PUBLICITY AND TRANSPARENCY IN COURT PROCEEDINGS RELATING TO ELECTION IRREGULARITIES

- FINAL REPORT -

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FOUNDATION OPEN SOCIETY INSTITUTE МАКЕДОНИЈА
ФОНДАЦИЈА ОТВОРЕНО ОПШТЕСТВО МАКЕДОНИЈА

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Dear All,

The report in front of you is a product of the project "Publicity and Transparency in Court Proceedings Relating to Election Irregularities", implemented by the Coalition of Civil Associations "All for Fair Trials" in the period from September 2009 to April 2010. This is the second project implemented by the Coalition aimed at monitoring the institutional resolution of election irregularities registered during the early parliamentary elections in June 2008.

The projects "Monitoring the Institutional Response against Election Irregularities"[1] and "Publicity and Transparency in Court Proceedings Relating to Election Irregularities"[2] were financially supported by the OSCE Spillover Monitor Mission to Skopje and the Foundation Open Society Institute - Macedonia. Thanks to the partnership approach of these two organisations, which supported the Coalition "All for Fair Trials" to implement these two projects for almost two years, on the following pages we will find a much clearer picture of the problems, systemic obstacles as well as recommendations to overcome them.

In the report of the project "Monitoring the Institutional Response to Election Irregularities", apart from an overview of the legal framework, procedures for exercising the active and passive electoral right as well as legislation on implementing campaigns and elections, an analysis was made of the roles of the institutions of the state apparatus in tackling election irregularities in the Republic of Macedonia. The same report also makes an analysis of institutions' acting, that is, the penal law response to criminal and misdemeanour acts committed during the elections in June 2008 and the municipal and presidential elections in 2009.

Considering the duration of most of the criminal cases[3] that refer to election irregularities of the elections held in June 2008, as well as the absence of indictments for criminal acts committed during the elections of 2009, the Coalition "All for Fair Trials" implemented the project "Publicity and Transparency in Court Proceedings Relating to Election Irregularities", which resulted into this report. Within this project a number of activities were implemented to obtain a clear picture of the processes of: detecting, prosecuting, proving, acting and sanctioning perpetrators of criminal and misdemeanour acts concerning the electoral process.

[1] Implemented in the period July 2008 – June 2009.
[2] Implemented in the period September 2009 – April 2010.
[3] „40% completed criminal cases with a first instance verdict by 19 June 2009 inclusive" pp. 13 Final Report on the Institutional Response against Election Irregularities, June 2009 – Coalition „All for Fair Trials".

The focus of the project was court hearings for criminal acts concerning elections monitored by the network of observers of the Coalition "All for Fair Trials". Monitoring was carried out in the course of the two projects, except for the period June – September 2009. Until 19 June 2009 inclusive, within the project "Monitoring the Institutional Response to Election Irregularities" before the basic courts in Skopje, Tetovo, Gostivar and Struga 88 hearings for criminal cases were monitored and 34 for misdemeanour cases before Basic Court Skopje 1 – Sector for Misdemeanours[4]. The second project on this topic, during the period 15 September 2009 – 9 April 2010, covered 86 hearings for criminal cases before the basic courts in Skopje, Tetovo, Gostivar and 23 hearings for misdemeanour cases before Basic Court Skopje 1 – Sector for Misdemeanours.

The data collection methodology for the purposes of this project comprised several different tools used in various phases of the project. In the course of the project a standard methodology was used, which involves the attendance of two observers at every hearing of a particular case and their filling in a questionnaire that refers to the details of court acting, the standards of a fair and objective trial and the course of events on the hearing in question.

Within the project "Publicity and Transparency in Court Proceedings Relating to Election Irregularities" communication with courts and the Public Prosecutors' Office was maintained via official correspondence. It is important to note that the Coalition "All for Fair Trials" obtained some information by way of requests for access to public information, which apart from courts and the Public Prosecutors' Office, were sent to the Ministry of Justice, the State Election Commission of the RM, the Broadcasting Council, the Agency for Electronic Communications. Judging by the cooperation maintained in the past eight months, one may conclude that there is a satisfactory level of transparency and openness in basic courts and their bodies with regard to this issue.

During the month of December 2009, within the project two workshops were implemented in cooperation with the Academy for Training of Judges and Public Prosecutors of the RM, where the findings were discussed of the monitoring and data on current cases and cases with a first instance verdict that the Coalition "All for Fair Trials" has at its disposal. More specifically, on the first workshop held on 4 December, two topics were discussed:

- *The problem of institutional cooperation and coordination with a view to successfully processing criminal cases concerning election irregularities;*
- *Providing legally founded evidence in processing criminal cases in the area of elections.*

[4] pp. 12 Final Report on the Institutional Response against Election Irregularities, June 2009 – Coalition „All for Fair Trials"

The second workshop held later that month discussed the topics of:

- *Duration of the procedure of criminal cases in the area of election irregularities;*
- *Penal policy in processing criminal cases in the area of elections.*

Based on the information obtained from the discussions on these two workshops (attended by more than 35 judges, expert collaborators, public prosecutors and others), in cooperation with the external collaborator of this project Aleksandar Chichakovski, a series of interviews was conducted with the judges who are presidents of the judicial councils in some cases subject of monitoring. These conclusions, suggestions and comments raised during the two workshops helped formulate open dilemmas and questions that were covered at the interviews with 7 judges (of the basic courts in Skopje, Tetovo and Gostivar) during February and March 2010. The positions and comments of the judges interviewed were of great help when formulating the comments and recommendations covered in this final report.

This final report aims at serving as an overview of the situation of the penal law response to election irregularities. Although the contents of this report is primarily intended for the experts (practitioners and theoreticians) dealing with this issue, this report may also benefit the general public which directly or indirectly suffers the consequences of the irregularities in the process of elections and voting.

In the end I would like to extend my gratitude to:

- The observers of the Coalition "All for Fair Trials" and the donors of this project, OSCE Spillover Monitor Mission to Skopje and the Foundation Open Society Institute – Macedonia, without which the implementation of this project would not be possible;

- The courts covered by this project because they were open to cooperation and allowed unimpeded access to information and attendance of observers to court hearings;

- All state institutions and individuals within them who helped complete the picture about institutions' acting upon election irregularities.

Aleksandar Stojanovski
Project Coordinator

1. INTRODUCTION

The legal system of the Republic of Macedonia foresees two channels for institutional response to election irregularities. The first channel is the procedure for the protection of electoral rights taken before electoral bodies and this is an integral part of the electoral process, whereas the second channel is the criminal law response, which is a form of court protection of electoral rights. Within this project the criminal law response to election irregularities was monitored in order to identify key problems, analyse them and provide recommendations to overcome them.

2. LEGISLATION ON ACTS AGAINST ELECTIONS AND VOTING

The Criminal Code of the Republic of Macedonia foresees nine criminal acts against elections and voting:

- Prevention of elections and voting (Article 158),
- Violation of electoral right (Article 159),
- Violation of electors' freedom of choice (Article 160),
- Misuse of electoral right (Article 161),
- Bribery at elections and voting (Article 162),
- Violation of the secrecy of the vote (Article 163),
- Destruction of electoral documents (Article 164),
- Electoral fraud (Article 165),
- Misuse of funds for election campaign financing (Article 165-a).

They are systematised in a separate chapter (Chapter sixteen) titled "Criminal Acts against Elections and Voting". A common group object of the protection from criminal acts against elections and voting is the electoral system, which presents a collection of principles and procedures that should ensure free, direct, secret and democratic elections, which is also a fundamental value of the constitutional order of the Republic of Macedonia. Another, not necessarily less important, group object of protection is the active and passive electoral right, that is, the right to equal, general and direct electoral right, as well as the right of every citizen to take part in performing a public function.

Due to the severity, seriousness and frequency of the criminal acts against elections and voting during the whole period starting from the independence of the Republic of Macedonia, under public pressure and without sufficient analysis, in 2006 the legislator rushed into so called "panic-stricken" legislation, which resulted into drastically more severe criminal sanctions and the introduction of Article 165-a, which introduced a new incrimination: Misuse of funds for election campaign financing. The amendments introduced in 2009 envisaged a penalty for the act of misuse of funds for election campaign financing for the responsible person or election campaign leaders, as well as for the natural and legal person who donates funds for the election campaign contrary to the Electoral Code. The same amendments envisaged compulsory imposition of the penalty "prohibition on performing a profession, activity or duty" for the criminal acts against elections and voting (Article 165-b).

