditions for entry into the European Union.

Court Proceedings of Corruption-Related Criminal Acts

The research[1] covered court proceedings of corruption-related criminal acts[2] monitored in nine basic courts in the Republic of Macedonia, as follows: Skopje, Veles, Kavadarci, Strumica, Bitola, Ohrid, Kochani, Shtip and Tetovo.

Research Instrument

This part of the research was conducted on the basis of an instrument prepared previously – a questionnaire for monitoring composed of 64 questions.

[1] The research covered data from cases monitored in the period 01.04.2009-31.12.2009

[2] The definition of corruption provided in the project "Needs assessment- Development of Corruption Trial Monitoring Programme in the Republic of Macedonia", implemented in the course of 2007, encompasses 24 criminal acts , as follows: bribery at elections and voting, fraud, defrauding buyers, unauthorised reception of gifts, false bankruptcy, causing bankruptcy by unscrupulous operation, bankruptcy abuse, damaging or privileging creditors, laundering money and other proceeds from crime, securities and shares fraud, disclosing and unauthorised acquisition of a business secret, abuse of official position and power, fraud at service, helping oneself at service, receiving bribe, unlawful mediation, covering up the origin of disproportionately acquired property, disclosing an official secret, abuse of a state, official or military secret, forging an official document, unlawful collection or payment and unlawful influence over witnesses

When filling in the questionnaire, there was also a possibility for monitors (a team of lawyers with previous experience in monitoring this type of criminal acts) to give their comments and specific details about a particular case, that is, hearing monitored.

Content-wise the questionnaire was composed in a way to provide information about the separate segments of the subject of research:

- The court and judge in charge of the case
- Date of monitoring, duration of hearing, and the number of hearing for the case in question
- Data about the defendant
- Criminal act and description of the case for which the procedure takes place
- Whether an investigative procedure was conducted and, if so, how long investigation lasted
- When the indictment was issued and whether a complaint was filed against it
- Time period between an indictment issued and the first court hearing scheduled
- Whether a detention measure was imposed/if so, on the basis of what and duration of detention
- Attendance of persons necessary at the main hearing and data about whether and, if so, which measures were imposed for securing the attendance of defendants
- Data about the number of trials in absence or whether an arrest warrant was issued
- Conditions in which the trial takes place
- The course of the evidence procedure before the court
- Cases where expert evidence was requested, type of expert evidence, when and upon whose proposal an order for expert evidence was issued
- Reasons for adjournment of court proceedings
- Data about the judgment (when the judgement was pronounced, type of judgement and criminal sanction, whether the court decided on the seizure of property or imposed a measure for confiscation of property)
- Time period between the start of the court proceeding and the pronouncement of the judgement

Apart from the above-given questionnaire, monitors were given another questionnaire with additional questions on the basis of which they were supposed to give their opinions about a certain case which was previously subject of monitoring for several months.

ANALYSIS OF THE RESULTS OF MONITORING OF CORRUPTION-RELATED CASES IN 2009

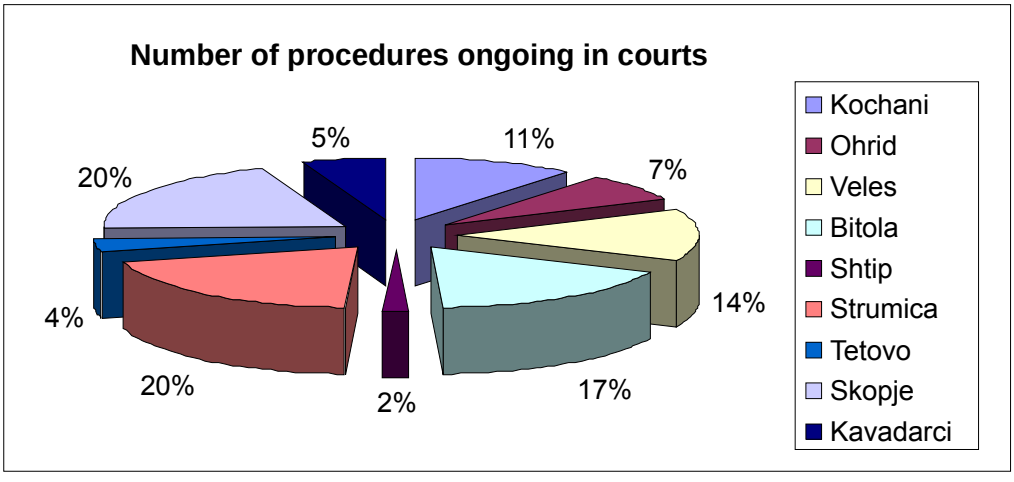
Compared to previous reports of the Coalition All for Fair Trials, as well as similar reports of other international (OSCE) and non-governmental organisations which monitor court proceedings and penal judiciary[3], this year the evaluation of the cases monitored is encouraging. Notably, although the long duration of proceedings remains to be unresolved anguish of domestic judiciary, the monitors' evaluation of the work of courts is surprisingly positive on many important issues. The evaluations that trials and penalties are fair while judges mainly unbiased and with a strong sense of a fair trial are satisfactory.

Which actions are considered fair may depend on the type of procedure we adopt and the assumptions we have about the manner in which this works. To a certain extent, our sense of justice and fairness is historical and linked to the legal folklore. The fact that certain characteristics of the procedure hurt our feeling of justice may only be the reflection of our familiarity with a procedure of certain type. However, one must bear in mind that the international instruments for human rights do not only guarantee fairness of procedure but also foresee a procedure of certain type, public, fast, unbiased, with expressly listed basic rights of defence. It is exactly on these standards and criteria set by the European Court of Human Rights in Strasbourg that the evaluation of the cases monitored in this project is made.

[3] See the reports of the Helsinki Committee for Human Rights (www.mhc.org.mk), Foundation Open Society Institute Macedonia (www.soros.org.mk) and Transparency Macedonia (www.transparency-mk.org.mk). Compare: Evaluation and Conclusions of the Supreme Court of the Republic of Macedonia on the Reports on the Work of Courts in the Republic of Macedonia in 2008, General session of the Supreme Court of the RM, held on 26.05.2009.

1. GENERAL INFORMATION ABOUT THE CASES MONITORED

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



During 2009 criminal procedures were monitored that are ongoing in courts in the Republic of Macedonia in a total of 110 cases for criminal acts of corruption. With regard to their distribution in basic courts, one may conclude that the highest percentage of the cases monitored fall within the courts of Skopje, Strumica and Bitola. The courts in Veles and Kochani have a share of 14% and 11%, respectively, whereas the lowest number of criminal procedures covered by this analysis falls within the courts of Ohrid, Kavadarci, Tetovo and Shtip.

- **Which criminal act is the procedure about**

	Criminal Code of the RM, Article No.	WHICH CRIMINAL ACT IS THE PROCEDURE ABOUT									TOTAL
		353 Abuse of official position and power	257 Dama-ging or privile-ging creditors	279 Money launde-ring	357 Recei-ving bribe	247 Fraud	360 Disclo-sing a business secret	354 Embe-zzlement	256 Bankruptcy abuse	359 Unlawful mediation	
BASIC COURT	**BC Bitola**	7	0	0	0	11	0	1	0	0	19
	BC Veles	12	0	0	0	3	0	0	0	0	15
	BC Kavadarci	0	0	0	0	6	0	0	0	0	6
	BC Kochani	11	0	0	0	1	0	0	0	0	12
	BC Ohrid	3	0	0	0	4	0	0	1	0	8
	BC Skopje 1	16	0	2	1	3	0	0	0	0	22
	BC Strumica	17	0	0	0	3	1	1	0	0	22
	BC Tetovo	2	1	0	0	1	0	0	0	0	4
	BC Shtip	0	0	0	0	0	0	1	0	1	2
TOTAL		68	1	2	1	32	1	3	1	1	110

With regard to the criminal acts monitored, one may conclude that the criminal acts of Article 353 of the CCM - abuse of official position and power are the most common ones with 68 cases of the total of 110 monitored cases, whereas one third, that is, 32 monitored cases are for the criminal act fraud of Article 247 of the CCM. The remaining cases are for the criminal act money laundering, Article 279 of the CCM, with two monitored cases, the criminal act embezzlement, Article 354 of the CCM, with three monitored cases, and one monitored case each for the criminal acts of Articles 357 of the CCM - receiving bribe, 360 of the CCM – disclosing a business secret, 256 of the CCM – bankruptcy abuse, 359 of the CCM - unlawful mediation and 257 - damaging or privileging creditors.

The criminal acts abuse of official position and power were present in all courts except for the courts in Kavadarci and Shtip, while the second most frequent criminal act – fraud was not present only in the Basic Court in Shtip. It is interesting to note that of the criminal acts rarely present the criminal acts "money laundering" and "receiving bribe" were present only in the Basic Court in Skopje, whereas the procedure for the criminal act "embezzlement" was monitored in the Basic Courts in Bitola, Strumica and Shtip. In Shtip the procedure for the criminal act unlawful mediation was also monitored, whereas the procedure for the criminal acts bankruptcy abuse was monitored in the Basic Court in Ohrid, disclosing a business secret in the Basic Court in Strumica, and the criminal act damaging or privileging creditors was monitored only in the Basic Court in Tetovo.

The highest number of monitored cases was found in Basic Courts Skopje 1 and Strumica, that is – 22 cases, of which in Basic Court Strumica 17, whereas in Basic Court Skopje 1 they were, understandably, for the criminal act of Article 353 of the CCM - abuse of official position and power. The remaining cases monitored in the Basic Court in Strumica are: 3 cases for the criminal act fraud and one criminal act each disclosing a business secret and embezzlement. The distribution of the remaining cases monitored in Basic Court Skopje 1 is as follows: 3 cases for the criminal act fraud, 2 for the criminal act money laundering and 1 case for the criminal act receiving bribe. According to the number of criminal acts monitored the next court is the Basic Court in Bitola, where 7 criminal acts were monitored for abuse of official position and power, 11 for criminal acts fraud and one criminal act embezzlement. In the Basic Court in Veles 12 cases were monitored for the criminal acts abuse of official position and power and only 3 cases for the criminal act fraud. The situation is similar for the cases monitored in the Basic Court in Kochani, where 11 cases were monitored for the criminal acts abuse of official position and power and only 1 case for the criminal act fraud. 3 cases each for the criminal act abuse of official position and power, 4 for the criminal act fraud and one criminal act bankruptcy abuse were monitored in the Basic Court in Ohrid. In the Basic Court in Kavadarci 6 cases for the criminal act fraud were monitored. 2 cases for the criminal acts abuse of official position and power and only 1 case each for the criminal act fraud and damaging or privileging creditors were monitored in the Basic Court in Tetovo, and, finally, in the Basic Court in Shtip only 2 cases were monitored for the criminal acts embezzlement and unlawful mediation.

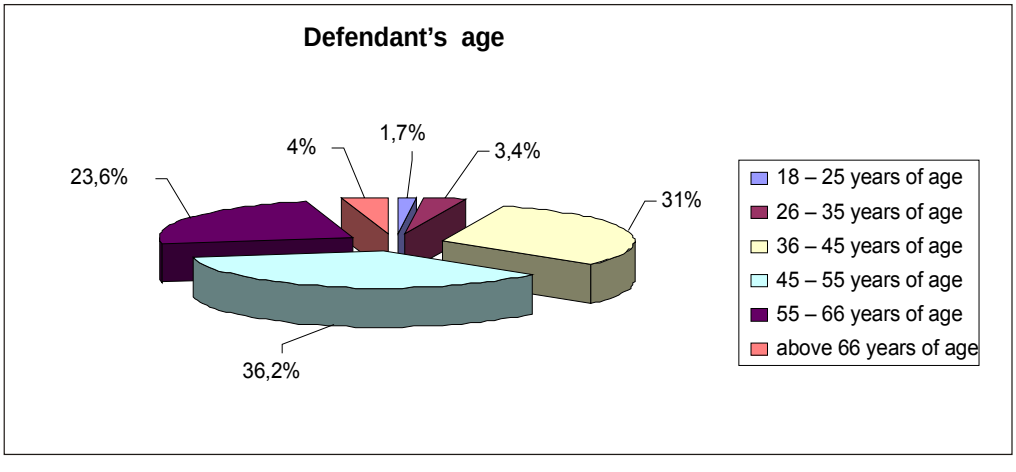
This distribution of monitored cases is especially important in order to determine court practice in basic courts, so the project's idea is to have as even distribution of monitored cases in the four appellate regions as possible, according to the scope of work of the courts in these appellate regions. Thus, we may conclude that in the largest appellate region, Skopje, the highest number of cases were monitored, 43 cases (in the Basic Courts in Skopje, Veles and Kavadarci), then in Bitola appellate region 27 cases were monitored (in the Basic Courts in Bitola and Ohrid), in the Shtip appellate region 36 cases were monitored (Basic Courts Shtip, Strumica and Kochani), and the smallest number of cases were monitored in the newest appellate region, Gostivar - 4 (all in the Basic Court in Tetovo).

It is interesting to note the fact that typical, per definitionem, criminal acts which characterise corruption, such as receiving bribe, giving bribe and the criminal act unlawful mediation, are very rare among the cases monitored, that is, of a total of 110 cases, only 3 such cases were monitored, which shows that in the Republic of Macedonia it is more common to find corruption in the form of abuse or illegal use of official position and the powers that arise from it, as opposed to traditional delicts of corruption. This is one possible conclusion, whereas the second is that simply these forms are hidden behind these acts or are an integral part of them, while prosecution authorities find them more difficult to detect easily.

2. PROFILE OF THE PERPETRATORS OF CORRUPTION-RELATED CRIMINAL ACTS

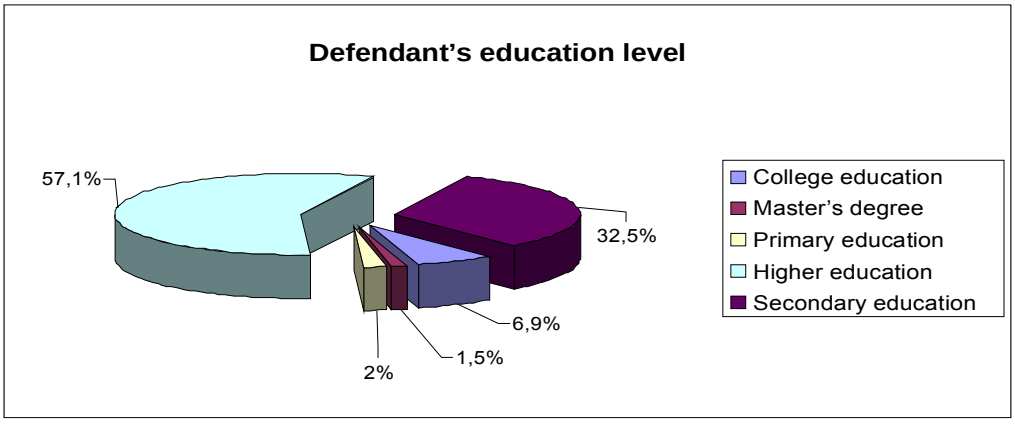
Of the characteristics that define the profile of the perpetrators of corruption-related criminal acts, this research covers questions about the defendants' age, place of residence, nationality, as well as their education level and previous convictions.

- **Defendants' age**



With regard to the question of age, although almost all age groups are present, persons who belong to age groups 45 to 55 years of age (36.2%) and 36 to 45 years of age (31%) have the largest share of perpetrators of criminal acts of corruption. The share of the age group 18 to 25 years of age (1.7%) and that above 66 years of age (4%) is the smallest.

- **Defendants' education level**

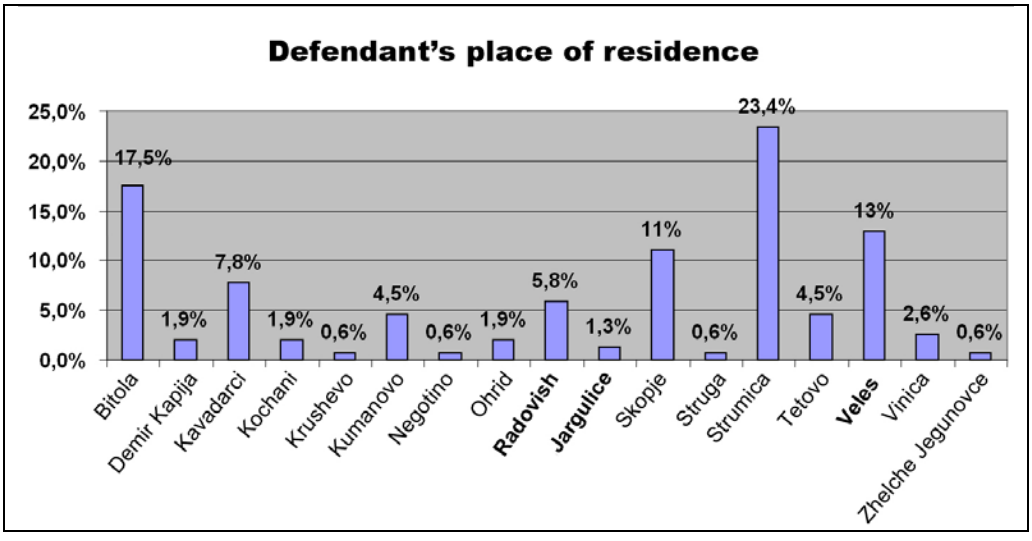


The research shows that the highest percentage of perpetrators are with higher education (57.7%), and the number of those perpetrators who are masters of arts or science (32.5%) is also big. Persons with primary (2%) and secondary education (1.5%) are perpetrators of criminal acts of corruption the least frequently, which is confirmed by the results of this research.

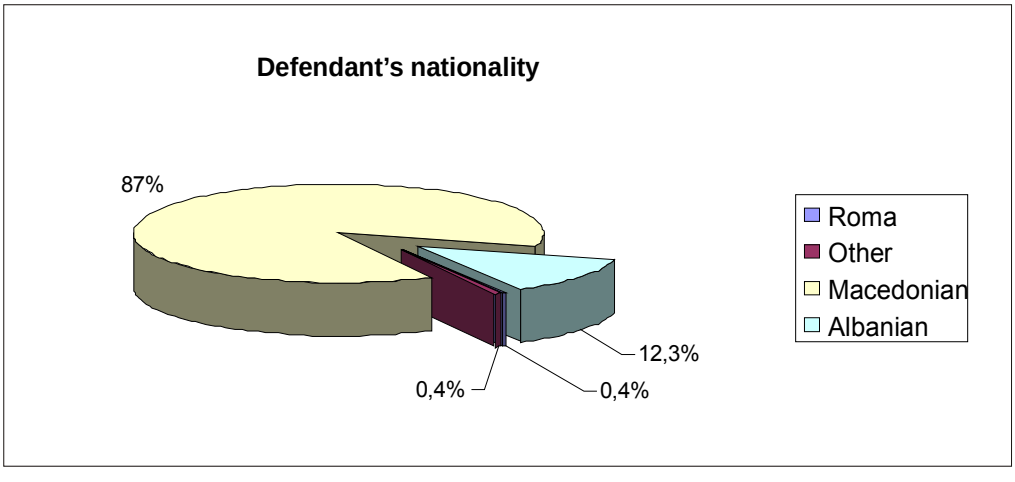
- **Defendants' place of residence**

According to their place of residence the perpetrators of criminal acts of corruption are most often located in urban areas. Notably, this research showed that, although with a different share, still a number of towns of the Republic of Macedonia are represented, whereas the percentage is the highest for Strumica (23.4%), Bitola (17.5%), Veles (13%) and Skopje (11%). The remaining cases also refer to perpetrators who live in urban areas, with the exception of insignificant 2%.

Based on the results of the research presented above, one may conclude that the analysis of the data that refer to age, education and place of residence shows that they are totally logical bearing in mind the special character of these criminal acts, that is, the manner in which they can be perpetrated as well as the special characteristics that the perpetrator should have. Therefore, it is expected that the age group 36 to 55 years of age will be the most frequent perpetrator of these criminal acts. Also, because they are persons who most often hold high management positions and jobs, it is understandable that they have higher education and even hold academic degrees.

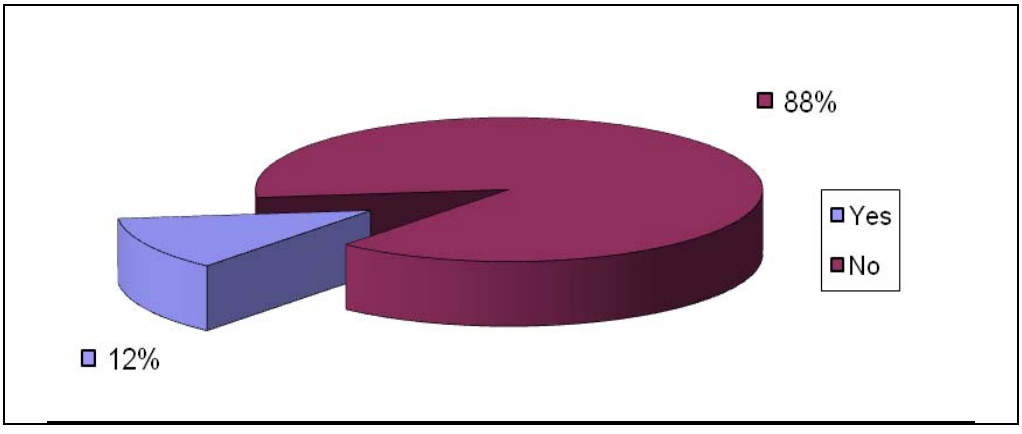


- **Defendants' nationality**



Furthermore, the research shows that the highest number of perpetrators of criminal acts of corruption are Macedonians, 87%. Here we may mention the percentage of 12.3% of persons of Albanian nationality, whereas the share of persons of Roma and other nationality is negligible, a total of 0.8%.

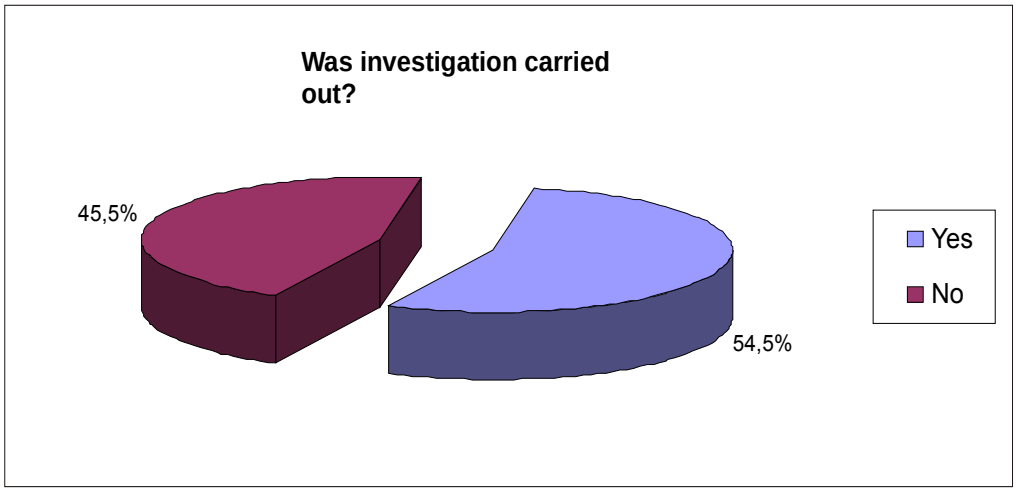
- **Defendants' previous convictions**



Among the data that define the profile of the perpetrators of criminal acts of corruption, the result of the research according to which 12% are previously convicted persons is worth mentioning. Unfortunately, the research does not provide information for one to see if this recidivism refers to criminal acts of the same type, which would be even more concerning because it would indicate that conditions were created for these persons, although convicted of such criminal acts, to be able to commit them again.

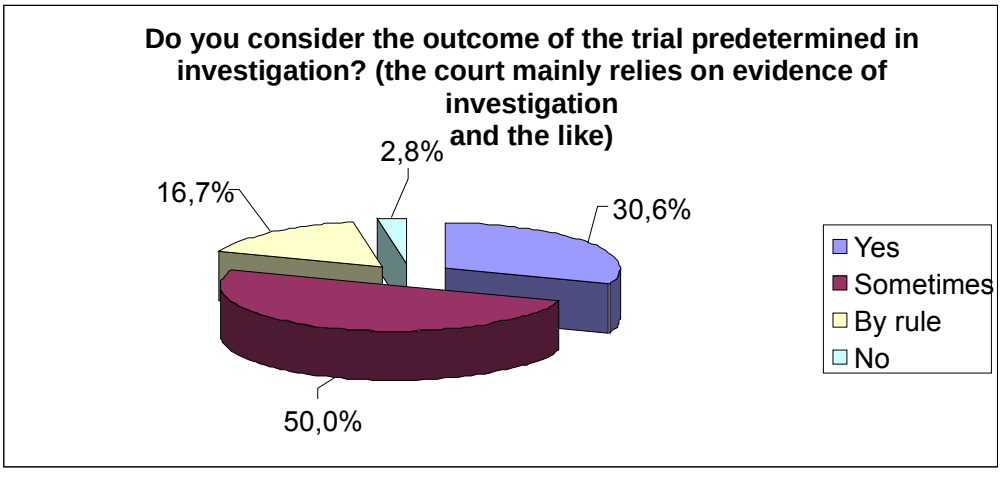
3. INVESTIGATION

- **Was investigation carried out**



Regarding investigation, as a totality of actions taken in order to uncover and explain the criminal act and its perpetrator, in which information and evidence are collected to allow the public prosecutor to assess whether to issue an indictment, and which allow the procedure to be taken further, we may note that in a number of research efforts conducted during the past years the existing model of court investigation manifests several key weaknesses. This is confirmed by the research conducted last year as well as the notes of the monitors of the cases that were source of data for this research. These notes are based on more than 54% of the cases for which investigation was carried out.

- **Influence of investigation over trial**

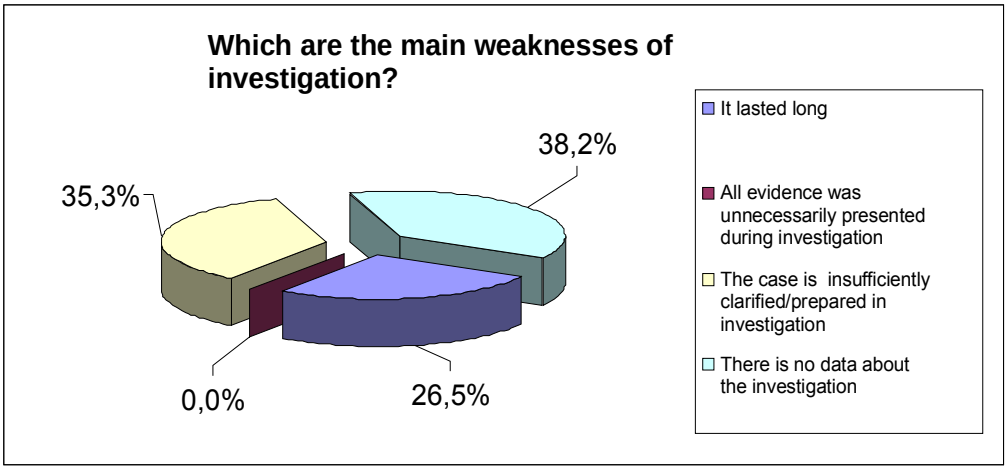


The procedures were analysed on the basis of three factors relevant to objective justice: minimising bias on the basis of findings of the previous procedure; minimising the effects of the sequence in which evidence is presented, and maximizing the scope and accuracy of information. Results show that the effect of bias arising from previous expectations is strongly determined in investigation (and according to comparative research it would be significantly weaker in an accusatorial procedure).

Still, according to monitors, it is shown that in the present (so called mixed) procedure there is more impartial presentation of evidence, whereas some of the results of the analysis may be interpreted in a way to conclude that such procedures lead to better collection and presentation of evidence.

According to the results of the project, investigation is still the “information spine“ of the whole procedure, which determines the course and content of the main hearing before the court, where most judgements are based exactly on defendants’ and witnesses’ statements made in investigation.

- **Main weaknesses of investigation**



Although the project design does not envisage detailed monitoring of the previous procedure (more than one third of monitors did not give a response to this question), monitors state the following as obvious weaknesses of investigation, given their influence on the procedure overall: long and inappropriate collection of evidence in investigation.

Long duration of investigation presents a problem, especially, in detention cases. The uncoordinated relations of the police, the Public Prosecutors' Office and the court are stated as the main reasons for prolongation of investigation. Notably, in most cases, these bodies cooperate in writing and there are long breaks between process actions. In some cases there is both lack of coordination and double actions of different disclosure authorities and the Public Prosecutors' Office. The prosecutors' office as an institution largely depends on MoI because it does not have investigative capacities of its own.

On top of everything, formal court investigation by rule repeats hearings of persons previously heard by the police and the Public Prosecutors' Office and does not significantly contribute to collecting evidence and determining the factual situation. Notably, investigative judges do not prove to be an entity which is able on its own or with criminalistic assistance of MoI to find new evidence, on the contrary, they limit themselves to simply registering in process form that which the authorities of internal affairs have already found. Hence, court investigation proves to be more of a phase that prolongs the procedure rather than a necessary preparatory stadium that would facilitate the conduct of the main hearing, since after the prosecutor has reviewed the case, he/she unnecessarily delegates it to an investigative judge, who then returns it back without providing his/her evaluation. Investigative judges do not show great initiative in collecting evidence, rather they just re-register in a formal way the statements of witnesses that the police already talked to as well as the other evidence in order to use it in the main hearing.

Such formal presentation of evidence in investigation by the investigative judge raises the second, very serious problem of extensive use of investigation results in the trial and when passing judgements. This practice is particularly problematic both from the perspective of the principle of immediacy, whose aim is to allow the defendant in a public and contradictory procedure to contest the allegations and evidence against him/her, and especially witnesses' statements, and from the perspective of the standard set in the ECHR and the other international documents for human rights, according to which everyone who is prosecuted upon criminal charges is entitled to a fair and public trial within a reasonable time, before an independent and impartial tribunal established by law.[4]

Finally, given that the basic objective of investigation is to collect evidence necessary to make a decision about whether to issue an indictment, then its formal presentation before the trial, except in exceptional situations, seems to be unnecessary. This has contributed for the existing model of double presentation of evidence and unnecessary referral of the case from one entity to the next to gain the epithet of inefficiency of investigation. It is also due to this that monitors perceive that, on the one hand, investigation lasts too long, and, on the other hand, it is often that, although the case is not sufficiently clear in investigation, the outcome of the trial is predetermined.

Monitors note the potential negative influence that the judge's investigative function in investigation has on his/her impartiality. Notably, the basic function of the judiciary should be to protect citizens' rights and freedoms, whereas the question arises if a judge who simultaneously has the task of investigating may be impartial in determining force measures, which eventually make his/her work easier. Therefore, the thesis is totally founded that the investigative judge's active role makes him/her an ally of the prosecution due to which he/she cannot perform impartially and consistently the protective function with regard to fundamental human freedoms and rights. To confirm this, we are witnesses that judges mainly fulfil the requests of the public prosecutors with regard to launching investigation and determining the detention measure. The impression of the monitors has been confirmed by several previous data, such as, for instance, those contained in the 2008 Report on the Public Prosecutors' Offices in the Republic of Macedonia, according to which almost all requests for investigation submitted by the Public Prosecutors' Office were accepted by the court.[5] The situation of basic prosecutors' requests for determining the detention measure is similar.[6]

[4] See: Article 6 paragraph 1 of the ECHR; Article 10 of the Universal Declaration; Article 14 paragraph 1 of the ICCPR.

[5] Thus, for instance, in 2008 the Basic Public Prosecutors' Office for prosecution of organised crime and corruption submitted requests for investigation against 266 persons. All these requests were accepted by the court. See: 2008 Report on the Public Prosecutors' Offices in the Republic of Macedonia

[6] Ibid.

- **Was there an order for special investigative measures**

Considering the Law on Amending the LCP of 2008, which extended the application of special investigative measures, in accordance with the amended Article 142-b of the LCP, apart from criminal acts for which an imprisonment sentence of at least 4 years is envisaged and the criminal acts for which there are grounds for suspicion that they are being prepared, are being perpetrated or that a criminal act has been perpetrated by an organised group, gang or other criminal association, special investigative measures may be also applied for some criminal acts in the area of abuse of official position and power, certain delicts of corruption, among which the criminal acts abuse of official position and power of Article 353, embezzlement of Article 354, fraud at service of Article 355, helping oneself at service of Article 356, receiving bribe of Article 357, giving bribe of Article 358, unlawful mediation of Article 359 and the like. However, the application extended to this range of criminal acts is limited by the obligation to apply these measures only if evidence to prove that the persons suspected are perpetrators of these criminal acts cannot be provided in any other way.

Regarding the application of special investigative measures, in the cases monitored there is no significant growth compared to last year. Thus, of the total of 110 cases monitored before basic courts by the members of the Coalition, special investigative measures were used in three cases only. If we make a comparison with last year's report, the conclusion that the application of these special investigative measures is rather restrictive and limited is valid. This is a good conclusion considering the danger that lurks in inadequate application of special investigative measures, which if applied uncritically, selectively or without control, threaten to be the biggest invasion of privacy and an attack on the citizens' rights and freedoms guaranteed by the Constitution.

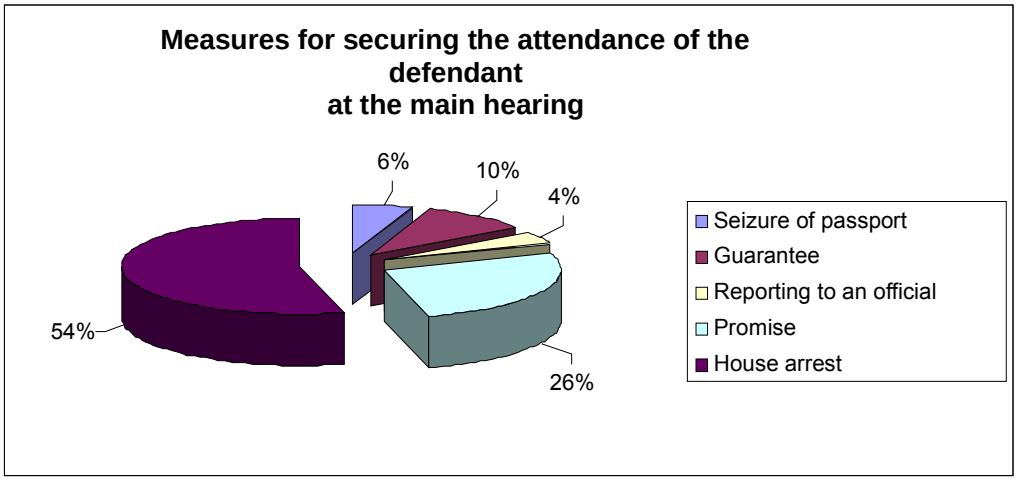
Criminal cases for which these investigative measures were imposed were as follows: in one case for receiving bribe, in one case where defendants are accused of two criminal acts as follows, criminal association and abuse of official position and power; and in one case for the criminal act abuse of official position and power. Only the case where defendants are accused of the criminal acts criminal association and abuse of official position and power dates back to 2008, while the other two are from 2009.

4. MEASURES FOR SECURING ATTENDANCE IN THE CRIMINAL PROCEDURE

- **Application of measures for securing attendance in the criminal procedure**

The measures for securing the attendance of persons are a basic mechanism for efficient court actions. These force measures may sometimes limit citizens' personal freedom to a great extent. That is why force is applied in exceptional

circumstances and in a strictly defined procedure, only in cases when the obligation to respond to the summons is not met voluntarily. To that end the Law on Criminal Procedure foresees a number of measures for securing attendance in the criminal procedure. They are systematised according to the degree of repression, that is, according to the degree of forced limitation of the freedom of the defendant and the other participants in the procedure, that is, summons is the most lenient measure; then defendant's promise that he/she would not leave the place of residence; the following are also foreseen as preventive measures according to Article 178-a: prohibition to leave the place of residence or stay; obligation on the 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 drivers' licence, or a ban on its issuance; guarantee; house arrest and detention.