The increase in the number of persons reported for committing these criminal acts with particularly violent methods and the inapplicability of the new incrimination, which was supposed to prevent misuse in election campaign financing, showed that the reform in this part of criminal legislation did not give the results expected, that is, that it was carried out without making a deep social and legal analysis to identify key reasons for these phenomena. Practice in acting upon these criminal acts showed that making the penal policy more severe also had a contradictory effect, thus in many cases criminal sanctions were imposed that were below the special legal minimum without there being any particularly alleviating circumstances, whereas in many cases due to poor evidence material and severe threatened penalties, the Public Prosecutors' Office decided to withdraw from prosecution.

The analysis of the legal provisions for these criminal acts showed that they provide a sound penal law protection in all phases of the electoral process. Practice, however, showed that in certain incriminated activities there is a lack of precision and that for certain parts of the electoral process full penal law protection is not ensured, as well as that certain criminal acts cover a range of acts of perpetration of different degree of social danger.

Thus, forging data in voters' lists in order to cover up certain election irregularities committed with a threat against officials, as well as misleading citizens on election day by presenting false claims through the mass media or in another way, are left with no appropriate criminal law response. In the former case only electoral bodies members or another official are envisaged as perpetrators of the act of electoral fraud, thus the possibility is missing for the perpetrators of this act who are not officials and do not belong to the electoral administration to be prosecuted. The possibility is also missing for an appropriate legal response to presenting false claims through the mass media during the election campaign and election silence, although, for instance, in many European countries there is an act of spreading false information.

On the other hand, the act "Prevention of elections and voting" (Article 158 paragraph 2) covers many alternative acts of perpetration which create problems because a single severe penalty is envisaged for acts of different degree of social danger. This severe penalty for the act "Misuse of electoral right" (Article 161) has a negative influence and puts public prosecutors off prosecuting perpetrators of minor acts, such as family voting and voting instead of someone else.

RECOMMENDATIONS:

-It is necessary to make the penal policy generally more lenient and make additional gradation of the various acts of perpetration according to their social danger, especially of the criminal acts of "prevention of elections and voting" and "misuse of electoral right" in a way to envisage qualified and privileged forms of special acts of perpetration;

- Considering its specific nature, family voing should be envisaged as a separate criminal act that would cover all the different manners of perpetration and all possible perpetrators by prescribing an appropriate penalty;

-To expand punishment of electoral fraud to perpetrators who are not officials, as well as to envisage a new act "spreading false news during elections" to incriminate the acts of spreading false claims that mislead voters;

-To envisage punishment of an official who will enable another person to vote unlawfully on behalf of someone else or to vote several times; or to establish a practice of holding Election Boards members who have made a contribution towards the perpetration of the act (as encouragers or assisters) criminally liable or holding them criminally liable for failure to report the criminal act;

-To prescribe the loss of the active and passive electoral right as a secondary penalty. Its duration should not be less than 5 years since by rule elections are held every four years.

3. DETECTING AND PROSECUTING PERPETRATORS OF ACTS AGAINST ELECTIONS AND VOTING

The monitoring of the institutional response to election irregularities showed that detecting criminal acts and their perpetrators is the most critical phase which determines the efficiency of the criminal law response to a great extent. Considering the reports of domestic and international observers during the elections held in 2008 and 2009, which point to a number of election irregularities[5], and the small number of reported acts, one has the impression that a large number of acts remain undetected.

	2006 Parliamentary elections	**2008 Parliamentary elections**	**2009 Presidential and municipal elections**
Persons reported	52 persons	363 persons	41 persons

Chart #1 – Number of persons reported for election irregularities
in the last 3 electoral cycles in the Republic of Macedonia

[5] OSCE/ODIHR Final Report on the Early Parliamentary Elections 2008;
Citizens' Association MOST, Final Report on the Early Parliamentary Elections 2008.

The Ministry of Interior pressed criminal charges against 217 persons to the Basic Public Prosecutors' Offices concerning election irregularities committed during the 2008 early parliamentary elections. Concerning the same criminal law events criminal charges were pressed against 146 persons by political parties (the political party DUI pressed the majority of the charges, whereas DPA pressed fewer charges). With regard to the presidential and municipal elections held in 2009 13 criminal charges were pressed against 34 persons by the Ministry of Interior. With regard to the 2008 early parliamentary elections and the 2009 presidential and municipal elections 1 criminal charge was pressed for the act "Bribery at elections and voting" by the Commission for the Prevention of Corruption, whereas the Public Prosecutors' Office initiated criminal prosecution upon its own initiative in 3 cases for criminal acts against elections and voting.

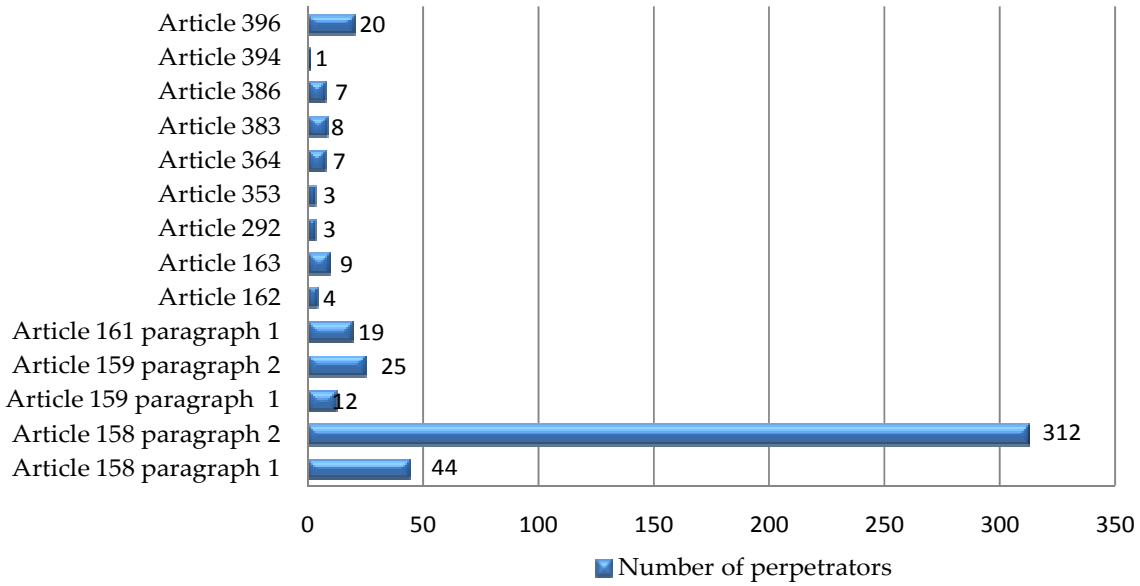


Chart #2 – Structure of acts reported concerning the elections held in 2008[6]

According to the structure of the acts reported concerning the 2008 early parliamentary elections, the majority of the charges refer to the criminal act of prevention of elections and voting of Article 158 of the CC. It is noticeable that charges for the act of prevention of elections and voting of Article 158 paragraph 2 of the CC prevail, which, according to the legal qualification, shows significant increase in the application of elements of violence during the perpetration of the criminal acts during these elections. This conclusion is confirmed also by the fact that in many cases the persons charged with the act of prevention of elections and voting were also charged with and prosecuted for the act of violence of Article 386 and the act of illicit manufacturing, keeping and trade in firearms or explosive materials of Article 396 of the CC.

[6] The Chart shows the structure of persons reported and does not correspond to the number of reported persons because some persons were reported for several criminal acts.

These data showed that competent authorities successfully detected mainly the acts that have a wider public manifestation, whereas more subtle acts, like misuse of electoral right, violation of the secrecy of the vote, bribery at elections and voting and misuse of funds for election campaign financing are significantly more difficult to detect. It is interesting that besides the facts that for the majority of the acts of prevention of election and voting a certain degree of organisation was established, the court did not detect the organisers of these acts (encouragers and assisters).

In 52.4% of the cases monitored there are three or more defendants in one criminal law event, whereas 44.02% of the defendants are prosecuted for the act "Prevention of elections and voting" of Article 158 paragraph 2 since they committed the act in an organised group or in several polling stations.

The reasons for inefficient detection of more sophisticated acts may be found in the police officers' limited access to the polling station, electoral administration's and electors' fear to testify for the event, the tradition of family voting and voting instead of someone else in part of the population which considers it a socially permitted manner of voting, and political influence. An additional factor which negatively determines the efficiency in detecting more sophisticated acts is the passivity of state institutions directly involved in the electoral process such as the State Election Commission, the State Auditing Office, the State Commission for the Prevention of Corruption, in documenting cases with excuse that if they rush into pressing criminal charges, it will affect the quality in performing their primary competences and the institutions' independence.