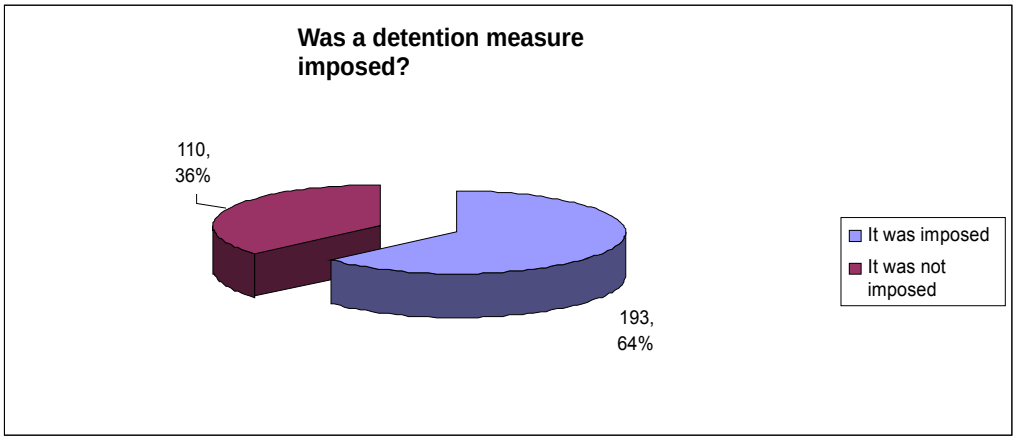


When reviewing the measures for securing attendance in the criminal procedure, one may conclude that all measures together, without the measure detention, are applied far less that the measure detention. Notably, if we analyse the other measures according to their number in all the cases monitored, we may conclude that every one of these measures individually is applied in rare or exceptional situations. That is, the measures for securing attendance, except for the measure detention, are imposed only for 72 hearings of the total of 303 monitored hearings. This conclusion is valid the most for the measures seizure of passport, guarantee and reporting to an official. Of the remaining measures, apart from the measure detention, house arrest is applied the most (13% of the total number of hearings).

If we compare the data analysed about the cases monitored by the Coalition in 2008 and 2009, we will conclude that there is a change in the places of application of the measures promise on the part of the defendant that he/she would not leave the place of residence or stay and house arrest. Notably, the trend of the measure promise

is negative, as opposed to the measure house arrest. These conclusions only confirm the thesis that the toughest measures for securing the attendance of the defendants in the criminal procedure, that is, detention and its milder form – house arrest, are applied more frequently and often uncritically.

- **Was a detention measure imposed**



The measure detention is the toughest measure for securing the attendance of the defendant in the criminal procedure. Therefore, in the spirit of the LCP, and above all the principle of application of a more lenient measure of Article 175, paragraph 2, to reach the goal – securing the permanent attendance of the defendant in the criminal procedure and its unimpeded conduct, it is necessary to apply this measure as restrictively as possible. That is why according to the provisions of the LCP of Article 184 the application of the measure detention is envisaged only in cases when there is founded suspicion that the defendant may destroy the leads of the criminal act or influence witnesses and thereby impede investigation, when there is a danger of the defendant fleeing or hiding or when his/her identity cannot be determined and, finally, when there is a danger of the defendant completing the attempted act or repeating a previous criminal act or perpetrating the act he/she is threatening to. These grounds are not cumulatively listed, rather to impose the measure detention it is necessary to have only one or more of them.

More specifically, the widespread application of the measure detention is seen in data about the cases monitored, thus, regarding the question if the measure detention was imposed as a measure for securing the attendance of defendants in the criminal procedure, monitors note a particularly high level of application since of a total of 303 monitored hearings in 110 criminal cases, the attendance of the defendants with the help of the measure detention was secured in more than two thirds of the hearings, that is, 193 of the total of 303 hearings were held with defendants who were in detention. Whereas, a total of 58 accused persons are in

detention. These persons are accused of criminal acts abuse of official position and power, receiving bribe and money laundering.

Compared to last year, this year in the cases monitored (110) detention was imposed on a smaller number of defendants, that is, on 58 defendants of a total of 256. According to the number of defendants, one may conclude that in comparison with last year in cases monitored the recommendation for less frequent application of this measure is respected. If we consider the number of cases in which defendants were in detention, compared to the number 11 of last year's total of 95, this year the Coalition monitored 10 "detention" cases of a total of 110.

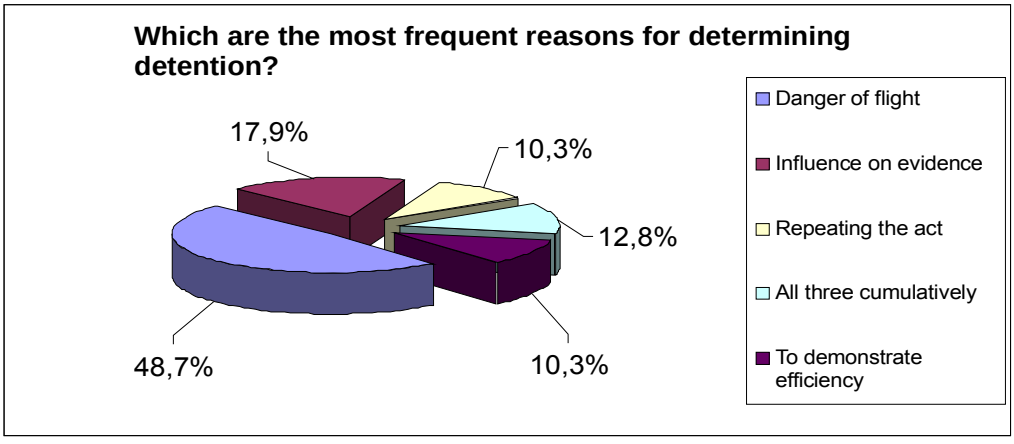
Still, in comparison with the other measures for securing the attendance of the defendant, detention is by far the most applied measure for securing the attendance of these persons, that is, although applied only in 10 cases of a total of 110 monitored cases, that is, only for 58 of a total of 256 defendants, detention is applied in order to secure their attendance in almost two thirds of the monitored hearings.

With regard to the duration of the measure detention, one may conclude that 26 defendants are still in detention, these defendants are charged with the following criminal acts: abuse of official position and power - 21, receiving bribe - 2 defendants and money laundering 3 defendants. It may be stated that of this number half of the accused persons detained are still in detention, that is, for these defendants detention lasts as long as the main hearing lasts, which, if we take into account the start of the cases monitored, roughly, we may conclude that we have a really long detention, which lasts certainly more than 90 days.

The following data may be given about the time defendants who were in detention spent in detention. Notably, detention lasted the most in one case against a defendant for the criminal act abuse of official position and power, a total of 407 days, one defendant for the criminal act money laundering was in detention 63 days, whereas for the same act two defendants were in detention 60 days, while other defendants for this act were in detention 45 and 38 days, respectively, other two were 4 days each, and one defendant for this act was in detention 3 days. For the criminal act abuse of official position and power twenty one persons were in detention thirty days each.

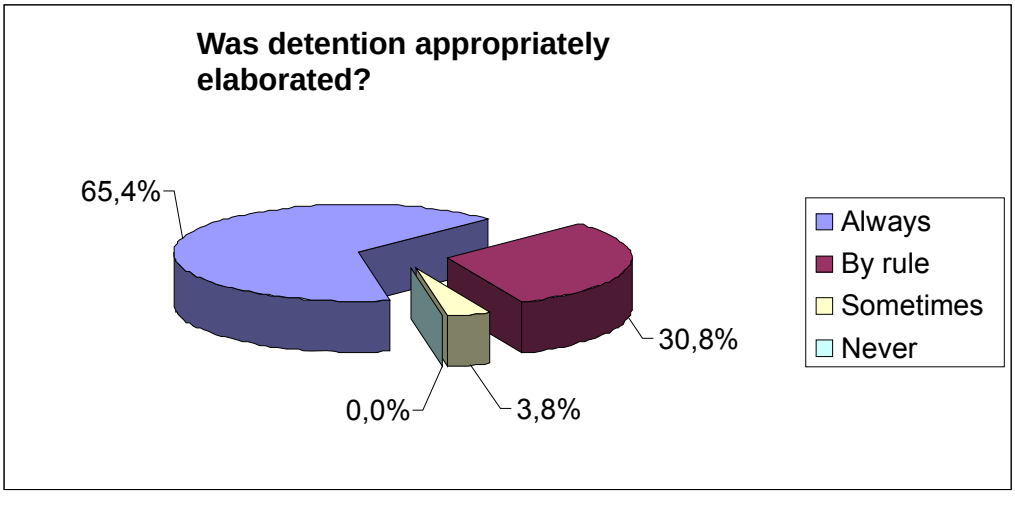
These conclusions may confirm the recommendations to restrict the widespread application of detention, whereas in average for the completed monitored cases detention lasted thirty days, although there are some curiosities as well. The conclusion about the frequent application of long detention during the main hearing, which according to the provisions of Article 191 paragraph 2 of the LCP is limited, is particularly important and is in line with the conclusion that the application of this measure should be as restrictive as possible, and its duration should be limited and reduced to the minimum time necessary.

- **Most frequent reasons for detention**



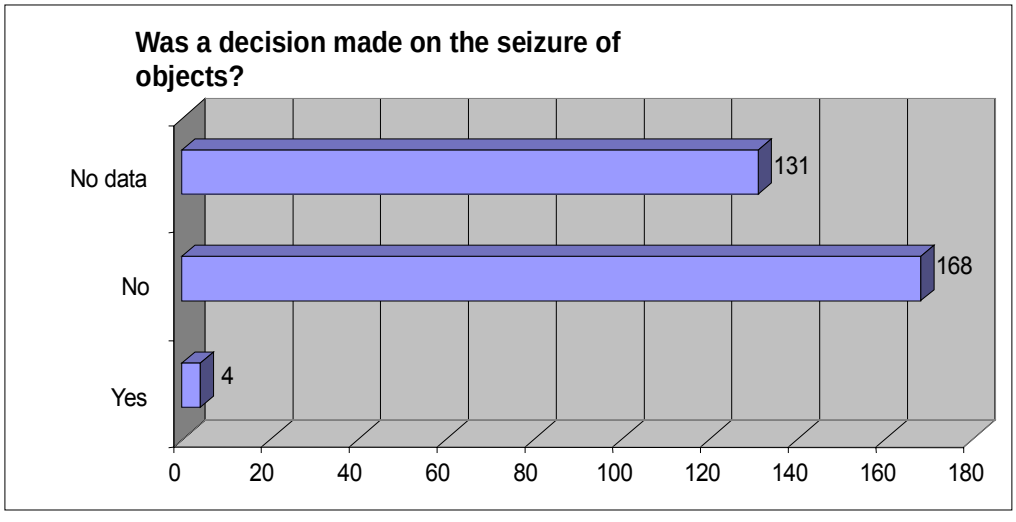
The following are stated as the most frequent reasons for imposing detention as a measure for securing the attendance of the defendant and unimpeded conduct of the procedure: danger of flight (49%), danger of collusion, that is, influence on evidence (18%), and, last, the possibility to repeat the act or to perpetrate the act the defendant is threatening to (10). All three grounds are cumulatively listed in 13% of the cases. It is concerning that the monitors have the impression that in some cases that the public is interested in detention was not justified of process reasons or necessary, but imposed only in order to demonstrate efficiency in combating crime and corruption (10%).

- **Elaboration of detention**



As opposed to the usual criticism that decisions on detention are not sufficiently elaborated but rather only paraphrase legal provisions for the grounds of detention, the results of the procedures monitored in cases of corruption show that, on the contrary, monitors perceived that in most cases, that is, in more than 65%, detention was elaborated appropriately.

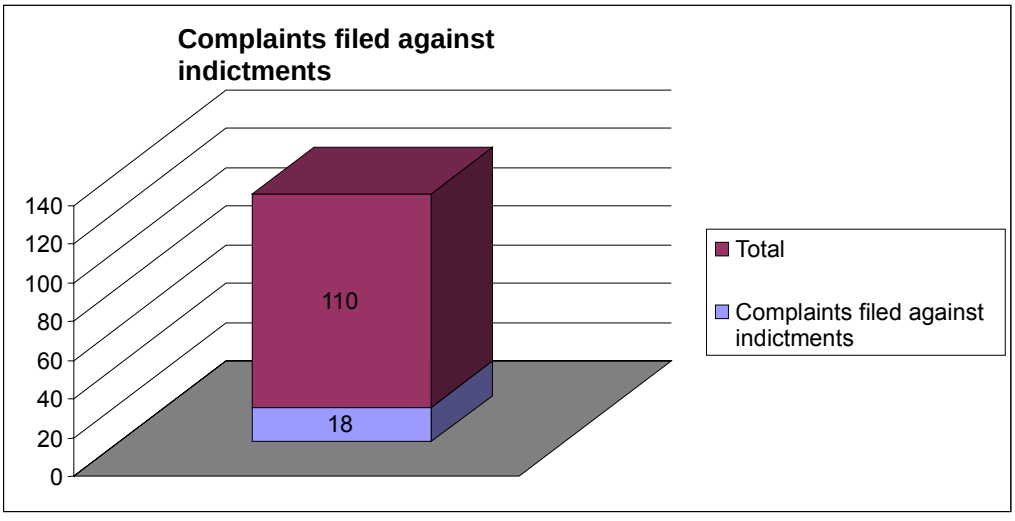
5. SEIZURE OF OBJECTS



What can be concluded from this year's cases is that the means which the criminal act was perpetrated with or which came into being as a result of the criminal act were seized by a court decision only in 4 cases, that is, only in 1.32%, whereas in the remaining cases either this was not applied or monitors did not provide data. From the abovementioned one may conclude that this measure is applied as an exception in the cases monitored. Still, we must leave space for a significant doze of doubt in the consistency of this conclusion, above all due to the high percentage of missing data about its real application (42.32%).

The latest amendments of the CC of September 2009 envisage a redefinition and extension of the measure confiscation, as a special form of seizure of objects that have come into being with the criminal act or originate from the criminal act or are its proceeds. Confiscation and extended confiscation are definitely institutes that would raise interest in the time to come and would be an interesting and compulsory basis for monitoring cases in the area of criminal acts of corruption in the coming years.

6. CONTROL OF THE INDICTMENT



The accusation phase as a final part of the previous procedure covers the issuing of the indictment as well as its examination, and, eventually, its withdrawal or change and amendment. Taking citizens to court and accusing them have consequences irrespective of the final outcome of the procedure. Therefore, to prevent unjustified taking of citizens to court, it is necessary for the court to first examine the lawfulness and the grounds of the indictment.[7] The objective of examining the indictment is to overcome the weaknesses of the previous procedure, including the evidence collected unlawfully, and to check the assumptions for holding the main hearing, to clarify the contents of the accusation as a subject of dispute between the prosecution and defence, to clarify the legal positions of the parties and to determine the process matter that will be subject of hearing.[8]

Our criminal procedure envisages previous examination of the indictment by the court ex-officio, as well as, a complaint against the indictment as a legal means which gives the defendant the opportunity to defend himself/herself from ungrounded accusations, to contest the allegations of the indictment and thereby prevent ungrounded presentation of the case at the main hearing.

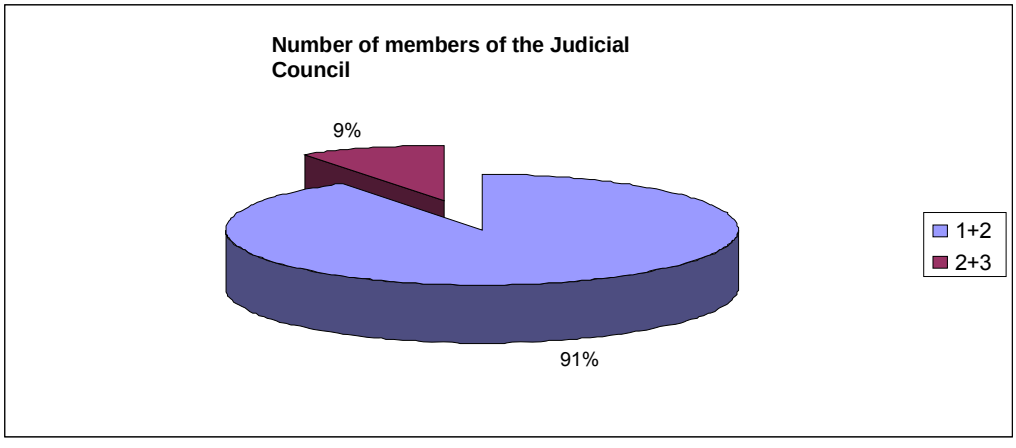
The data obtained by this research show that of a total of 110 cases, a complaint against an indictment was filed only in 18, that is, in 16.4% of the cases. This low percentage of complaints filed against indictments results from the fact that complaints are accepted only in rare cases. Moreover, this year monitors note that all 18 complaints filed are rejected as ungrounded, which means that the percentage of accepted complaints is 0%. In a way this is a trend that repeats every year considering

[7] See: N.Matovski/G.Buzharovska/ G. Kalajdziev, Penal Process Law, Skopje, 2009, pp. 310.
[8] See: D. Krapac/G. Kalajdziev/V. Kambovski/G. Buzharovska, Penal Law Reform Strategy of the Republic of Macedonia, Ministry of Justice of the Republic of Macedonia, Skopje, 2007.

that in the last year's report monitors also noted that of 75 complaints filed only 2 were accepted (97%).[9]

7. MAIN HEARING

- **Composition of the Judicial Council**



The Law on Criminal Procedure envisages that, in first instance, courts try in councils composed of five people, that is, two judges and three jurors for criminal acts for which an imprisonment sentence of 15 years or a life sentence is prescribed by law, whereas in a council composed of one judge and two jurors for criminal acts for which a more lenient penalty is prescribed by law (Article 22 of the LCP).