On the other hand, (failure to use) using appropriate investigative methods and techniques on election day is a key reason for inefficient detection of encouragers and assistants of the criminal acts against elections and voting. We asked the judges interviewed to comment this question and the predominant assumption was that failure to use special investigative measures for fear of deeply affecting fundamental human rights and the democratic atmosphere significantly made it more difficult to detect the organisers of the criminal acts against elections and voting perpetrated during the 2008 early parliamentary elections.

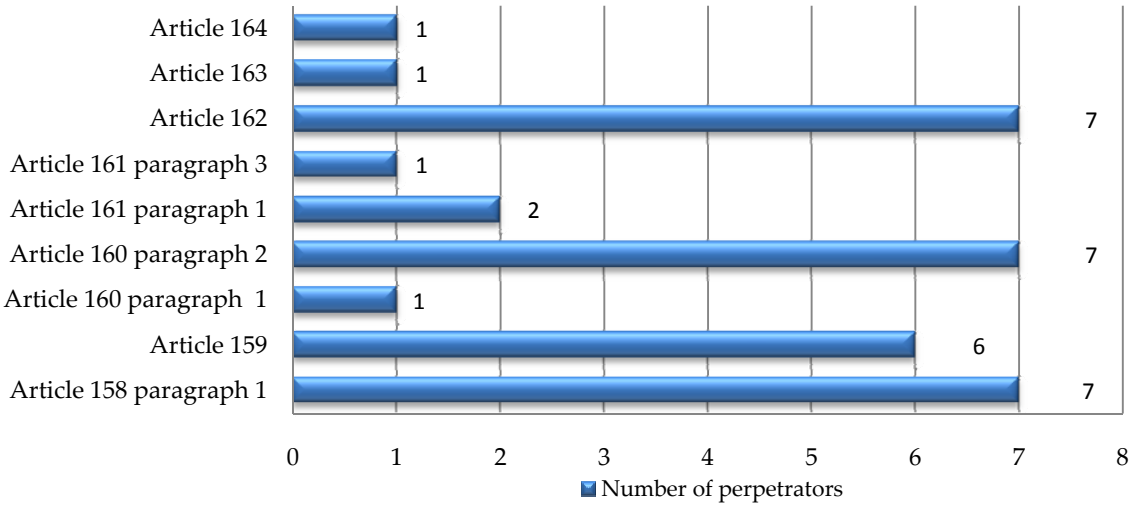


Chart #3 – Structure of acts reported concerning the elections held in 2009

The structure of criminal acts reported concerning the 2009 presidential and municipal elections shows a drastic decrease in the number of charges for the act of prevention of elections and voting of Article 158, and a mild increase in the number of charges for the acts of violation of electors' freedom of choice of Article 160 of the CC, misuse of electoral right of Article 161 and bribery at elections and voting. This structure of acts reported consistently reflects the findings of domestic and international observers, who in their reports identified bribery and intimidation of voters as a key problem.

In any case, data show that preventive activities and measures taken by the police, the Public Prosecutors' Office and the electoral administration in order to improve mutual coordination between competent authorities significantly contributed to reducing the potential for perpetration of criminal acts during the elections held in 2009. Continuous non-binding recommendations of international organisations contributed to this as well, particularly the European Union, which conditioned the RM's further integration by holding fair and democratic elections in 2009 (an additional, i.e ninth benchmark). This positive example should be borne in mind and coordination between competent authorities (the electoral administration, the Broadcasting Council, the State Auditing Office, the police and the Public Prosecutors' Office) during the electoral process should continue improving in order to improve the efficiency in detecting these acts.

PUBLIC PROSECUTORS DECISIONS							
		Persons reported	Active		Resolved		
			Collecting notifications	Investigation under way	Charges dismissed	Withdrawal from prosecution	Indictment
Skopje	2009	2		2			
	2008	22		4	3	9	6
Gostivar	2009	3	2	1			
	2008	117	47		15	10	45
Tetovo	2009	19	7		12		
	2008	220	48	2	92	18	60
Struga	2009	5			5		
	2008	3					3
Kochani	2009	3	1		2		
	2008						
Strumica	2009						
	2008	1			1		
Bitola	2009	1			1		
	2008						
Ohrid	2009	8	5			3	
	2008						
Total:	2009	41	15	3	20	3	
	2008	363	95	6	111	37	114

Chart #4 – Work and decisions of the Public Prosecutors' Office on the persons reported for acts committed during the elections held in 2008 and 2009

The data on the Public Prosecutors' Office's acting upon the criminal charges pressed concerning the 2008 elections showed that the charges against 262 persons were resolved or 72.17% of the total number of reported persons, which is to a great extent within the annual average of resolved charges of 75.3% (2008 Annual Report on the Work of Public Prosecutors' Offices in the Republic of Macedonia), although urgent acting is envisaged for these acts thus it is expected that such cases would be resolved more efficiently. Regarding the 2009 elections the charges against 23 persons are resolved out of the charges pressed againt a total of 34 persons. The structure of decisions made by public prosecutors' offices' acting upon criminal charges for acts committed against the elections and voting of 2008 shows that the criminal charges against 111 persons were dismissed or 42.36% of those resolved, which is significantly more than the annual average for 2008 of 24.8% for all types of criminal acts. The largest number of charges was dismissed because there were no grounds for suspicion that the person reported was a perpetrator of a criminal act, which points to the fact that it is difficult to provide evidence to prove that the suspects are perpetrators of criminal acts. Basic public prosecutors submitted requests for investigation against 157 persons reported for acts committed during the 2008 elections and 3 persons reported for acts committed during the 2009 elections. After investigations were carried out, statements for withdrawal from prosecution were made for 37 persons concerning the 2008 elections and 3 persons concerning the 2009 elections, indictments were brought against 144 persons, whereas investigations against 6 persons for acts of 2008 and 3 persons for acts of 2009 remained unresolved.

Key problems that may be identified regarding public prosecutors' decisions are their inertia in collecting notifications necessary to decide on charges and their susceptibility to political influence. Necessary notifications are awaited of the electoral bodies, the Ministry of Interior and political parties, which in the majority of the cases due to their running out of time cannot respond appropriately to requests, thus a large number of charges are dismissed due to lack of sufficient evidence to establish that the persons reported committed the acts. On the other hand, the position of the Public Prosecutors' Office in the political and legal system still does not guarantee its full independence, therefore, the public is left with the impression that the Public Prosecutors' Office is passive acting upon charges against senior political officials from the parties in power.

To overcome these problems public prosecutors need to act proactively and engage themselves directly, check certain data, and collect necessary notifications to contribute to faster and more efficient prosecution of these perpetrators. Also, to overcome the problem of efficiency in acting upon charges for criminal acts against elections and voting against political activists of parties that won the elections, it is necessary to further strengthen the independence of the public prosecution function.

RECOMMENDATIONS:

- To strengthen investigative abilities of authorised officials for detecting sophisticated types of criminal acts against elections and voting whereas public prosecutors should specialise within Public Prosecutors' Office to detect and prosecute these acts;

- Planning and carrying out investigation for criminal acts committed against elections and voting should be a single coordinated process, where certain investigative actions will be intertwined and mutually complemented by team work on the part of the electoral administration, MoI authorised officials and public prosecutors, who should have the leading role in this process;

-To strengthen the professionalism and independence of the electoral administration, the police and the Public Prosecutors' Office.

4. PROVING CRIMINAL ACTS AGAINST ELECTIONS AND VOTING

When it comes to acting upon criminal acts against elections and voting, the problem is noted of securing legally relevant evidence. Due to lack of evidence a large number of statements were made for withdrawal from prosecution for the cases reported in 2008, as well as for the cases reported during the 2009 elections. In proceedings on the criminal acts against the 2008 early parliamentary elections courts faced problems such as: evading testifying, changing the statement made during an informational interview before the police and the statement made before an investigative judge and at the main hearing, failure to secure part of the election material as evidence and prolonging the forensic examination of physical evidence.

According to the statements of judges made at the interviews within the project, indictments for these acts are, above all, supported by verbal evidence. Witnesses' statements are mainly empty, and it is often that statements made during investigation and in the course of the proceeding are changed, which makes it difficult to establish the factual situation. It is often that the court requests delivery of the overall election material as evidence material in proceedings, whereas SEC, however, in many cases, delivers only the decision which annulled the vote in the polling station in question. With regard to the indictment of Article 158 paragraph 2, which is the most common one, the judges interviewed stated that organisation is difficult to prove, and in the majority of cases it is organisation that gives the act its qualificatory form.