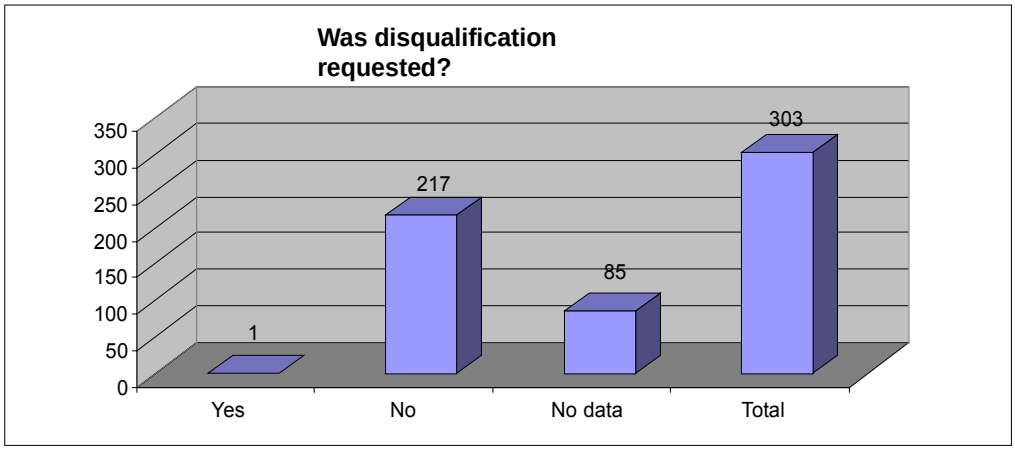
The Constitution of the Republic of Macedonia lays down that jurors participate in the trial when this is stipulated by law (Article 103 paragraph 3 of the CRM). The Law on Courts contains an identical text in Article 36 paragraph 3.

Bearing in mind the type of criminal acts, all cases monitored were before a council, whereas in 91% of the cases the council was composed of three members and in 9% of five members. Jurors participate in the part of the criminal procedure that is taking place before a council, that is, in the main hearing, and they are always more numerous in the council than professional judges, which is an attempt to mitigate the large difference in quality between the juror and the judge and to secure their "equality". Regarding the participation of jurors in councils, monitors note a general and known conclusion. Notably, although in our system jurors are equal to judges and together make up the Judicial Council, still practice shows that the contribution of citizens in criminal trials is lacking and that this does not give good results either from a process or from an organisational perspective. Process difficulties with regard to jurors arise of their incompetence and lack of knowledge, lack of preparation for

[9] See: Corruption Trial Monitoring Programme in the Republic of Macedonia, Coalition All for Fair Trials, Skopje, 2008, pp. 31.

trial and passiveness during trial, as well as their failure to resist external influences. From an organisational point of view, their participation makes court's work more difficult because they often do not respond to the calls for trial, particularly the employed ones. That is why those who are likely to respond to calls are elected jurors, and they, too, are rather passive during trials. Monitors' impressions confirm this as well. Hence, we may say that this is not real participation of citizens in trials, only their inclusion in the composition of the Judicial Council, because they do not participate in trials, they are just in attendance.

- **Was disqualification requested**



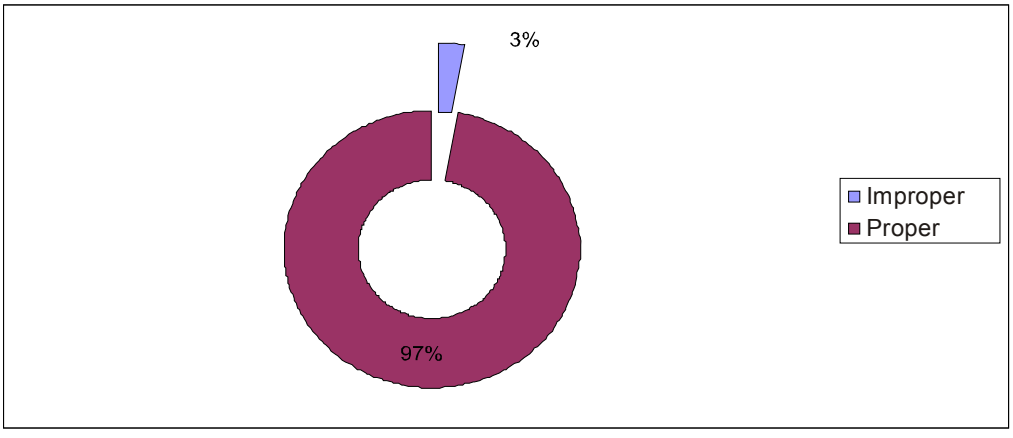
The impartiality of the court, as a body which decides upon the defendant's guilt, is secured by the possibility to disqualify judges when parties doubt their impartiality. With regard to the exercise of this right in the cases monitored, one may conclude that this was requested in one case only and the reason for doubting judge's impartiality was the previous contact between the council president and the prosecutor, that is, their alleged coordination with regard to the determination of the measure detention. Still, in this single case the defender later withdrew the request for disqualification of the judge. This was so because of the fact that the defender did not refer to a provision of the LCP (Article 36, paragraph 1) for compulsory disqualification of the judge, but rather questioned the impartiality of the court based on Article 36, paragraph 2 of the LCP, a question which he/she needs to support with relevant facts, which he/she did not do.

On the other hand, in about 28% of the hearings monitored, monitors did not note this possibility given to the defendant and his/her defender. The reasons for this indefinite percentage may be found in the fact that these hearings had already started before the monitoring period, and the monitors, lacking a complete overview of the case, could not have this information.

Based on this we may conclude that in most cases monitored the court was impartial, that is, the defendant did not have any remarks as to its impartiality. These

results are welcomed because these findings may increase, to a great extent, general confidence in and improve the reliability of the legal system of the Republic of Macedonia.

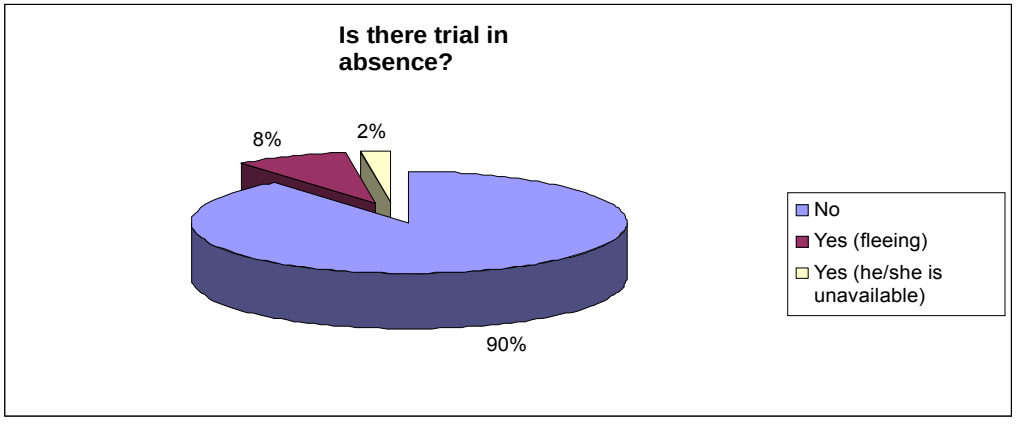
- **Was proper delivery made**



The question of proper delivery is of great importance for the duration of the criminal procedure and the right of the defendant to a trial within a reasonable time. Notably, from previous monitoring of court proceedings, there is a general conclusion that the inefficiency of courts is based to a certain extent on the inefficient delivery, which makes process parties untimely and inappropriately notified of the date of the hearing. Therefore, one of the most significant questions in court proceedings monitoring is whether the defendant is appropriately and timely notified of process actions. However, from the data obtained from the hearings monitored, at first glance, one may draw a wrong conclusion that with around 97 percent proper delivery, actually, the problem which is often stated as the main reason for the long duration and court inefficiency, is overemphasised. We say at first glance because, in fact, from the data we may see that of the total of 303 hearings two thirds are with defendants who are in detention, which means these persons and their defenders cannot be unduly notified about the hearings, above all, due to the legal obligation for compulsory defence in case when the defendant is in detention (Article 66 of the LCP), and the manner of notifying defenders (Article 116 of the LCP).

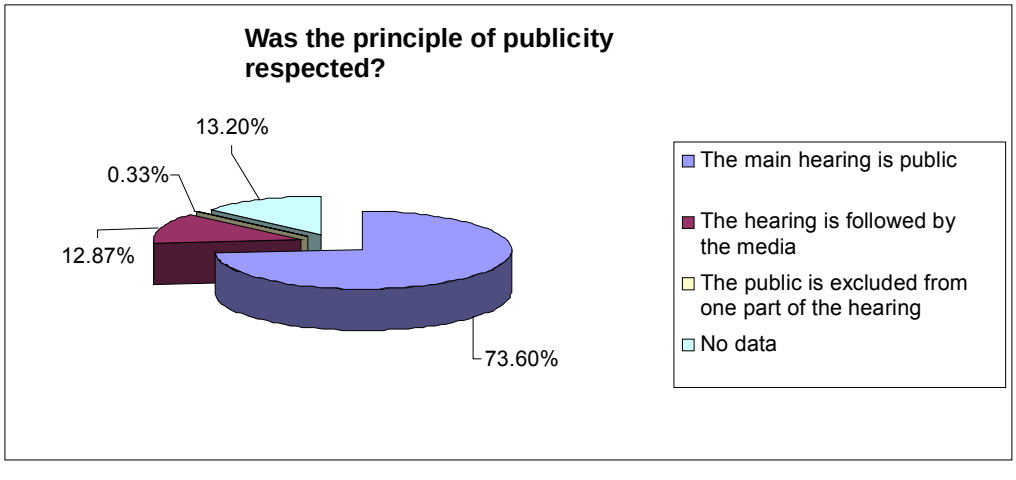
Still, there is a positive fact and it should be highlighted – that proper delivery has an increasing trend in the cases monitored. That is, even if we take into consideration only the third of the hearings where defendants were not in detention, the conclusion is that the number of improper deliveries is not that high, only in 8 of the hearings monitored and recorded by the monitors of the Coalition. From this we may conclude that the issue of proper delivery is one of the most significant ones for exercising the defendant's right to a trial within a reasonable time, but still it is not the only reason due to which there is infringement of this right, and this excludes it from being the only factor for increasing or decreasing courts' efficiency.

- **Is there trial in absence**



According to the provisions of Article 292 paragraph 3 of the LCP, the main hearing may be held in the defendant's absence only in exceptional circumstances. Thus, according to these provisions, the main hearing may be held in the defendant's absence only if he/she is fleeing or is unavailable to the prosecution authorities while there are particularly important reasons to hold the trial in his/her absence. Regarding the monitored hearings of the cases determined by the Coalition, it is clear that in the highest number of hearings the defendant is in attendance. If we express this conclusion in percentage, we get a figure which is more than 89 percent of the total number of hearings, whereas only a small number, that is, only 32 hearings were held in the defendant's absence because of fleeing (in 8.3 percent, that is, only 25 hearings) or because of defendants being unavailable (only 2.3 percent, that is, only seven hearings were held).

- **Principle of publicity**

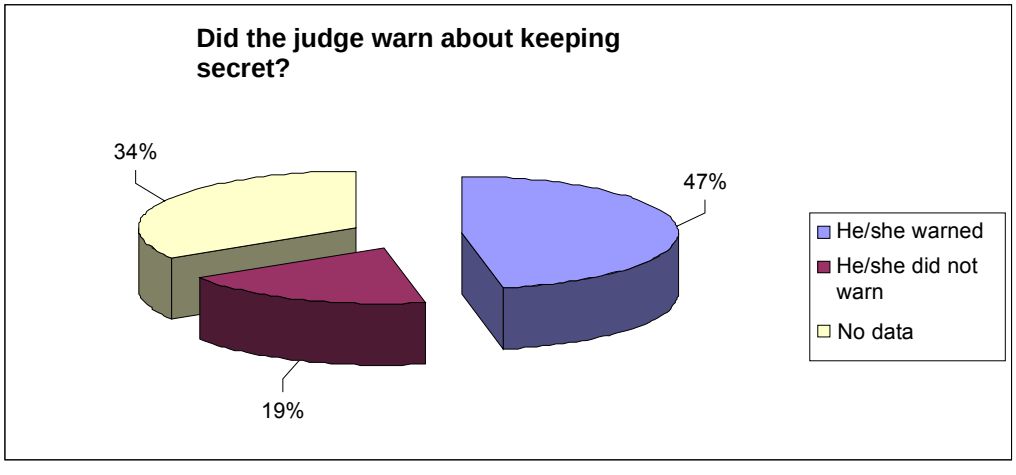


One of the elements of a fair procedure, and at the same time, one of the basic principles regulated in the LCP, is the principle of publicity. The grounds for this principle may be found in two arguments, notably, publicity in passing judgements is not important only in order to meet the general interest on the part of courts as bodies tasked in a fair procedure to sanction perpetrators who have broken the generally accepted norms of behaviour in the society and thereby make an influence in the sense of general prevention, but also as compulsory and necessary correction of the work of courts, which improves the accountability, impartiality and lawfulness of their actions.

Regarding the attendance of the public at the main hearing, one may conclude that mostly hearings are public and a large number of them kindle the public's interest and are covered by the media. It is peculiar that only in one hearing of the 303 monitored has the public been excluded because information about the personal and private life of the defendant was presented at it.

The question that is inevitably linked to the principle of publicity of the procedure is the question if the judge has warned the parties of the procedure about their obligation to make a secret of the elements they have learned during the hearing and which were presented before the court and are an official or business secret.

- **Did the judge warn about keeping secret**



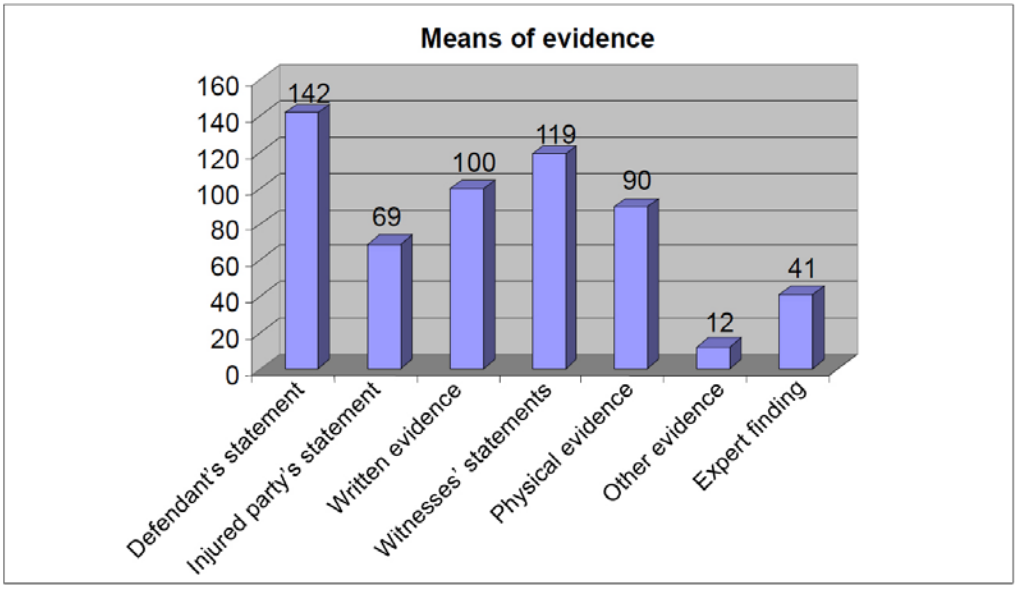
As a concession to the principle of publicity one has the obligation to exclude the public from certain process actions during the main hearing, above all, due to the fact that in the course of these process actions the right to privacy may be infringed or certain facts may be presented that fall within the framework of classified data. In these cases, the president of the council is obligated to warn the parties of the procedure that they are obligated to make a secret of the facts learned in this way, that they must not disclose them outside the court after the completion of the hearing. With regard to this obligation, in the cases monitored it may be observed that almost

in a half of the hearings the judge was strict following his/her obligation to warn the parties about their obligation to keep secret, whereas in 19% of the cases this obligation was not met.

It is interesting to note the high number of monitors who do not have responses to this question 34%. This high percentage makes us conclude that most probably during these hearings facts that belong to the group of classified data were not presented.

8. EVIDENCE

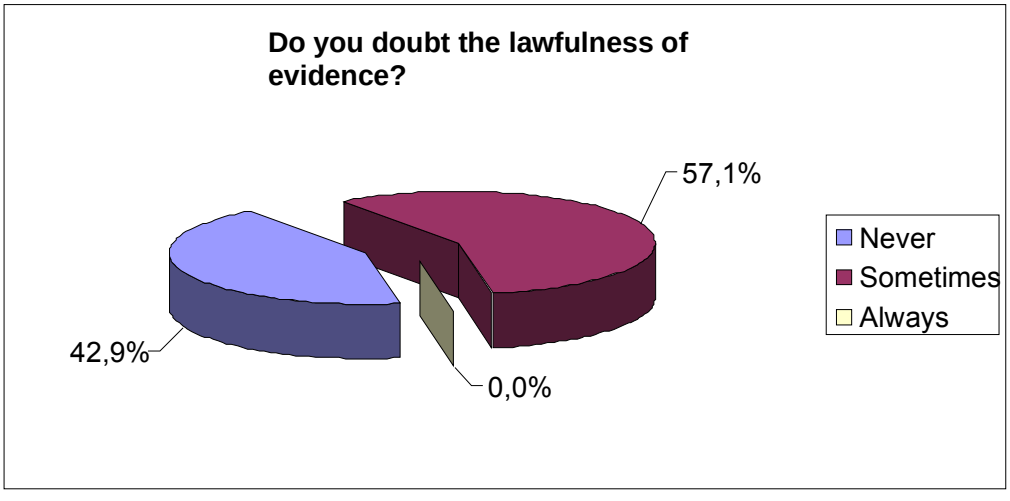
- **Which means of evidence were used**



Regarding means of evidence, we may conclude that of the total number of means of evidence monitored and presented, statements of witnesses and defendants were used the most, while expert evidence was used the most rarely. It may be noted that written and physical evidence was used to a high extent. Analysed from a criminological perspective, this is founded, since corruption-related criminal acts are often proved with the assistance of witnesses and persons with special characteristics - undercover agents or agents provocateurs (who may later in the criminal procedure be heard as witnesses), through defendants' confessions and, of course, through physical and written evidence that the perpetrators did not manage to hide or remove (particularly in acts of abuse of official position and power and related delicts, forging an official document and the like). Still, a better version of data obtained would be if the witness statement is not at the top of the list of means of evidence used, that is, it

would be better if the act is proved by another means of evidence and then enhanced by the defendant's confession. On the other hand, what is worth commenting is the relatively rare use of expert evidence as means of evidence. The reasons for these findings may be seen in both the nature of the criminal acts which are subject of monitoring and analysis, above all, due to the fact that expert evidence is not always necessary to prove the defendant's guilt and the large financial costs of courts for expert evidence, which in situations of courts' restrictive budgets, is used only in cases when its use is absolutely indispensable.