A main factor contributing to these problems is witnesses' fear of testifying for the criminal law event, as well as insufficient institutional coordination in securing evidence. Witnesses' fear of testifying for the event is the key problem and in order to overcome it, it is necessary to establish properly its etymology. It seems that fear is determined above all by

voters' and political parties' poor culture of democracy, political activists' aggressiveness and the change of political constellations, which makes witnesses change their statements or refuse to testify in order to protect their interests.

To overcome these problems, it is necessary to act on several levels. First, one should work preventively on fostering democratic culture in voters and political parties. Second, the electoral administration and the authorised officials, who are by rule the first to know about the criminal acts, should be trained to secure the place of the event properly, to collect all necessary data that may later become unavailable and to record potential witnesses. Third, the public prosecutor who is supposed to take a leading role in this procedure should be informed on time to decide if and which investigative action will be taken. Forth, due to the problem noted of changing witnesses' statements and improper securing of election material, a special focus should be put to secure this evidence immediately after the criminal law event.

RECOMMENDATIONS:

- All stakeholders in society should intensively engage in fostering democratic culture in voters and political parties and all forms of intimidation of citizens should be sanctioned.

- To improve coordination and exchange of information on election day between all relevant state institutions.

- Specialised training for electoral bodies in how to tackle election irregularities and how to gather evidence by including special forms in the election material for this prupose.

- Public prosecutors should take a leading role in the preliminary investigation procedure, that is, they should conduct and direct the procedure of gathering and selecting evidence material.

5. URGENCY IN ACTING

With the ratification of the European Convention on Human Rights, the Republic of Macedonia assumed a serious obligation to organise its legal system in a way to ensure trial within "a reasonable time". In this case due to the special social danger of the criminal acts against elections and voting, the Electoral Code of the Republic of Macedonia set forth special urgency in acting upon these cases (Article 178 paragraph 2 of the Electoral Code). Based on this instructive provision, which was not followed by appropriate interventions in the criminal process legislation, courts were advised to give these cases a priority, to ensure a concentrated and efficient main hearing when acting upon them and to adopt and prepare decisions within reasonably short deadlines.

Failure to respect the principle of urgency in acting upon criminal acts against elections and voting is a factor which relativises the institutional response to election irregularities. The monitoring of these cases showed that there is unreasonable prolongation of actions and disrespect for the principle of urgency in all phases of the criminal procedure and by all relevant authorities, which contributed to the fact that physical evidence is established slowly and hard in court proceedings, and slow justice does not meet at all the goals expected.

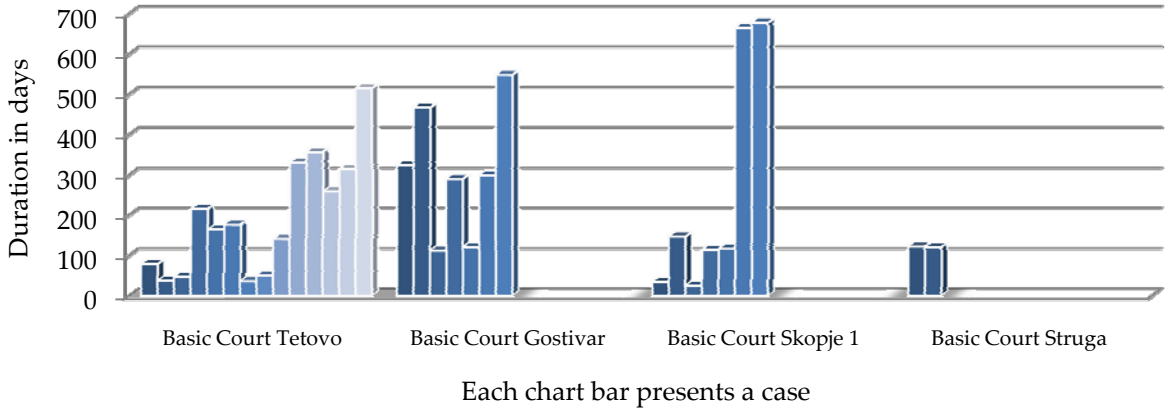


Chart #5 – Duration of procedure from the day the indictment is brought to first instance decision

Up to April 2010 courts adopted first instance decisions in 30 cases for criminal acts against the 2008 parliamentary elections. Data show that in half of the court proceedings first instance decisions are adopted within 4 months of the day the indictment is brought, whereas the other cases last drastically longer, and this discrepancy in proceedings duration is noted in all courts that act upon these cases. In order to create a solid picture of the reasons and justification for this departure from urgency in acting upon these cases, below we analyse the duration from the day the indictment is brought to the day the hearing is scheduled for, the frequency of adjournment of the main hearing for the cases monitored and the reasons for adjournment.

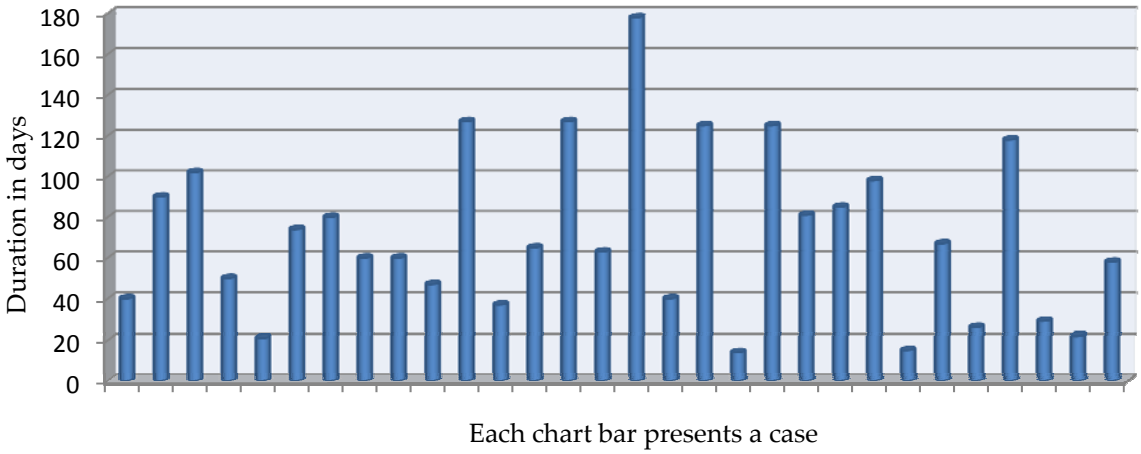


Chart #6 – Duration from the day the indictment is brought
to the day the hearing is scheduled for in days

The average time period between the receipt of the indictment in court (that is, the decision on the complaint) and the day the first hearing is scheduled for is at least two times longer than the legally determined period of 30 days. Based on the data the Coalition has, it is only in 6 cases (20%) of the cases monitored that this instructive deadline was respected. According to the statements of the judges interviewed within the project, there are both objective and subjective reasons for this prolongation of actions. Thus, on the one hand, according to them courts are overburdened (*a large influx of new and current cases, so there are no objective possibilities to set the dates of the cases quickly*) and insufficiently staffed, and, on the other hand, in certain number of cases the competent judge himself/herself is not appropriately prepared for the main hearing.

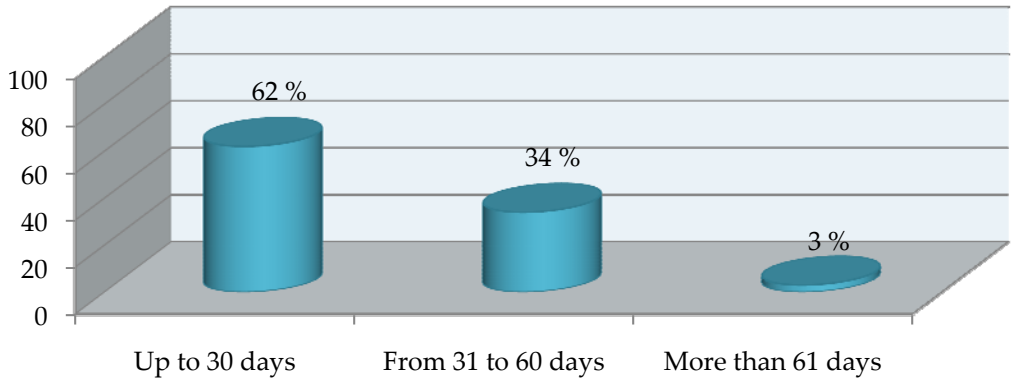


Chart #7 – Summary of duration (in days)
from the day the indictment is brought
to the day the hearing is scheduled for in percentage
(summary information for all courts)

Based on the data of the cases monitored, we established that hearings are adjourned to the longest period in Basic Court Gostivar, where 64.7% of adjournments lasted up to 30 days, 32.2% lasted between 31 to 60 days and 3.1% more than 60 days, which was a reason for repetition of proceedings. The analysis showed that in Basic Court Skopje 1 77.8% of adjournments last up to 30 days. Short adjournments to up to 10 days are the most common, and 22.8% of adjournments last up to 60 days. In Basic Court Tetovo 82.6% of adjournments are to up to 30 days, and only 17.4% of adjournemtns lasted up to 60 days.

A special problem that prolongs the procedure is the failure to secure the conduct of the main hearing concentrated in several hearings. The data obtained showed that in 21 of the 30 cases completed in first instance the court needed more than 3 hearings to pass verdict.

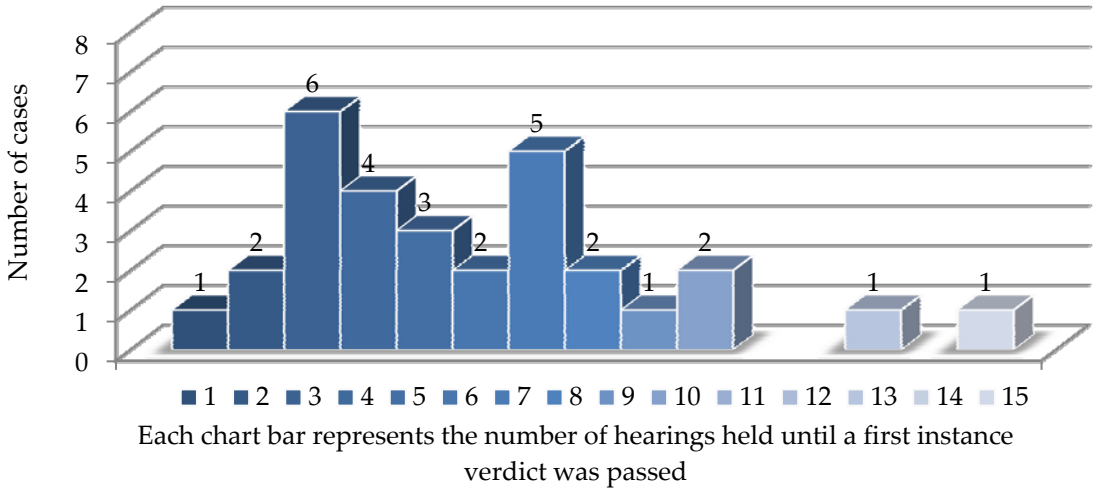


Chart #8 – Number of hearings held in procedures where first instance decisions were adopted

The analysis of the data of the monitoring of court proceedings for criminal acts against the 2008 early parliamentary elections on the reasons for adjournment of hearings showed that the absence of one of the relevant actors was the most frequent reason for adjourning the proceeding. The analysis of the actors who are the ones who contribute the most to adjourning the main hearing shows that defendant's absence is dominant. In this respect there are many adjournments in cases with more defendants. In 30% of the cases there is adjournment in order to secure witnesses, whereas the number of those cases where adjournment is done to secure physical evidence is smaller. The main hearing is interrupted most frequently due to holidays, and rarely due to closing arguments preparation.

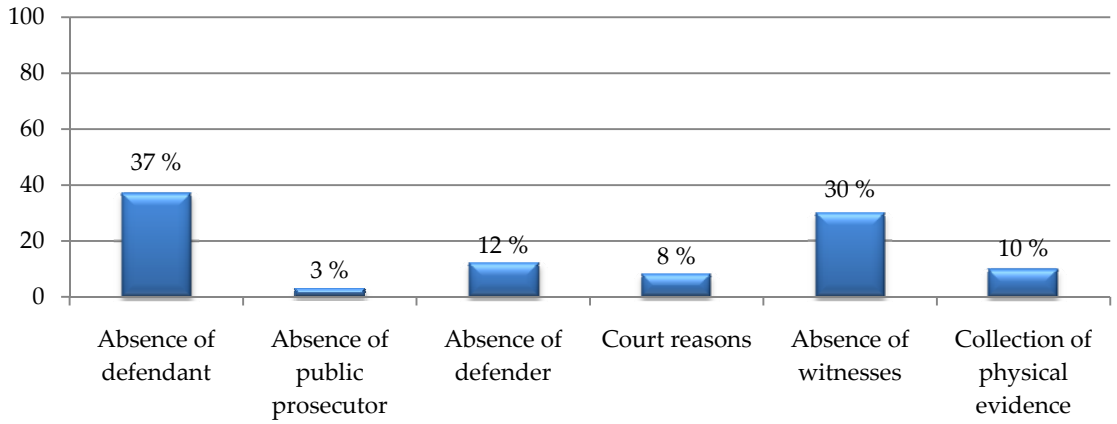


Chart #9 - Reasons for adjournment of hearing

According to the judges who handled these cases, it is the systemic problem of delivering court notifications that is the biggest problem that disables concentrated conduct of proceedings. This problem is particularly evident in the cases against the elections and voting of 2008 because of the large number of defendants, so in many cases the absence of only one defendant led to adjournment of hearing. It is important to mention also the fact that the main hearing was often adjourned because of evasion of the legal obligation to testify since the defence and the public prosecutors' office proposed additional evidence. Irrational use of the instruments legally provided for securing the attendance of defendants and the other participants in the procedure on the part of judges is certainly a factor which contributed to the fact that these problems cannot be properly addressed. In order to gain an overall picture of the dynamics of acting upon these cases, it is important to highlight that it is the Coalition's observers' impression that adjournment in acting upon certain cases correlated to the political profile of the defendant and the political constellations both on local and state level. It is also important to mention the fact that the dynamics of acting upon the cases for the criminal acts against elections and voting may be correlated to the increased public interest in these cases, so immediately before and after the 2009 presidential and municipal elections acting upon these cases intensified whereas later they got less priority.

RECOMMENDATIONS:

- Courts should adapt to different process situations when setting the dates for the cases in order to secure the attendance of relevant participants as well as other participants in the proceedings. The measures for securing the attendance of the defendant (when it is not necessary to impose detention, the other preventive measures) as well as the legal measures for securing the attendance of the other participants in the proceedings should be used more frequently. Judges should also be more prepared to prevent deliberate attempts to prolong the proceedings by using the legal possibilities for sanctioning that behaviour.

- In cases where there are several defendants and they are adjourned several times due to absence of one or more defendants, courts should use the legal possibility to devide the proceeding. The court should consider frequent adjournments of hearings a sufficient reason for deviding and completing the proceeding in separate cases.

- Courts must take all possible measures to reduce the time period which hearings are rescheduled for.

- Amendments to the LCP should be proposed so that the rule of the LLP is envisaged for the court not to have the obligation to deliver summons to someone summoned properly as well as to set forth an obligation to propose all evidence at the beginning or to propose presentation of new evidence in the course of the proceeding only by elaborating why it could not be presented at the beginning.

6. PENAL POLICY

The monitoring of court cases by the Coalition allowed for continued monitoring of the types of decisions adopted by first instance courts, as well as the severity of sanctions they impose on the quilty perpetrators of the criminal acts against elections and voting and other acts concerning election irregularities. This section contains an overview of first instance court decisions, and the penal policy followed by first instance courts when imposing penalties.

6.1. Types of decisions

CONVICTIONS	DISMISSALS	ACQUITTALS
Basic Court Tetovo for 15 persons	Basic Court Tetovo for 18 persons	Basic Court Tetovo for 13 persons
Basic Court Gostivar for 15 persons	Basic Court Gostivar for 1 person	Basic Court Gostivar for 1 person
Basic Court Skopje for 23 persons		
Basic Court Struga for 1 person		Basic Court Struga for 2 persons

Chart #10 – Types of first instance decisions of competent courts concerning the elections of 2008

Concerning cases relating to the 2009 presidential and municipal elections the basic courts in the Republic of Macedonia have still not adopted first instance decisions, whereas concerning the early parliamentary elections held in 2008 up to April 2010 they adopted convictions against 54 persons, acquittals for 16 persons, and dismissals for 19 persons.