- **Lawfulness of evidence**

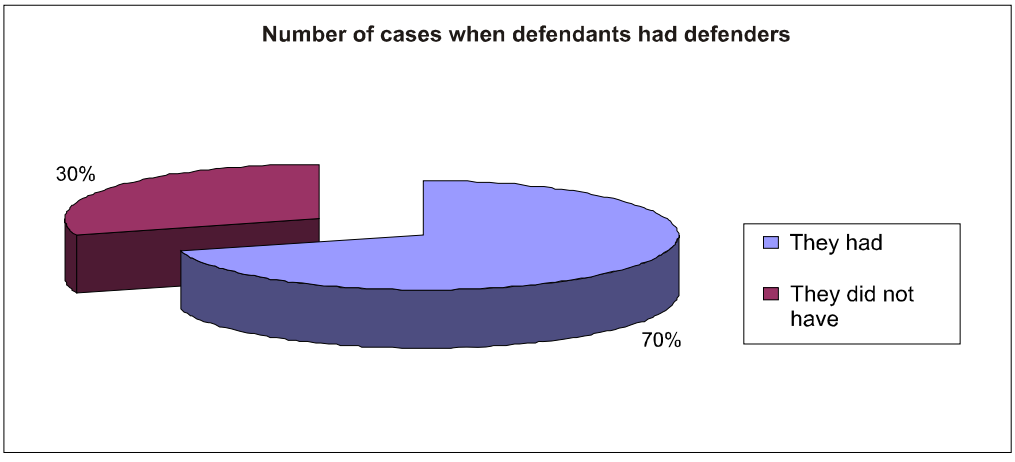


Courts are obligated to secure a proper and fair procedure for providing evidence. The integrity of penal judiciary is based on lawful presentation of evidence in a fair procedure. Hence, the high degree of doubt among monitors in the lawfulness of evidence presented before the court and on which court decisions are based raises concern and needs additional analysis. Unfortunately, existing questionnaires and monitors' remarks do not provide a more detailed explication of the problem.

It may be said that normatively, with the strict introduction of the rules for rejecting unlawful evidence in Article 15, paragraph 2 of the LCP, our law even exceeds the standards of the European Convention. According to the European Court of Human Rights, rejecting unlawful evidence is a function of the domestic system of legal remedies. As opposed to this rather strict approach of the law, which by rule excludes all evidence unlawfully presented or obtained through violation of the rights and freedoms of individuals (irrespective of the degree of violation), our practice does not consider this institute very important.

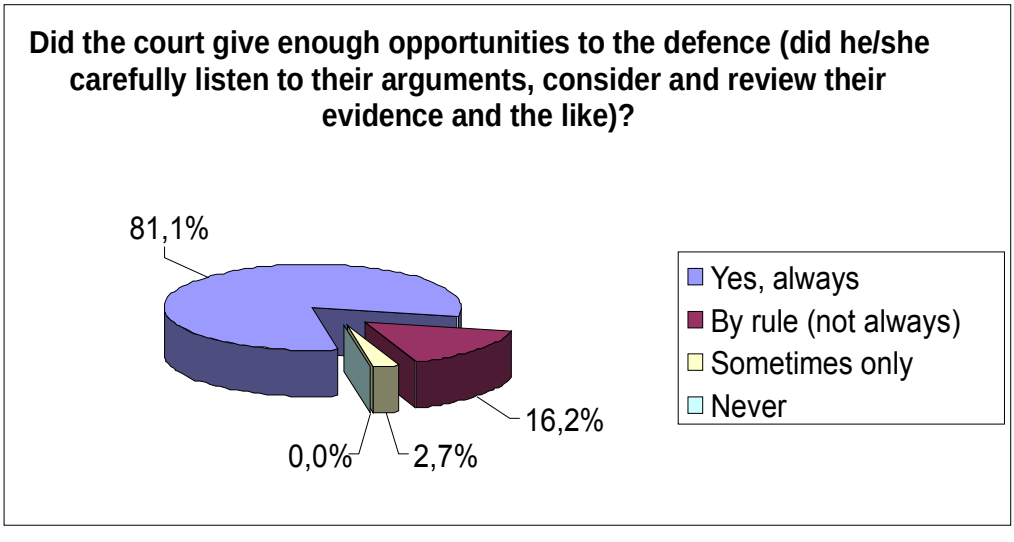
9. RIGHT TO DEFENCE

- **Did defendants have defenders**



The research conducted shows that of the total of 256 defendants, as there were in the cases that were subject to monitoring, 180 had defenders, which means 70%, and this is also due to the cases of compulsory defence considering that the measure detention was imposed on a significant number of them. The remaining 30% or 76 defendants are those who either did not have a defender or for whom there is no data.

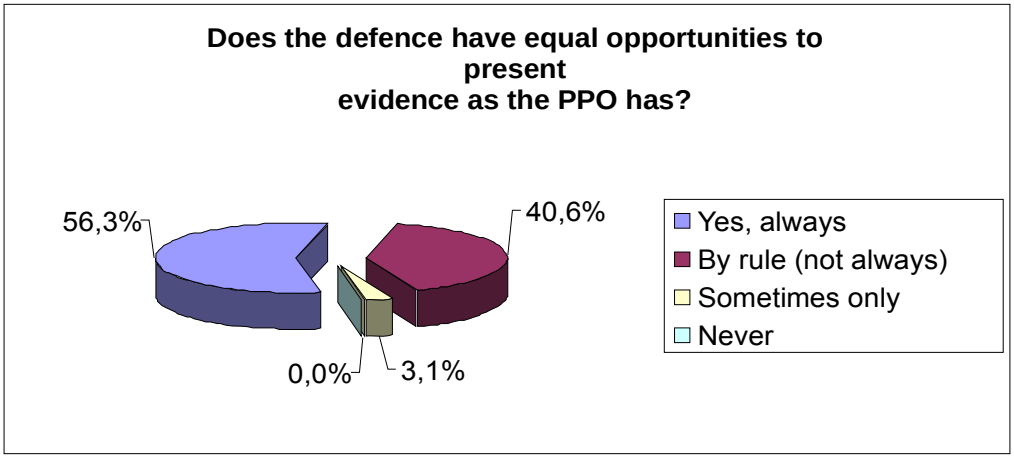
- **Right to defence**



The effect of process control we addressed above involves more than a simple instrumental control to secure favourable outcome. The possibility to express parties' opinions and arguments and the chance to present one's own version of the story are a strong factor of experiencing procedural justice. The evaluations of procedural justice improve if there is a possibility for the parties to express their views and arguments, irrespective of whether this in reality secures more favourable decisions. The criterion for process control shows what chances defendants had to present their case before authorities before a decision is made. Finally, for people to think that procedures are fair it is not only important for them to be allowed to tell their story but also to have the impression that the court has taken their views into consideration.

In this respect, as an essence of a fair trial, results are encouraging and worth the praise. Most monitors evaluated that in more than 90% of the cases defendants had an adequate opportunity to present their defence at a public hearing before the court in a contradictory hearing.

- **"Equality of arms" for the defence and the Public Prosecutors' Office**



The principle of procedural equality is a key element of the concept of fair trial. The concept behind this expression, a little unusual for us, is not as unfamiliar as it looks at first glance. It originates from the ancient principle expressed in the Latin maxim audi altera partem. The principle is more important in accusatorial systems which function as a fight between opposing parties, which logically results in the request for them to have approximately equal opportunities for a fair fight. In our country the essence of this principle is traditionally expressed as the principle of contradiction. The principle is considered one of the basic principles of penal procedure but is substantially limited by the so called investigative principle and the active role of the court. Still, it is encouraging that the monitors of the project evaluated that "equality of arms", by rule, is found in procedures before our courts (more than 90%).

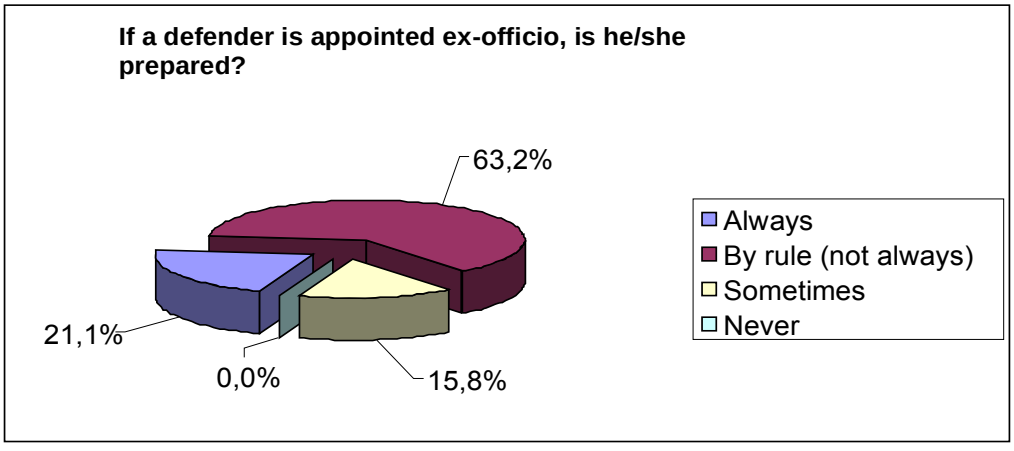
It is totally understandable that equality does not represent absolute equality of parties' rights and powers, but rather it is a balance of parties' opportunities in accordance with the specifics of their procedural roles. Each of the parties must have the opportunity to present its view on the case with regard to both the facts and legal issues. Besides, each of the parties must also have the opportunity to comment, that is, to contest the argument and evidence of the opponent.

The problems of ensuring equality of parties in continental systems are of different nature, which is totally understandable because mixed systems where the court has an active role do not pay much attention to the principle of equality between parties. Notably, it is above all the court who is ex-officio tasked to establish the truth, whereas parties only, more or less, assist it in doing so. One of the main problems is the fact that the judge knows the minute details of the prosecution authorities' files, and even knows the evidence which has not formally been presented before the court. In real life the prosecutors' office and the court collaborate much more closely than in accusatorial systems, because at the bottom they have close starting hypotheses and interests. Although from a theoretical point of view this does not play a major role – because the court may base its judgement solely on evidence presented directly on an oral and contradictory hearing – the indirect effect of knowing the file from the previous procedure may affect the defendant negatively.

The problem of expert witnesses is resolved in another way in Anglo-Saxon systems. As we know, they are appointed by the court and are considered to be neutral and impartial. One has to admit that the defence has difficulties contesting the findings and opinions of these official experts, who enjoy certain respect in line with their position. This system has advantage in that it provides in principle expert independence, but when expert evidence essentially benefits the indictment this can be a large problem. Exactly because of this the opinion is particularly important of the European Court of Human Rights, which does not dispute this system, but indicates that when the indictment is based on the findings and opinions of such "neutral" court experts, for the purposes of Article 6 of the European Convention, they are treated as "witnesses against the defendant", which gives the defence the right to have the attendance and hearing of experts provided to its benefit.

Although usually people object on the grounds that during the presentation of evidence the defence does not have an equal treatment with the Public Prosecutors' Office, there are also opposite cases. In one case the monitors doubted fair trial since the defendant worked abroad a long period and the court did not decide to try him in absence. In this particular case the court did not accept all evidence of the Public Prosecutors' Office, whereas all evidence of the defendant was accepted.

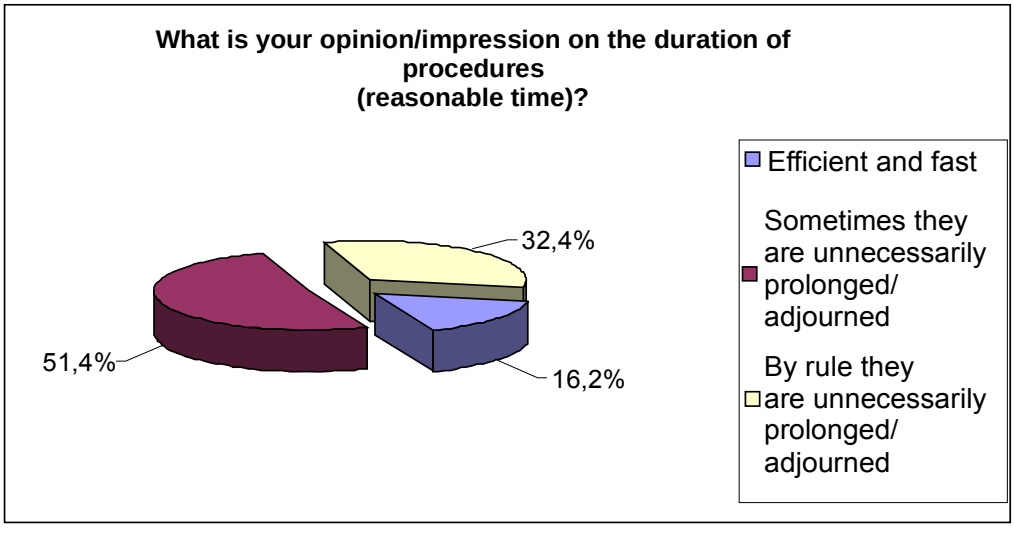
- **Defender ex-officio**



As opposed to the claims that defenders appointed by the court ex-officio are most often insufficiently prepared for the trial, it was the monitors' impression that in the cases subject to monitoring they were most often soundly prepared for defence (in more than 80%). In some cases it is stated that the reason for inappropriate preparedness is the inappropriate compensation for these defenders, which is not always according to the attorney's fees, as well as the insufficient time for preparation in other cases.

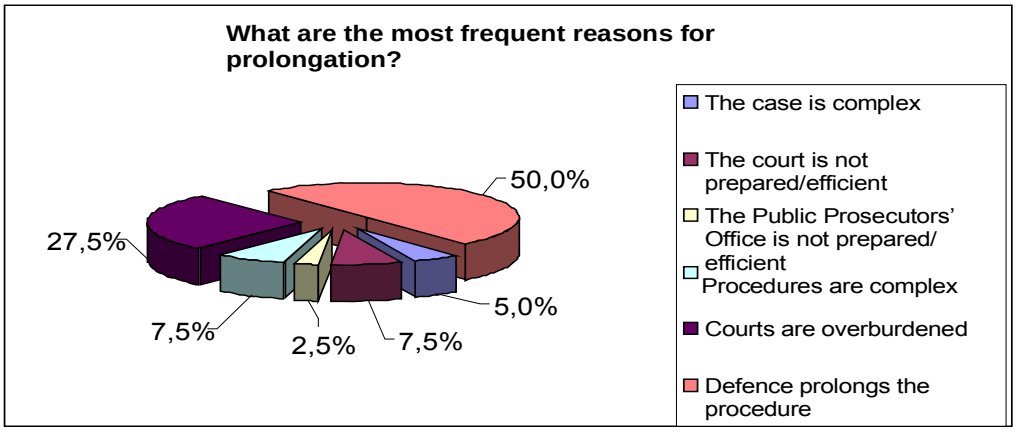
10. TRIAL WITHIN A REASONABLE TIME

- **Duration of procedure (reasonable time)**



Long duration of court proceedings and the violation of the right to a trial within a reasonable time is a known problem of court proceedings in the Republic of Macedonia. Only in one third of the cases monitored (33%) were procedures evaluated as sufficiently efficient and fast. In all other cases (67%) the monitors evaluated that trials are prolonged/adjourned unnecessarily.

- **Most frequent reasons for prolongation**

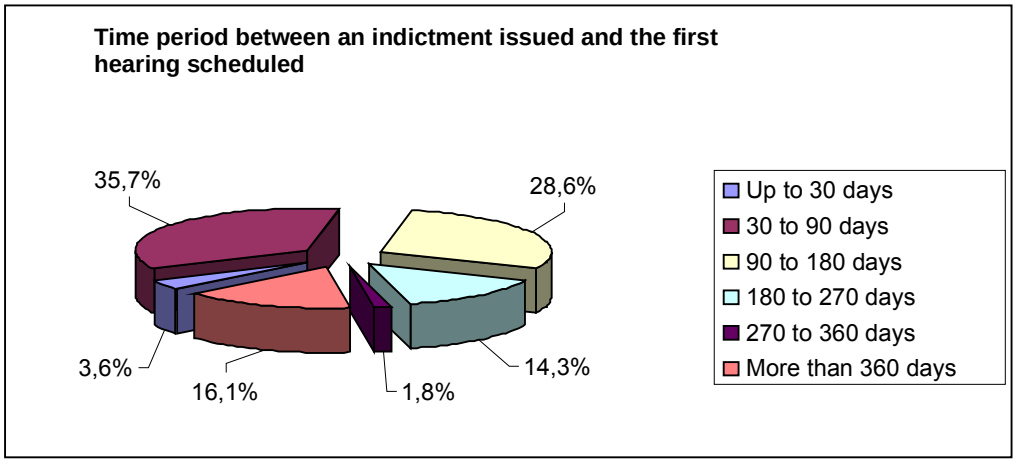


Monitors stated the following as reasons for adjournment of the procedures before courts: courts' being overburdened (27.5%), lack of suitable conditions for a trial (available court rooms), courts'/judges' inefficiency (7.5%) and case complexity (5%). 7.5% of monitors place the blame on complex and formal court proceedings, and only a few (2.5%) shift the blame onto the Public Prosecutors' Office and the police and other disclosure authorities. Still, it should be noted as a curiosity that most monitors find the defence responsible for the prolongation of procedures since it unnecessarily prolongs the procedure (50%) by failure to come to hearings, unfounded requests for expert evidence, complaints about bad health of defendants and the like.

Considering that all cases of organised crime have been transferred to the specialised department within the Basic Court in Skopje, this year the number of cases was higher in that court. Since existing court rooms are too much occupied and there is a lack of larger court rooms, trials were adjourned to longer periods.