Criminal acts	CONVICTIONS	DISMISSALS	ACQUITTALS
Prevention of elections and voting **Article 158 paragraph 1**	7		
Prevention of elections and voting **Article 158 paragraph 2**	16	15	4
Violation of electoral right **Article 159**		2	3
Misuse of electoral right **Article 161**			3
Bribery at elections and voting **Article 162**			3
Violation of the secrecy of the vote **Article 163**		1	
Criminal association **Article 394**	9		
Illicit manufacturing, keeping and trade in firearms or explosive materials **Article 396**	10		
Violence **Article 386**	2		
Failure to report a criminal act or a perpetrator **Article 364**			1
Forging official documents **Article 361**	4		
Endangering safety **Article 144**	2		

Chart #11 – Types of first instance decisions concerning the elections of 2008 per criminal act

It is noticeable that convictions were imposed only for criminal acts which have violent methods of perpetration and wider public manifestation, which only confirmed the conclusion about the difficulties of securing evidence for more subtle criminal acts.

The problems of securing legally relevant evidence for all criminal acts against elections and voting are confirmed by the fact that in most cases acquittals were passed since during the proceeding it was not proved that the defendants had perpetrated the act they were charged with, whereas dismissals were passed because due to poor evidence material the plaintiff withdrew the indictment by the end of the main hearing.

6.2. Determining criminal sanctions

The majority of the penalties imposed fall within the legal framework with a tendency of being close to the special legal minimum. What raises concern is the frequent use of the principle of penalty mitigation in order to impose penalties below the special legal minimum. This penal policy does not correspond at all to the social danger recognised by the legislator and expressed by making the penalties more severe. Although they have legal possibilities to impose drastically more severe penalties, basic courts do not use a third of the penal framework they have available according to the law.

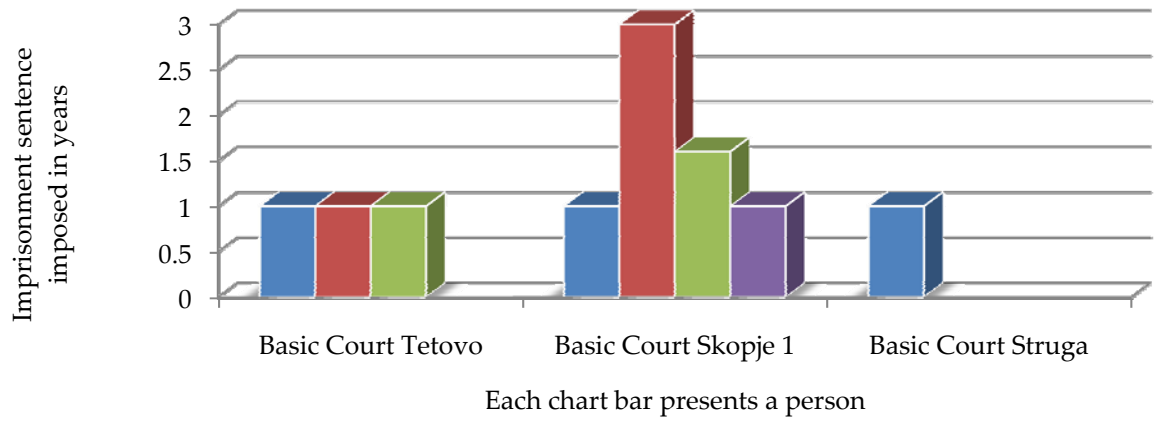


Chart #12 – Number of persons convicted according to Article 158 paragraph 1 per court

When determing the penalties for the guilty perpetrators of the criminal act of prevention of elections and voting of Article 158 paragraph 1, courts used the principle of penalty mitigation for 7 persons, so on 6 of them an effective imprisonment sentence of 1 year and 6 months was imposed, whereas on 3 persons an effective imprisonment sentence of 1 year was imposed. In a situation when it is not mentioned in verdicts imposing these criminal sanctions that the principle of penalty mitigation is used and it is not stated under which alleviating circumstances this institute is used, we are of the opinion that courts use by inertia the legal framework which was made significantly more severe with the amendments of 2006.

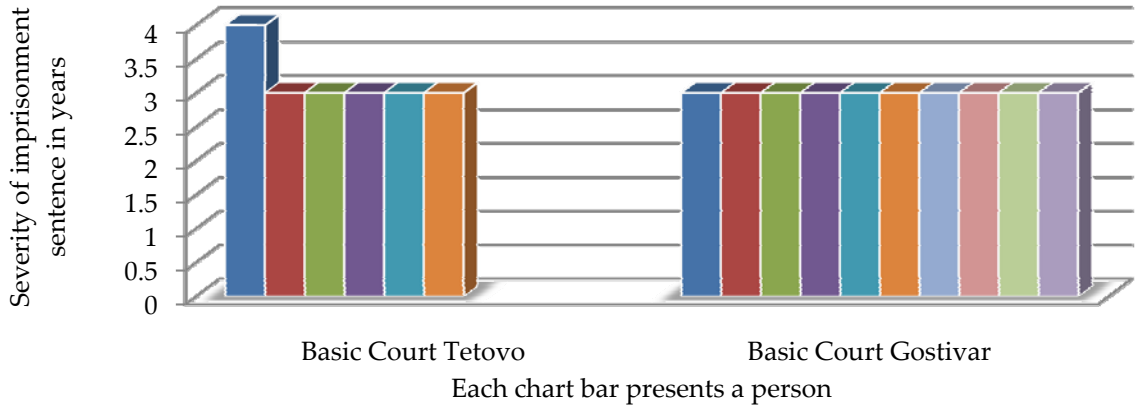


Chart #13 – Number of persons convicted according to Article 158 paragraph 2 - Prevention of elections and voting

In the case of determining the criminal sanction for the guilty perpetrators for the criminal act "Prevention of elections and voting" of Article 158 paragraph 2, the chart given above shows that courts have a far too lenient penal policy and still use the principle of penalty mitigation more drastically and impose penalties below the special legal minimum. This penal policy of courts does not correspond at all to the penal policy of the legislator, so it raises the question of what the reasons are for such a large deviation from the legal model of sanctioning the perpetrators of these acts.

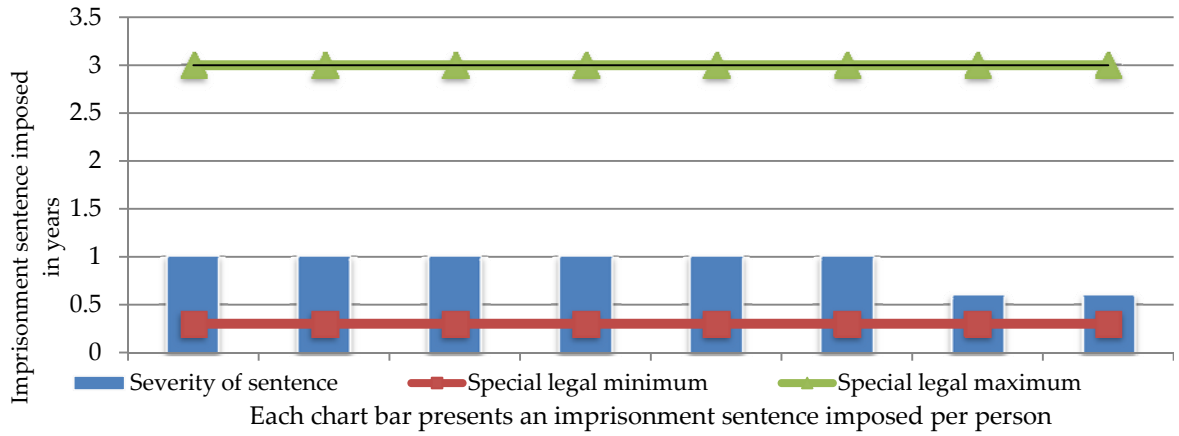


Chart #14 – Determining an imprisonment sentrence for the criminal act "Criminal Associaiton" Article 394 paragraph 2

The penalties imposed for the acts that gave the election irregularities of the 2008 early parliamentary elections their violent character fall within the special legal minimum.