- **Time period between an indictment issued and the first hearing scheduled**

According to LCP provisions the president of the council should schedule the main hearing within 30 days of the day the indictment was received in court at the latest. There is an exception when a complaint against the indictment was not filed or it was rejected and the president of the council before which the main hearing should be held has requested the council (Article 22 paragraph 6) to decide upon every issue which is decided upon on the basis of a complaint according to the LCP.



The results of the research raise concern as we may note that only in 3.6% was the legal deadline for scheduling the first hearing respected, whereas in 28.6% of the cases the period for scheduling the hearing was between 270 and 360 days, and in 16% more than 360 days!

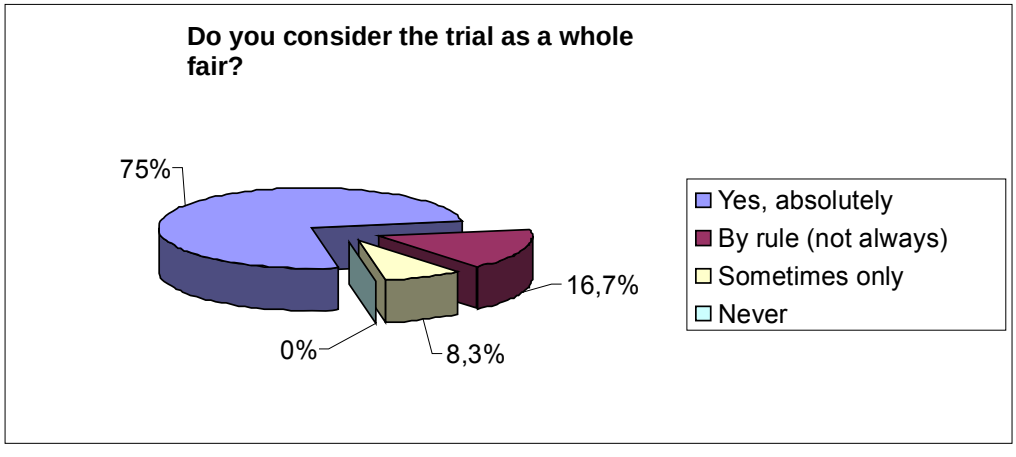
- **Reasons for adjournment**

	What are the reasons for adjournment of the case															TOTAL
	PPO's absence	Defendant's absence	Defender's absence	The damaged party's absence	Witnesses' absence	Calling new witnesses	Collecting physical evidence	Seeking expert evidence	Reasons within the court	Indictment	Closing arguments	Vacation	Miscellaneous	Pronouncing judgement	Judgement passed	
Basic Court Bitola	0	3	1	0	2	21	12	0	0	0	0	0	2	0	1	**42**
Basic Court Veles	2	7	11	0	11	2	10	4	2	1	2	0	3	1	2	**58**
Basic Court Kavadarci	0	8	1	0	2	0	2	0	0	0	0	0	2	1	1	**17**
Basic Court Kochani	1	3	2	0	0	0	0	3	1	0	0	1	5	1	2	**19**
Basic Court Ohrid	1	2	0	0	0	1	0	0	1	0	0	0	2	0	0	**7**
Basic Court Skopje 1	0	9	1	1	1	20	14	0	7	0	0	18	22	1	0	**94**
Basic Court Strumica	2	5	2	2	0	12	10	1	2	0	3	0	5	2	7	**53**
Basic Court Tetovo	2	1	3	0	1	2	0	0	0	0	0	0	1	0	0	**10**
TOTAL	**8**	**38**	**21**	**3**	**17**	**58**	**48**	**8**	**13**	**1**	**5**	**19**	**42**	**6**	**13**	**300**

Adjournment means failure to start the main hearing on the day it was scheduled for or, if the main hearing has already started, reasons may appear to adjourn it to an indefinite time period. The circumstances due to which the main hearing may be adjourned are various.

The results of the cases monitored show that irrespective of the basic court there is a general tendency to find the reasons for adjournment of cases in calling new witnesses (most often in the Basic Courts in Skopje and Bitola). A second reason is to collect physical evidence, and a very large number of cases are adjourned because of defendant's absence. Looking at basic courts, one may conclude that the basic court where cases are adjourned the most is the Basic Court in Skopje, then Veles, Strumica and Bitola follow, whereas cases are adjourned the least in the Basic Court in Ohrid.

11. FAIR TRIAL



Most trials are evaluated as fair (more than 90%) because evidence subjected to contradictory testing was presented before an impartial court and the defendants had an adequate chance to inform the court from their point of view about the facts and arguments relevant to the indictment. The right of defendants to reasonable notification of the indictment against them and the chance to be heard in their defence are considered basic rights which as a minimum involve the right to be notified of the indictment, to examine witnesses against the defendant, to offer testifying in his/her favour and to be represented by a defender.

Standards for a fair trial arise from values which may be grouped in several layers and their mutual relations are very complex indeed. Thus, the first level of standards applicable to the penal procedure is linked to accurate determination of guilt or innocence, which must be in accordance with legal criteria. In this regard, the defendant will be treated fairly only if he/she is tried based on accurate determination of facts and proper application of the law to facts. The other level or group of standards may be linked to the prohibition of inhuman treatment, protection of

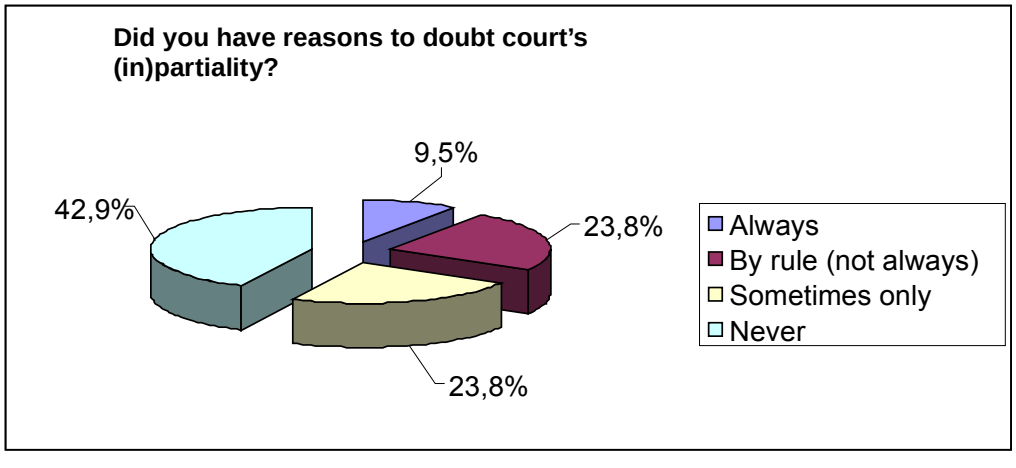
privacy and the like. And whereas some of these standards directly or indirectly influence the outcome, others may set certain limitations on the road to finding correct outcomes, while others may be totally independent from outcomes.

Monitors note the following as factors that influence the evaluation of fairness of criminal procedures: control over the procedure and outcomes, the opportunity for expressing and considering the arguments and the correctness of the outcome. In procedures where better process control of parties was provided, procedural fairness was also evaluated higher. The effects of process control may be explained by the fact that parties prefer to have personal control over the outcome of the procedure and see it as the only way of influencing the outcome because in court proceedings parties cannot gain more direct control over the decision itself.

How much a certain trial has taken place according to the standards for a fair trial must be examined on the basis of the trial as a whole, a certain incident may sometimes take on such importance that it would be a deciding factor in the general evaluation of the trial as a whole.

The evaluation of case K. No.409-08 is that the trial as a whole was fair because the defendant was given the opportunity to exercise all rights to be able to make her defence. The court respected her right not to appear at the first main hearing because from the day of delivery until the day of the main hearing 8 days had not passed. The judge responded positively to the defendant's defender's request for adjournment because the defendant was still not prepared taking into consideration her psychological condition. The judge was fair and prepared to hear the defendant and the other parties in the procedure.

- **Independence and impartiality of the court**



Considering the current situation with many controversies as to the independence of the court, we focus our attention on the actual independence and impartiality of the judiciary. In that regard, an ultimate test of independence is the functional independence in court practice and actual freedom from instructions while performing the court function. On the other hand, personal independence of judges,

although protected in certain respects, does not guarantee immunity to any influences of the executive authorities. In this respect, although open interference of the executive authorities with the judiciary may not be tolerated, it is difficult for monitors to register more subtle interventions of the executive authorities or other factors or centres of power.

However, the fact that of the cases monitored there were doubts about court's impartiality in every second is very important and raises concern. This overshadows the good evaluation of the fairness of procedures and penalties because it points to certain illogical inconsistency of results and needs additional analysis and possible revision of the instruments of measurement in the future.

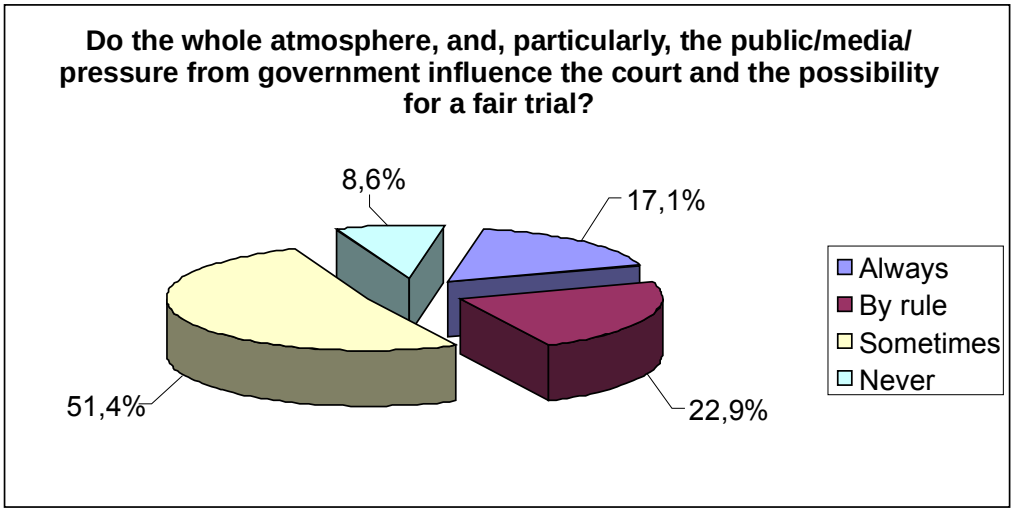
Court impartiality is operationalised in three ways: lack of bias, integrity and putting efforts to be fair. Lack of bias in the actions of court authorities is established by the question if defendants were treated differently depending on their race, sex, age, nationality or some other personal characteristic. Impartiality in the sense of integrity is evaluated through the responses to the question if authorities did something that was improper or corrupt and, second, if policemen, prosecutors or judges attempted to show a fair attitude. Correctness and quality in decision making is determined with the responses to the question if the court had the information necessary in order to make a right decision.

The results of the analysis show that several aspects of procedural justice had their independent contribution to monitors' evaluation. Efforts put by authorities to be fair; their integrity; the evaluation of whether their behaviour is consistent with ethical standards; whether an opportunity was given for presentation; the quality of decisions made; whether there is an opportunity for appeal and whether authorities' behaviour displayed subjectivity or bias. It was shown that impartiality is important, but more in the form of subjective bias, an effort to be fair and honourable, rather than a direct evaluation of the degree of bias of authorities. The quality of decisions also proved to be important, as was the case of presentation.

In case K. No. 532-08 because of previous cooperation between the defendant as a public function holder and the judge and the public prosecutor, as functions that put them in a position to cooperate closely, and probably because of their long-time acquaintanceship, during the whole procedure monitors could notice favour, with indications that due to these connections, an acquittal may be passed. The more so, when the BPPO changed the indictment from unlawful mediation to fraud.
Finding the defendant not guilty in this particular case was because it was not proved that the defendant was guilty, where monitors assume that the court showed more trust in the statements of witnesses who are close friends of the defendant than in those of the damaged party. Thus, the case was completed with an acquittal rather than a conviction based on all evidence presented.

- **Fair trial without pressure from authorities and the media**

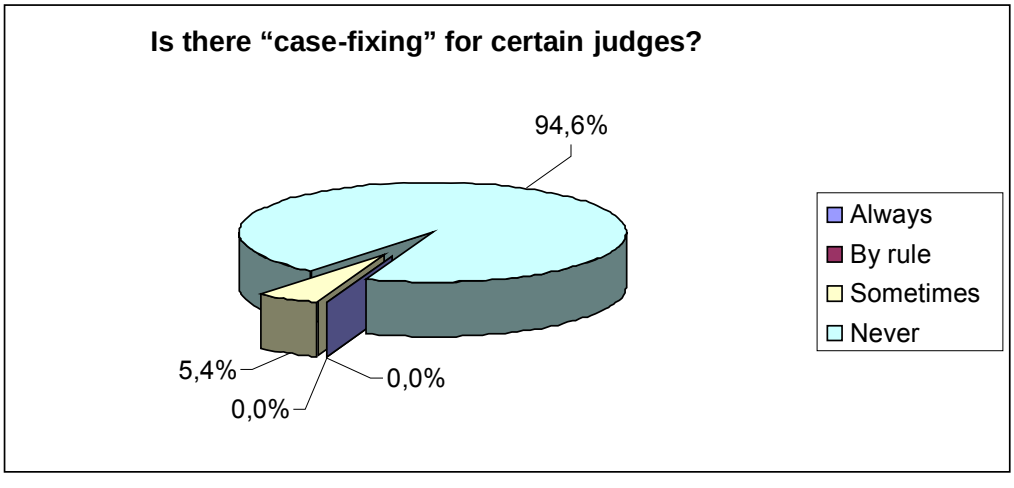
Regarding the publicity of uncovered criminal acts in the area of organised crime, we may say that, except for the moment of uncovering the perpetrator, the public is not particularly interested in following the procedure itself, except for the local media which inform the public most often at the beginning and the end when the judgement is pronounced, especially, if a celebrity or a person performing a public function is involved.



In case K. No. 409-08 the defendant was arrested spectacularly in the presence of media, which caused nervous breakdown in her son, who later attempted to take his life.

Case K.No.532-08 was of a former superintendant of SoI Shtip, who was arrested after he had been previously followed and watched, whereas the whole case was followed by the television media in Shtip (more specifically, the arrest, preceded by the whole MoI action, was recorded).

- **Right to a "natural judge"**

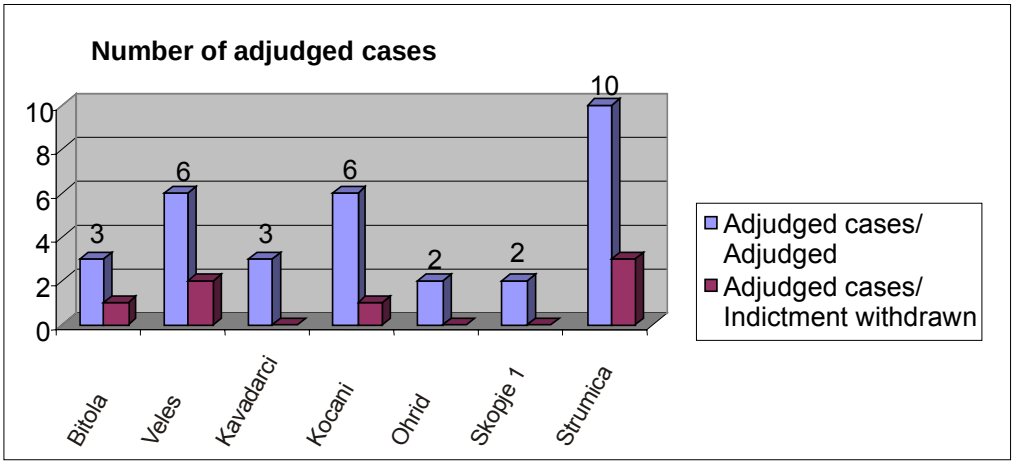


One of the most important guarantees that provides the defendant the right to be tried by an independent and impartial court is the right to be tried by a judge who was assigned the case randomly, without fixing cases – so called "natural judge". One of the pleasant surprises of the results of the project is the finding that with the

introduction of electronic distribution of cases in the court, "case-fixing", lately often condemned, is brought to a minimum. Few monitors (9%) still declared that they could not know if there was any influence on the distribution of cases.

12. JUDGEMENT AND PENAL POLICY

- **Number of adjudged cases**



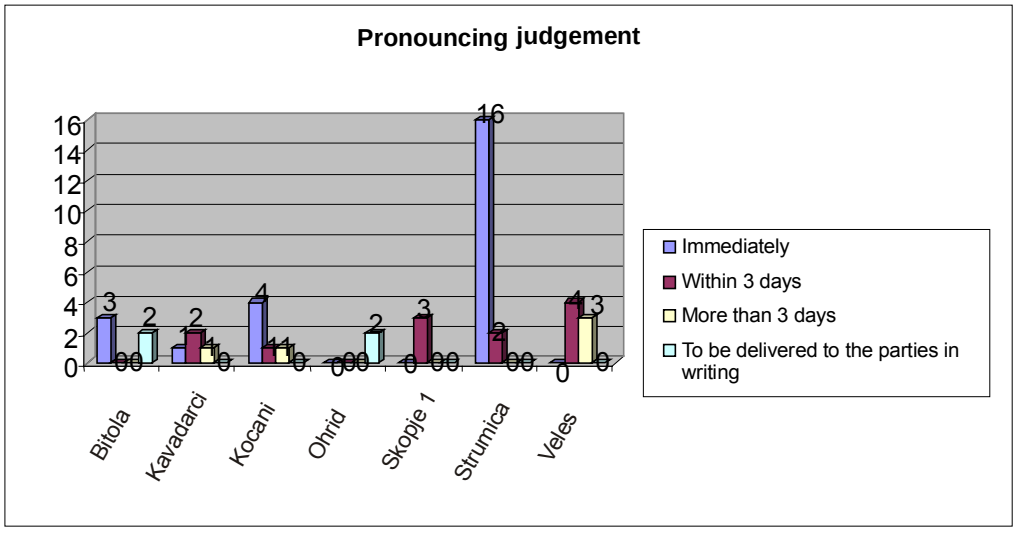
Regarding the cases completed, we may conclude that of a total of 110 cases monitored on 303 hearings the procedure was completed in 39 cases. From a superficial analysis of these figures the most obvious conclusion one can make is that in the highest number of cases monitored the procedure lasts more than a year. It should be mentioned that only in 7 cases did the public prosecutor withdraw the indictment, where the procedure ended with a judgement rejecting the indictment, whereas it should be borne in mind that procedures were monitored after the start of the main hearing. Material, that is, judgement on the merits was passed in 32 cases.