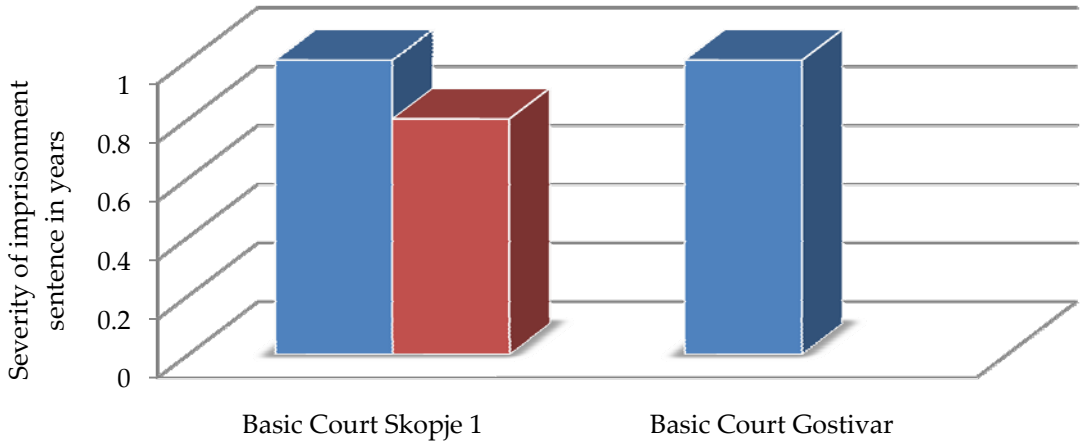
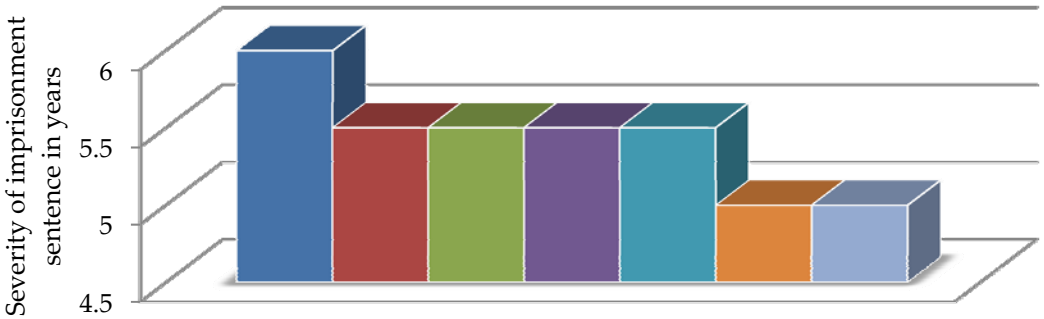


Chart #15 – Number of persons convicted according to Article 396 paragraph 1 Illicit manufacturing, keeping and trade in firearms or explosive materials



Basic Court Skopje 1

Each chart bar presents a person

Chart #16 – Number of persons convicted according to Article 396 paragraph 2 Illicit manufacturing, keeping and trade in firearms or explosive materials

The analysis of the circumstances that the court used in the proceeding to individualise penalties shows that when elaborating the penalties imposed courts mention fewer alleviating and aggravating circumstances than those explicitly mentioned in the law. Circumstances are stereotypically enumerated without them being specially analysed. The degree of danger or the violation of the good protected (the circumstance that these irregularities dramatically ruined the democratic atmosphere in the country and endangered its Euro-Atlantic integration) is a circumstance that is analysed the least, and it is obvious that it was not taken into consideration at all.

Elaboration of the circumstances when determining penalties	Degree of criminal liability		alleviating	
			aggravating	20%
	Motives for which the act was perpetrated		alleviating	
			aggravating	13.4%
	Degree of danger or violation of the good protected		alleviating	
			aggravating	40%
	Circumstances in which the act was perpetrated		alleviating	
			aggravating	6.6%
	Perpetrator's former life and his/her personal circumstances		alleviating	62.5%
			aggravating	20%
	Perpetrator's behaviour after the perpetration of the act	Repentance or confession	alleviating	25%
			aggravating	
		Attitude towards the injured	alleviating	
			aggravating	
	Other		alleviating	12.5%
			aggravating	

Chart #17 – Circumstances when determing the penalty

When elaborating the penalty, (non) conviction, perpetrator's personal circumstances, as well as the degree of danger or the violation of the good protected, are stated as the most frequent circumstances. When elaborating the penalty, courts take

perpetrator's former life and his/her personal circumstances as an alleviating circumstance most often (in 62.5%), whereas perpetrator's behaviour after the perpetration of the act has a smaller influence. Nonconviciton, poor financial situation and parenthood of a juvenile/juveniles are alleviating circumstances that courts take most often into account. In a situation when in many cases courts use the principle of penalty mitigation and impose penalties below the special legal minimum, a question is raised as to whether these circumstances may and should lead to imposing an imprisonment sentence below the minimum legally envisaged, that is, whether they may be treated as particularly alleviating circumstances so that the purpose of punishment is achieved by a mitigated penalty.

It is the interviewed judges' impression that tightening the penal policy does not influence positively the efficiency in tackling this type of crimes. The threatened penalties are too severe for this type of crime, particularly since mainly these are cases of persons who commit crimes for the first time, persons who have their own businesses or perform public functions and who seem to be manipulated into committing or pressured to commit this type of acts. On the other hand, the imprisonment sentence does not give the results expected. On the contrary, there is a negative tendency for some convicted persons to be involved in political life again.

7. LEGISLATION ON MISDEMEANOURS AGAINST ELECTIONS AND VOTING IN THE REPUBLIC OF MACEDONIA

Misdemeanours against elections and voting are envisaged in the Electoral Code of the RM (Official Gazette of the RM, No. 40 of 31.3.2006 and the amendments and consolidations of the Electoral Code, Official Gazette of the RM, No. 136 of 30.10.2008) in Chapter XIV from Article 178 to Article 191. Sanctions are envisaged for the perpetrators of misdemeanours against elections and voting, as follows: for a natural person the minimum fine amounts to EUR 300 in denar equivalent value, and the maximum fine amounts to EUR 1.500 in denar equivalent value; for a legal person a fine is envisaged that falls within the limits of EUR 3.000 to 7.000 in denar equivalent value, and for the responsible person from EUR 300 to 2.000 in denar equivalent value. The provisions do not envisage confiscation of articles and funds, nor a security measure – prohibition on performing an activity.

The amendments and consolidations of the Electoral Code (Official Gazette of the RM, No. 136 of 30.10.2008) envisaged a competence, in the list of competences of the State Election Commission, for instituting an misdemeanour procedure if in the course of the election procedure it established grounds for suspicion that a violation was made of the provisions of the Electoral Code. The same amendments extended the compentences of the Broadcasting Council, too, so this regulatory body gained the competence to monitor the programmes of broadcasters not only during election campaign, but also from the day elections are called to the day when election campaign starts and explicit competence was envisaged for it to institute misdemeanour procedures directly before competent courts against broadcasters who broke election rules. Previously, upon the initiative of the Broadcasting Council procedures were instituted by the Agency for Electronic Communications. To institute an appropriate procedure for irregularities concerning election campaign financing, an obligation was envisaged for the State Auditing Office to notify competent bodies for further acting.

To provide more efficient response to election irregularities, the amendments and consolidations of the Electoral Code (Official Gazette of the RM, No. 136 of 30.10.2008) introduce specification as to which legal persons are subject to misdemeanour liability, envisage misdemeanour liability for the editors responsible for printed and electronic media and sanction the publication of advertisements from the Budget of the Republic of Macedonia, that is, the budgets of municipalities and the City of Skopje.

8. INSTITUTING A MISDEMEANOUR PROCEDURE

8.1. Claims submitted for instituting misdemeanour procedures for the 2008 early parliamentary elections

In 2008 claims for instituting a misdemeanour procedure were submitted by the Agency for Electronic Communications against 28 electronic media, for the violation of Article 182, paragraph 1, indent 1 and paragraph 2 of the Electoral Code of the RM (failure to ensure equitable presentation of MP candidates, political parties, groups of electors and their programmes). Of them, 17 are submitted to Basic Court Skopje I - Skopje; 4 to Basic Court Tetovo, one claim in each of the Basic Courts Gevgelija, Kichevo, Kumanovo, Veles, Shtip and Radovish.

MoI submitted 9 misdemeanour claims for instituting a misdemeanour procedure for acts committed during the 2008 early parliamentary elections. 1 claim was submitted to Basic Court Tetovo for the violation of Article 186 of the Electoral Code due to destruction of election posters (flags of political parties) on a place determined for their placement before a properly scheduled meeting. 8 misdemeanour charges were pressed against 18 perpetrators to the courts in Tetovo, Gostivar, Kumanovo, Struga and Shtip for acts committed during the election campaign and on election day, for the violation of public peace and order of the Law on Misdemeanours against Public Peace and Order, of the Law on Firearms and the Law on Road Traffic Safety.

SEC did not submit claims for instituting a misdemeanour procedure for acts committed during the 2008 early parliamentary elections.

Although election legislation envisaged clear sanctions for a wide range of election irregularities, still due to confusion about competences for instituting misdemeanour procedures, poor interinstitutional cooperation in the process of monitoring and detecting these misdemeanours and poor institutional capacity of competent institutions to properly document detected cases and submit quality claims for instituting a misdemeanour procedure, a very small number of misdemeanours were sanctioned.