Here we may conclude that the Basic Courts in Strumica and Veles resolved the highest number of cases, 13 and 8 respectively, of which 10, that is, 6 with a judgement on the merits. Regarding the number of cases monitored, the Basic Court in Kochani resolved the highest number of cases, that is, 7 of the total of 12 monitored cases, of which 6 with a judgement on the merits. The Basic Court in Kavadarci is in the middle as it resolved half of the cases monitored, and the Basic Court Skopje 1 Skopje resolved the lowest number of cases, only 2 of the 22 monitored. The complexity of the cases processed in this court should be taken into account as well as the need for more time to pass judgements on them. In the Basic Court in Ohrid 2 cases were resolved of the total of eight monitored.

One may conclude that public prosecutors rarely withdraw the indictment, that is, expressed in the number of cases resolved, the highest number of withdrawn

cases is in Bitola , i.e. 1 of a total of 4 resolved cases. The situation in Strumica is similar (in 3 cases of 13 resolved ones), whereas in Veles (in 2 of 8 resolved ones) and in Kochani (in 1 case out of 7) cases are withdrawn as an exception. One may conclude that in the remaining courts public prosecutors were successful in presenting facts to charge the perpetrators with the criminal acts perpetrated.

- **Pronouncing judgement**



Regarding the pronouncing of the judgement, one may conclude that of the total of thirty nine judgements passed, they refer to forty five defendants, whereas judgements for a little more than a half of the cases, that is, for 24 defendants, were pronounced immediately, for one forth of defendants, that is, 12 defendants, judgements were pronounced within three days, only for 5 defendants they were passed within a period longer than three days, and for four defendants judgements were delivered in writing (in accordance with paragraph 3 of Article 344 of the LCP, these are the cases when the party, legal representative, proxy or defender are not in attendance when the judgement is pronounced). The Basic Court in Strumica deserves praise as it pronounced judgements immediately for 16 defendants, and for the other two defendants judgements were passed within three days.

The situation is similar also in the cases monitored before the Basic Court Skopje 1, which, in all the cases monitored for all three defendants it passed judgement for, delivered the judgement within three days. If we compare these figures with the data from the procedures monitored last year, we may conclude that courts increased the number of judgements pronounced within three days compared to the judgements pronounced in a period longer than three days. The number of judgements delivered to the parties of the procedure in writing is the same. Based on this comparison, we may draw the conclusion that with regard to the cases monitored

this year courts are more efficient in pronouncing judgements and we welcome the fact that courts put efforts to pronounce judgements according to the provisions of Article 344 of the LCP, which envisages that the judgement should be pronounced immediately after it is passed by the council, that is, within three days of the day the main hearing ends at the latest.

- **Sanctions imposed for the criminal acts and defendants**

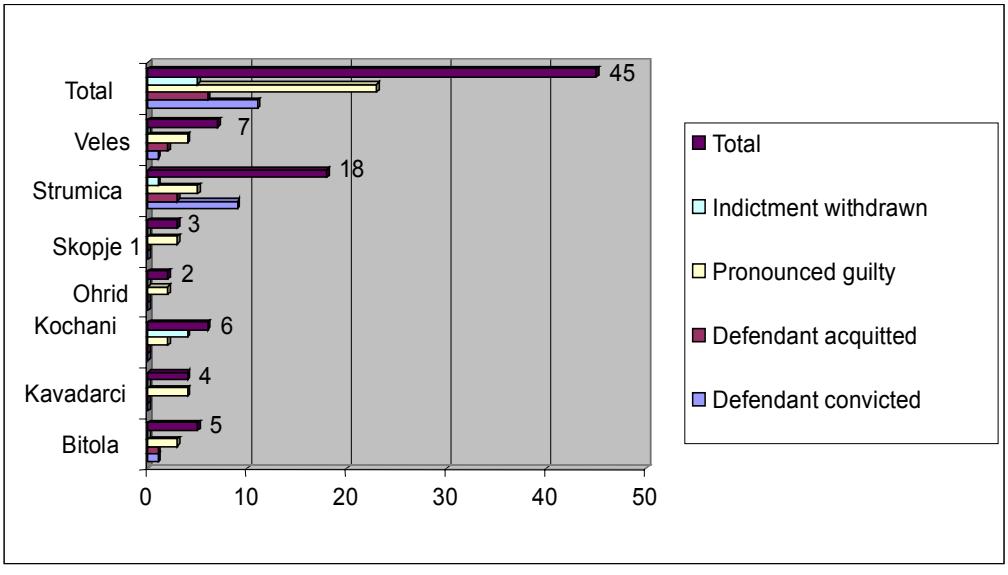
If we consider penal policy for these 39 cases adjudged, in which 45 persons were accused, we may repeat the conclusion from last year and conclude that penal policy is extremely lenient.

Sanctions imposed for the criminal acts and defendants

	Duration in months													Total number of sanctions per act
	Indictment rejected	Defendant acquitted	Indictment withdrawn	3	5	6	10	12	18	24	36	48	60	
248 Defrauding buyers	0	0	0	0	1	0	0	0	0	0	0	0	0	1
354 Embezzlement	0	1	0	0	0	1	0	1	0	0	0	0	0	3
353 Abuse of official position and power	11	3	5	1	0	3	1	1	1	0	2	1	0	29
357 Receiving bribe	0	0	0	0	0	0	1	0	0	1	1	0	1	4
247 Fraud	1	1	0	0	0	2	0	0	2	1	0	0	0	7
257 Damaging or privileging creditors	0	0	0	0	0	1	0	0	0	0	0	0	0	1
TOTAL	12	5	5	1	1	7	2	2	3	2	3	1	1	45

Thus, we may perceive that the ratio between convictions and judgements by which the defendant is proclaimed not guilty or cases when the authorised plaintiff withdrew the indictment or the court rejected the indictment is almost equal, that is, we may conclude that of the total number of accused persons in the cases completed only half were proclaimed guilty. This conclusion leads us back to an ever-present fact that the authorised plaintiff works with weak or insufficiently developed indictments, and if we go back to an earlier stage of the procedure, the stage of control of the indictment, we conclude that in most cases either complaint is not filed against the indictment or it is rejected and the indictment confirmed. It seems that defenders do not wish to complete the cases in an early stage or that they are not interested at all in this legal means, which is used by the court very uncritically.

- **Type of judgement**



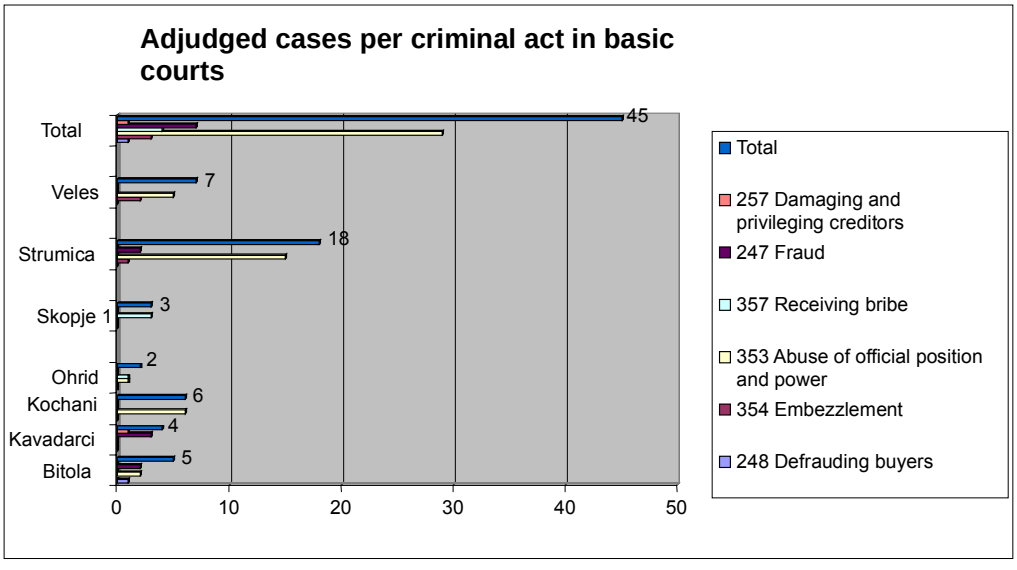
Analysing data per courts that passed judgements for defendants, we may note that the Basic Court in Strumica resolved the highest number of cases, against eighteen defendants, five of whom were proclaimed guilty, for one defendant the indictment was withdrawn, the indictment was rejected for nine persons, and an acquittal was passed for three defendants. The Basic Court in Strumica acted the most upon the criminal act abuse of official position and power, for 15 defendants, it passed judgement for the criminal act fraud in two cases, and passed a judgement for embezzlement only against one perpetrator.

After the Basic Court in Strumica comes the Basic Court Veles, where judgements on the merits were passed for the highest number of defendants, as follows: four defendants were proclaimed guilty, two defendants obtained acquittals and the indictment against one defendant was rejected. Regarding criminal acts, this court acted against five perpetrators of the criminal act abuse of official position and power and two perpetrators of the criminal act embezzlement.

In the Basic Court in Kochani cases were resolved against six defendants, of whom two obtained convictions for the criminal act abuse of official position and power, whereas the indictments for the same criminal act against four defendants were withdrawn.

The Basic Court in Bitola proclaimed three defendants guilty, found one defendant not guilty and rejected the indictment against one defendant. The Basic Court in Bitola resolved the cases of defendants for the following criminal acts: one criminal act defrauding buyers and two each for criminal acts fraud and abuse of official position and power.

The Basic Court in Kavadarci passed convictions for all cases adjudged, whereas three defendants perpetrated the criminal act fraud and one defendant perpetrated the criminal act damaging or privileging creditors. The Basic Court Skopje 1 in Skopje passed three convictions for three defendants perpetrators of the criminal act receiving bribe. Finally, the Basic Court in Ohrid passed two convictions for two defendants, of whom one perpetrated the criminal act abuse of official position and power, and the other defendant perpetrated the criminal act receiving bribe.



If we analyse penal policy per criminal acts, we may have the following findings.

Notably, the highest number of judgements is passed for the most frequent criminal acts, that is, for the act of Article 353 of the CC - abuse of official position and power. Of the total number of judgements passed for 45 accused persons, around two thirds were passed for this criminal act, i.e. judgements for 29 persons. It must be mentioned right away that of these twenty nine persons only ten persons were proclaimed guilty, while the indictment was rejected for 11 defendants, the public prosecutor withdrew the indictment against 5 defendants, and only three defendants obtained acquittals. With regard to the persons with convictions, we may conclude that the penal policy is very lenient, that is, 7 convicts were sentenced to imprisonment for up to a year and half, that is, one convict was sentenced to 3 months' imprisonment, 3 convicts were sentenced to 6 months' imprisonment, and the courts sentenced three persons to 10, 12 and 18 months' imprisonment, respectively. Two persons received more severe sentences, three years, and the most severe sentence was imposed on one convict, four years. Based on these data we may conclude that one person had his/her sentence mitigated below the special legal

minimum for these acts, whereas most sentences fall within the lower range of the special legal minimum and maximum for the primary act (from six months to three years), while only three persons were imposed more severe sentences, either the most severe sentence for the primary act or in these cases for some of the qualified forms of this act. If it was a case of a qualified form of the primary act, the court showed special leniency towards the perpetrators of these criminal acts.

Apart from this criminal act, the highest number of convicts is for the criminal act fraud, that is, 7 persons obtained judgements, of whom 5 defendants obtained convictions, 1 defendant obtained an acquittal, and the indictment was withdrawn for one defendant. Regarding penal policy for the criminal act fraud, for which in its primary form a fine or an imprisonment sentence of 3 years may be imposed, we may conclude that two defendants were convicted to a relatively low sentence of 6 months, two defendants got the medium value of the sentence envisaged for this criminal act, that is, eighteen months, and only one person was convicted to an imprisonment sentence of two years.

Authorised plaintiffs had the highest percentage of success in the criminal act receiving bribe of Article 357 of the CCM, for which in its primary form an imprisonment sentence of one to ten years is envisaged, and according to the amendments of the CCM of September 2009, more severe sentences for this criminal act are envisaged, that is, an imprisonment sentence of at least four year to ten years. The most severe sentence in all the cases monitored was imposed for this criminal act, that is, 5 years, whereas three defendants were sentenced to nine months, two and three years, respectively.

Regarding the criminal act embezzlement of Article 354, the procedures against three defendants were completed, of whom two were proclaimed guilty and sentenced to 6 and twelve months, respectively, and one defendant obtained an acquittal.

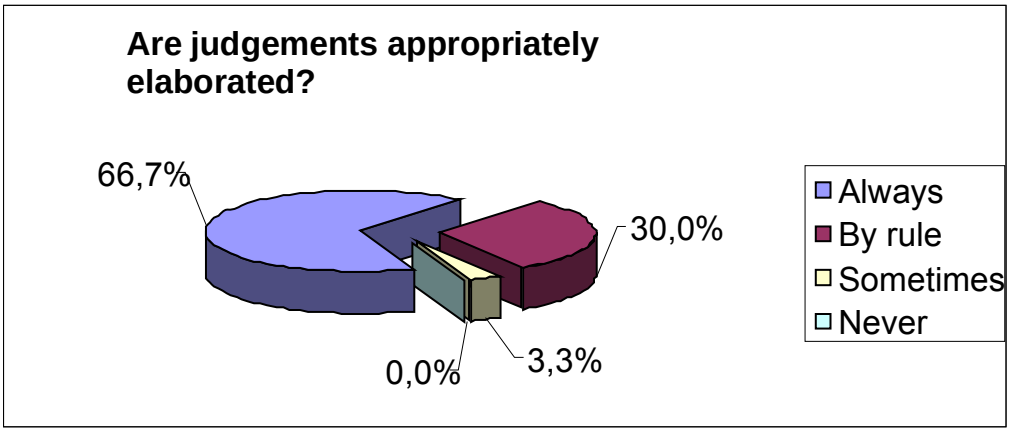
Two persons were convicted of criminal acts defrauding buyers of Article 248 of the CCM and damaging or privileging creditors of Article 257 of the CCM. For the former an imprisonment sentence of 5 months was imposed, and for the latter an imprisonment sentence of 6 months was imposed.

With regard to the penal policy of courts, a general conclusion may be made valid for all criminal acts monitored without exception, as follows: courts have a lenient penal policy which in average falls within the lower ranger of the penalty legally prescribed for a certain criminal act.

- **Elaboration of judgements**

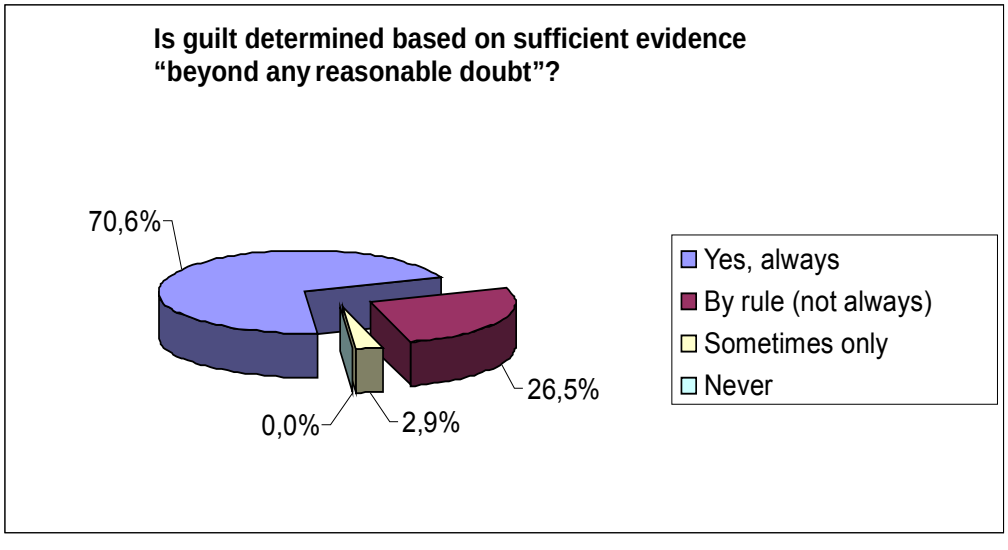
Article 6 of the European Convention requests national courts to elaborate their judgements both in civil and criminal procedures. Courts are not obligated to provide detailed answers to all questions, but, if the evidence submitted is utterly important for the result of the case, then the court must elaborate it in its judgement. Our court explains this obligation in great detail, so judges sometimes feel it is too large a burden.

The general opinion of monitors is that the court's duty to elaborate its decision is necessary in all cases that envisage the right of the party to file a legal remedy against it, as it is necessary for the principle of free evaluation of evidence to function properly, which means objectivisation of this evaluation, that is, protection from mistakes and arbitrariness on the part of the court on this duty.



De lege ferenda duty to elaborate judgements may conform with the principle of economy in our country, so it is in principle linked to the party's initiative for appeal, while the court would be obligated to prepare an in-depth elaboration only if the parties announce their appeal within a certain time after the pronouncement of the judgement.

- **Sufficient evidence for guilt**

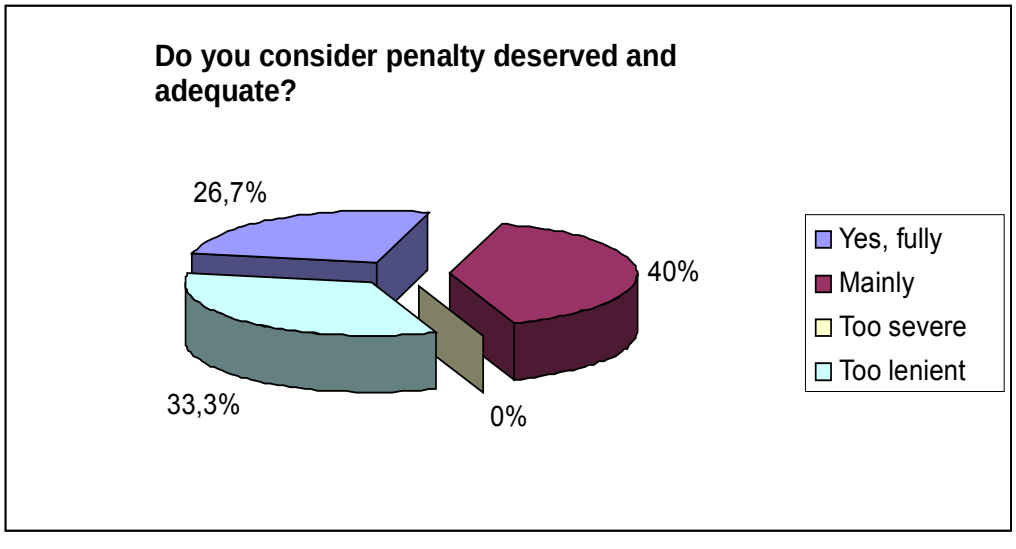


A fundamental moral justification for requesting a fair penal procedure is that this minimises the number of mistakes, that is, cases of unfair treatment. The morally valued function of minimising mistakes in penal procedure is fulfilled to the extent to which correct court proceeding is demanded because this gives guarantee that the number of unfair penalties will be as small as possible and generates confidence that those who are punished deserve that.

A key theoretical guarantee that defendants have according to international instruments for human rights and the Constitution of the RM is the presumption of innocence. This presumption is usually expressed by the principle that guilt must be proved "beyond any reasonable doubt". There are two basic aspects to this rule, such as the demand for a relatively high standard of proof, on the one hand, and placing the burden of proof on the prosecutors' office, on the other hand. The standard in question attempts to make a compromise between the two opposing objectives: to convict the guilty one and to acquit the non-guilty one, at the same time favouring wrong acquittals over wrong convictions.

For a long time now our procedure of the so called mixed type has been criticised as inadequate from the point of view of the respect for the presumption of innocence as a pivotal principle of modern criminal law. First, the burden of proof is more on the court than on the Public Prosecutors' Office, and, second, the standard of proof does not explicitly refer to the standard "beyond any reasonable doubt" that international law and the countries with accusatorial procedure of the Anglo-Saxon type insist on. Contrary to these claims of domestic and foreign literature, monitors' evaluations are that in the highest number of cases there is a high degree of confidence in the correctness of the decision on guilt (97%), which is surely one of the greatest pleasant surprises of the results obtained by the project.

- **Fairness of penalty**

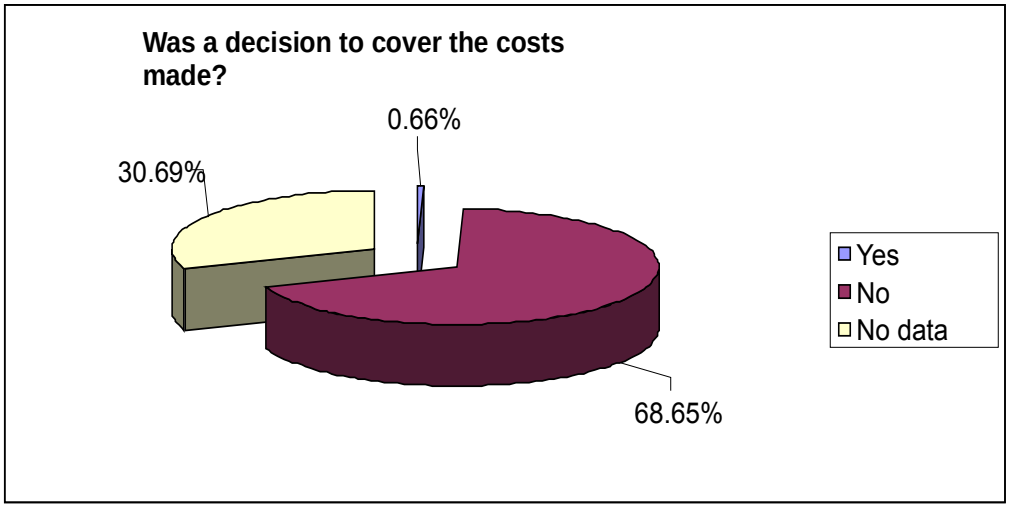


A fair procedure represents a procedure that justifies the outcome because it provides arguments for the claim that the treatment one person receives is a treatment he/she deserves.

The results of monitoring show that procedural factors influence people's perceptions of the fairness of procedures and outcomes. Here our object of concern was whether people believe that procedures and outcomes are fair rather than whether procedures and outcomes are fair indeed from an objective point of view.

Two thirds of monitors (66.7%) considered that the penalty was deserved and adequate to the act perpetrated. It is interesting that one third (33.3%) considered that penalties are too lenient, whereas none of the monitors found that defendants were treated worse than how they deserved! This is important to note considering that along with sexual abuse of children these are acts for which for the past several years in the Republic of Macedonia we have had the most severe penal policy.

- **Was a decision to cover the costs made**



Of the cases monitored in almost 70% it is concluded that the court made a decision for compensation of the costs of the parties in the procedure, based on which one may conclude that the parties' right to access to justice through a financial "construction" is appropriately recognised and respected at least by the court. It is another issue if the parties are able to and the extent to which they are able to charge such decisions for compensation of costs (here we think, above all, about high debts to expert witnesses and other similar problems detected in the judiciary in the RM). In percentage terms, 30% of the cases monitored are still not in the stage of determining the costs of the parties in the procedure, that is, they are not completed yet.

13. CONCLUSIONS AND RECOMMENDATIONS

Conclusions:

- In most cases monitored defendants had a fair trial – a fair opportunity to defend themselves from indictments. With several exceptions (where trial took place in absence), they were heard and had an appropriate and effective opportunity to be in attendance when their case was reviewed. Domestic courts carried out correct examination of arguments and evidence presented by the parties and had no prejudice when assessing them.
- People accept decisions more if they are made in procedures that are evaluated as fair, the fairness of procedure is valued irrespective of the fairness of outcome. Monitoring showed that the parties in the procedure experience procedural justice differently from fairness of outcome. The final outcome, however, plays a key role in the evaluation of whether the procedure was fair for the parties.
- In criminal procedures for corruption cases, the pragmatic interests of the state strive towards punishing the defendants and avoiding great efforts and costs. Monitoring of procedures and following of standards that guarantee fairness are, therefore, necessary for protection of defendants' vulnerable interests, ensuring as much as it is possible that they are not punished unless they are guilty indeed.
- The LCP does not set the problem of efficiency as a right of the defendant but as an obligation of the process parties. The undefined form of this obligation, on the one hand, relativises the work of the court as a driving force of efficiency, and, on the other hand, absolutizies efficiency making it a quality which is not disjunctive or complementary with the other process values. The public and legal obligation of the court to strive for formal efficiency formulated like this, in a certain way, puts the other process parties under an obligation more than the court itself.
- In the Republic of Macedonia corruption in the form of abuse or illegal use of official position and the powers arising from it is more frequent than traditional delicts of corruption.
- Public prosecutors rarely withdraw the indictment.
- Regarding the application of special investigative measures the last year's conclusion that these special investigative measures are applied rather restrictively is valid.
- When reviewing the measures for securing attendance in the criminal procedure, one may conclude that all measures together, without the measure detention, are applied far less that the measure detention. Except for detention, other measures are applied in rare or exceptional situations.
- In comparison with the other measures for securing the attendance of the defendant, detention is far more applied as a measure for securing the attendance of the defendant.

- With regard to the duration of the measure detention, one may conclude that detention lasts rather long, particularly, in cases where it is imposed during the main hearing.
- Regarding court's impartiality and considering the requests monitored for disqualification of judges, one may conclude that in most cases monitored the court was impartial, that is, defendants did not have any remarks as to its impartiality.
- There is a noticeable increasing trend of proper delivery in the cases monitored.
- Regarding publicity in the course of the main hearing, one may conclude that most of the hearings monitored are public and that the media were present at a pretty good number of them.
- With regard to the obligation of the court to warn the parties of the procedure about their obligation to keep secret, a negative development may be observed, that is, in 19% of the cases monitored this obligation was not met.
- Regarding means of evidence, defendant's confession is used the most, whereas expert evidence is used more rarely.
- The measure of seizure of the objects that the criminal act was perpetrated with or that have come into being as a result of the criminal act was applied in exceptional cases in the cases monitored.
- Regarding the pronouncement of the judgement in the procedures monitored, we may conclude that courts increased the number of judgements pronounced within three days compared to the judgements pronounced in a period longer than three days.
- One may conclude that prosecutors were half successful in providing arguments for indictments in the course of the main hearing, so they were successful (with convictions) only in half of the cases adjudged. This conclusion leads us back to an ever-present fact that the authorised plaintiff works with weak or insufficiently developed indictments, and if we go back to the stage of control of the indictment, we conclude that in most cases either complaint is not filed against the indictment or it is rejected and the indictment is confirmed.
- Courts have a lenient penal policy, which, in average, falls within the lower range of legally prescribed penalties for certain criminal acts.
- In most cases the court made a decision for compensation of the costs of the parties in the procedure, based on which the parties' right to access to justice through a financial "construction" is appropriately recognised and respected at least by the court.
- Persons accused of criminal acts of corruption mainly belong to the age group 36 to 55 years of age, are with higher education and are holders of academic degrees. They are most often of Macedonian nationality and, mostly, previously unconvicted.
- The legal deadline for scheduling the main hearing within 30 days of the day the court receives the indictment was respected only in 3.6% cases, whereas in 28.6% of the cases the period for scheduling the hearing was between 270 and 360 days, and in 16% more than 360 days.

• The reasons for adjournment of cases mainly lie in calling new witnesses and collecting physical evidence, and a very large number of cases are adjourned also because of defendant's absence. The highest number of cases are adjourned in Skopje, then in Veles, Strumica and Bitola, whereas in the Basic Court in Ohrid there are fewest adjournments.

• The greatest weaknesses of investigation are its long duration, inappropriate collection of evidence and repetition of actions. Long duration of investigation presents a problem, especially, in detention cases. Uncoordinated relations of the police, the Public Prosecutors' Office and the court are stated as the main reasons for prolongation of investigation. The prosecutors' office as an institution depends to a large extent on MoI because it does not have investigative capacities on its own, whereas court investigation by rule repeats hearings of persons previously heard by the police and the Public Prosecutors' Office and does not significantly contribute to collecting evidence and determining the factual situation.

• Process difficulties with regard to jurors arise of their lack of preparation and passiveness during trial, as well as their failure to resist external influences. From an organisational point of view, their participation makes court's work more difficult because they often do not respond to calls for trial.

Recommendations:

• Serious research should be conducted of the main sources of mistakes which lead to miscarriage of justice because even some known reasons have not been fully researched. Research is necessary that would examine realities, pressures and sources of mistakes in every stage of the penal procedure. A second step would be to develop certain systemic solutions or guarantees that are to ensure a significant reduction of the problems and risks detected.

• When making complex weighing of the interests of efficiency and human rights, more consideration should be given to respecting the interest of the victim too.

• Trial in absence is undesirable from the point of view of the right to be in attendance on trial as an element of the right to a fair trial and should be allowed only when the adjournment of the trial may lead to loss of evidence, obsolete possibility for prosecution and the like.

• The defendant must have the opportunity to effectively participate in procedures. To secure the right of the defence in criminal procedures is a fundamental principle of a democratic society and in this respect Article 6 of the ECHR must be interpreted in a way to present them as practical and effective rather than theoretical and illusory. The state is expected to be careful in securing the rights of the defence and any measures that might limit these rights should be absolutely necessary.

• *Hiding evidence* A fair trial requires the prosecutors' office to present and disclose all evidence, both that against the defendant and that in his/her favour. Failure to disclose evidence that may benefit the defence is still not automatically a

violation of the Convention, but will depend on the evaluation of the procedure as a whole.

- The principle of publicity must find balance between the interests and the right of the wider public and the rights of the defendant, victim and witnesses. In principle the right to publicity of trial is not only a right of the defendant that guarantees correct actions in the course of trial. It is also a right of the public in a democratic society. Just as justice is done on behalf of people, the public has the right to control over the procedure. It is necessary to strike proper balance between the two parties, the participants who may have confronting interests and the public.
- The limitation of the right to submit a request for disqualification due to circumstances which raise doubt in the impartiality of the judge or juror (Article 39 point 6) until the period before the main hearing starts has a particularly negative influence on the right of the defence. This novelty was introduced in the LCP in 1976 in order to prevent process abuse and to improve procedure efficiency.
- The demand for a trial within a reasonable time according to the jurisprudence of the European Court of Human Rights in Strasbourg insists on the long duration of the criminal procedure being compensated for by reducing the penalty, something that domestic courts find strange.
- To apply restrictive policy with regard to the application of detention as the most frequent measure for securing the attendance of the defendant by expanding the application of other measures for securing the attendance of the persons in the criminal procedure.
- To make efforts to reduce the measure detention to a minimum, that is, to reduce it only to the time necessary for the circumstances for which it was imposed.
- To continue the increasing trend of proper delivery in criminal and legal cases.
- To turn court's attention to giving the participants in the procedure a warning about the obligation to keep secret.
- To increase the application of the measure seizure of the objects with which the criminal act was perpetrated or which have come into being as a result of the criminal act.
- To encourage improvement of success of authorised plaintiffs by issuing better supported indictments in order to increase the percentage of convictions passed by the court.
- To review penal policy of courts, which is too lenient for the criminal acts monitored, in order to emphasise the effects of penalties on specific and general prevention effectuated through penalties.

Excerpt from the Review
of Prof. Dr. Ljupcho Arnaudovski

...Referring to all issues that are subject of analysis of this paper, the authors identify problems, make evaluations of theoretical and practical nature, at the same time, pointing to directions in which solutions should be sought. In that respect, the conclusions drawn both from the results obtained and as scientifically verified findings about the direction in which solutions should be sought, particularly, those confirmed by the results, are of great importance. Comparing, at moments, the results obtained from previous research on the same topic carried out within the Coalition All for Fair Trials, the conclusions are important that courts and judges show significant progress, increasingly adhering to and implementing international standards of fair justice. When formulating conclusions, the authors of the analysis do not only make evaluations about the situation established, but through a theoretical elaboration determine the place of each institute from the point of view of every defendant in the procedure and the work of the court as an autonomous, independent, impartial and objective body.

The conclusions drawn together with the evaluations and claims should reach every judge and should be indispensably applied in their work so that weaknesses and defects are overcome and courts' work is raised to a higher and more professional level.

Recommendations are also presented in a systematic way with clarity, convincing of their correct orientation, and are persuasive of the need for them to be accepted, especially, in their orientation towards improvement of courts' and judges' work.

Recommendations are formulated as general, principled indications and concrete directions for seeking solutions with concrete identification of both problems and legal institutes.

It is the reviewer's opinion that of the general indications of recommendations particularly important are those which indicate an urgent need for monitoring and studying the phenomena in this area in a systematic way, with an appropriate and scientifically based methodology, especially, due to the fact that the new forms of crime with new phenomenological characteristics require knowledge and experience, particularly, nowadays when our penal legislation is amended and consolidated.

The conclusions and recommendations, which complement each other in content and methodology, are given in a system and they should be reviewed, evaluated and accepted in a common approach as a whole.

Evaluation of the Paper

When preparing the review, the reviewer of the paper *Judicial Efficiency in Fighting Corruption in the Republic of Macedonia* presented his evaluations and comments, particularly, with regard to *conclusions* and *recommendations*. The reviewer chose this approach for at least two reasons: the authors of the analysis refer to the results of monitoring conducted in the course of 2009 and based on them formulate their positions and evaluations of certain institutes, which confirms the need for systematic monitoring of these phenomena because the period of one year is short for one to expect significant changes. The second reason is the fact that the report prepared in this way aims at identifying the problems in courts, judges and this type of crime, in particular, in order to show its character and so that on the basis of those indications new projects are prepared to study the problems identified and analyse the situation of our judiciary from the point of view of its functioning as an independent and autonomous entity in accordance with international standards for process justice. This presupposes a certain programme orientation of the research in this area and a methodological approach that would allow for overcoming weaknesses of this type indicated in the report itself.

The authors of the analysis treat the matter with great competence and knowledge of the topic. Their competence comes to the fore in the processing of the results of the research. The graphical presentation of results serves to explain the phenomenon and problems as well as is in support of the conclusions, claims and positions drawn. The approach in the analysis has a dual character: every institute is treated and explained from the point of view of its function in practice through existing legislation, but at the same time the authors explain their positions through their scientific and theoretical views and perceptions, which are in line with dominant theoretical and scientific views in modern criminal process theory. They present the analysis in the context of current and upcoming amendments of our criminal process legislation. In this way the analysis gains special importance and value, it is not only an analysis but a paper of high technical and professional values. It covers the problems of material penal law and imposes itself as necessary for penal process law with elements of criminology. All this makes the analysis complex and comprehensive.

A special value of the analysis is the identification of the work of courts and judges throughout all phases of action since that is a way of explaining the essence of the problem and in that way directions are determined according to which these should be monitored and studied. In that way recommendations become key, emphasising the need for permanent, systematic research of this area, which is missing in our country.

Conclusion:

On the basis of all the above-given conclusions, evaluations and positions on the paper *Judicial Efficiency in Fighting Corruption in the Republic of Macedonia* by author Prof. Dr. Gordan Kalajdziev, in cooperation with TA Divna Ilikj, MA, and TA Boban Misoski, MA, I propose that the coordinator of the project accepts the analysis with the evaluations given in this review and takes steps to print and publish it. Given the nature of this analysis, research objectives and subject, the content and manner in which it addresses key problems, the reviewer proposes that it is delivered to courts, judges and public prosecutors as information and finding about how they should act in the future upon cases they decide on, especially, from the point of view of international standards of process justice. The positions and recommendations presented in the analysis, as well as the conclusions, positions and proposals presented by the reviewer should serve as a basis for future research in this area.

Skopje, 29 January 2010

Reviewer
Prof. Dr. Ljupcho Arnaudovski

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