Current data show that competent institutions efficiently detect and submit misdemeanour claims against broadcasters due to failure to ensure equitable presentation, against election campaign organisers for failure to submit reports on election campaign financing, as well as for major disruptions of public peace and order during the election campaign. On the other hand, a large number of cases of voting for several persons or on behalf of someone else, abuse of official position to create disorder in a polling station, organising pre-election meetings in public institutions and religious buildings, destruction of election posters, municipalities' failure to determine places for displaying posters without any compensation on time and violations of the rules for election campaign financing remained undetected and unsanctioned. Misdemeanour procedures were not institutied at all against broadcasters for violations of the provisions of Article 182 of the Electoral Code, such as broadcasting paid political advertising in a special information programme, broadcasting paid political advertising without stating that it is a case of paid advertising and without marking it appropriately and visibly as paid political advertising, as well as for violations of the election silence.

The institutional response of the electoral administration was missing completely. The electoral administration, which was often a victim of election irregularities in 2008, very rarely felt the need to report these cases. The situation was made even worse by the State Election Commission, which, although obligated to ensure lawfulness in implementing the electoral process, interpreted the law restrictively and did not rush into submitting claims for instituting misdemeanour procedures since the Electoral Code did not explicitly envisage competence for that.

In a situation when the State Election Commission disqualified itself as incompetent to institute misdemeanour procedures for the violations of the Electoral Code, the Public Prosecutors' Office, as a body generally competent to prosecute perpetrators of misdemeanours, did not take that role at all. Data show that misdemeanour procedures were not instituted at all by the Public Prosecutors' Office. Although in many cases public prosecutors dismissed criminal charges or later in procedures made statements on withdrawal from prosecution due to lack of evidence, they did not decide to institute misdemeanour procedures for these cases. The overlapping of criminal acts and misdemeanours in most cases was not used by public prosecutors at all so that in cases when they have a weak indictment they can institute misdemeanour procedures because the latter is a simpler procedure and it is necessary to answer only three key questions: who, where and when?

The reasons for improper response to violations of the Electoral Code made by broadcasters may be found in the insufficient capacities of the Broadcasting Council. The insufficient expertise, administrative and technical preparedness of the Broadcasting Council significantly reduced the monitoring of election campaign presentation in the media and political advertising during the early parliamentary elections of 2008, which prevented a large number of violations from being detected, appropriately documented and later prosecuted. Poor coordination between the Broadcasting Council and the Agency for Electronic Communications, which was the only one competent to institute misdemeanour procedures, additionally made harder the prosecution of the perpetrators of violations of the Electoral Code.

8.2. Claims submitted for instituting misdemeanour procedures for the 2009 presidential and municipal elections

SEC submitted 147 claims for instituting misdemeanour procedures for the 2009 municipal and parliamentary elections. Of them two claims for instituting a misdemeanour procedure refer to failure to respect the deadline for the start of the election campaign and they were submitted against political parties (Article 74 paragraph 1 of the Electoral Code). For the same elections 145 claims were submitted for instituting a misdemeanour procedure for failure to submit a financial report within the legally envisaged deadline (Article 85 paragraph 1 and 3 of the Electoral Code). Of these claims 126 refer to election campaign organisers who did not submit financial reports, and 19 claims for instituting a misdemeanour procedure are for election campaign organisers who submitted financial reports with delay. All misdemeanour charges have already been processed by the competent courts. 86 claims for instituting misdemeanour procedures are resolved with effective decisions.

The Broadcasting Council submitted 24 claims for instituting misdemeanour procedures, as follows 20 claims against 11 broadcasters and 4 claims against public communication network operators. 2 claims for instituting misdemeanour procedures were submitted for broadcasting paid political advertising more than two thirds, that is, more than 10 minutes, of a real hour per election campaign participant (Article 75, paragraph 3 of the Electoral Code), 13 claims for violation of the rules for equal access to media presentation (Article 75 paragraph 4 of the Electoral Code), 1 claim for broadcasting paid political advertising in a special information programme (Article 76 paragraph 1 of the Electoral Code), 1 claim for broadcasting paid political advertising without stating that it is a case of paid advertising and without marking it appropriately and visibly as paid political advertising (Article 76 paragraph 2 of the Electoral Code), 1 claim for publishing public opinion polling results outside the deadline prescribed (Article 77 paragraph 1 of the Electoral Code) and 3 claims for violating the election silence (Article 75 paragraph 4 of the Electoral Code). The Broadcasting Council submitted 4 claims for instituting misdemeanour procedures against public communication network operators for failure to act upon the measure – order to disconnect a programme service.

The institutional response to the violations of the Electoral Code during the 2009 presidential and municipal elections was significantly more efficient compared to the previous elections. Competent institutions showed that they could implement legal provisions in practice much better. Although not all types of misdemeanours were covered, data show that significantly bigger number of claims was submitted for significantly more varied violations of the Electoral Code. The State Election Commission, which was not fully prepared to respond by instituting misdemeanour procedures for the violations of the Electoral Code, proved to be the weakest ring in the chain.

The additional staffing of the expert service and strengthening the technical equipment of the Broadcasting Council resulted in noticeable progress in monitoring and detecting misdemeanours as well as improving the quality of the claims for instituting misdemeanour procedures. The judges interviewed within the project emphasised that the quality was significantly improved of the formal and legal content of the claims for instituting a misdemeanour procedure submitted by the Broadcasting Council, as well as that evidence material was significantly better secured, which allowed for efficient completion of misdemeanour procedures.

Envisaging a strict legal basis for the State Election Commission to institute misdemeanour procedure has significantly improved the possibility to respond appropriately to election irregularities. Still, the data obtained show that the electoral administration did not respond appropriately to this challenge. A very small number of cases were detected by the electoral administration, whereas the formal and legal content of the claims for instituting a misdemeanour procedure submitted to courts, according to what was stated by the judges interviewed, was of very poor quality. The reasons for these problems may lie in the numerous competences of the State Election Commission, which combined with short deadlines, lead to manifestations of signs of overburdening and delays in taking actions, as well as lack of coordination of some of the competences of SEC, MEC and EB, which leads to confusion when it comes to addressing the election irregularities observed.

To increase the efficiency in responding to these irregularities, envisaging competence should be considered for SEC to conduct a misdemeanour procedure for minor types of misdemeanours, where the violation would be established and a misdemeanour sanction would be imposed. To that end, one may consider forming a special inspectorate within the State Election Commission that would take care of the lawfulness in implementing the Electoral Code and would submit claims for instituting a misdemeanour procedure both before misdemeanour authorities and competent courts. Such a solution would significantly accelerate the process of imposing sanctions for simpler misdemeanours, and would allow for more efficient detection of misdemeanours, their appropriate documentation and for submitting quality claims.

RECOMMENDATIONS:

- To continue strengthening the capacities (expert, administrative, technical) of the Broadcasting Council and the State Election Commission so that they could appropriately respond to the competences envisaged;

- To form a Misdemeanour Commission, within the State Election Commission, that would conduct misdemeanour procedures and impose misdemeanour sanctions for minor violations during the implementation of elections. To form a special inspectorate within the State Election Commission that would take care of the lawfulness in implementing the Electoral Code and would submit claims for instituting a misdemeanour procedure both before the Misdemeanour Commission and the competent courts;

- If their indictment for criminal acts against elections and voting is weak, public prosecutors should decide more often to institute misdemeanour procedures for the same cases because it is more likely that these perpetrators would be sanctioned for misdemeanours.

9. CLOSING OBSERVATIONS

Based on the data and analyses given above, one may conclude that, besides recent improvements, the penal law response to acts committed relating to elections is insufficiently efficient and effective. The reasons for such a situation are numerous, and the picture could change in the future if the recommendations and suggestions provided are taken into account.

The recommendations contained in this report aim at identifying areas that need solutions to correct the problems present in the penal law response to acts committed against elections and voting. It is obvious that the Republic of Macedonia and its institutions, as well as citizens eligible to vote, will have to improve their behaviour and approach to general elections, which are a key process in every modern democratic society.

ANNEX 1
Data on the decisions adopted in misdemeanor procedures

These data are gathered through official requests for free access to information of public character submitted to the

- Broadcasting Council
- State Electoral Commission
- Agency for Electronic Communications

The data contained in this annex have not been initially incorporated in the Report as they were provided to the Coalition upon the completion of the Report.

With a reference to the misdemeanors committed in 2008, the institutional response is the following: 28 requests for initiating misdemeanor procedure are submitted by the Agency for Electronic Communications against electronic media for violating Article 182, paragraph 1, line 1 and paragraph 2 of the Electoral Code of the Republic of Macedonia (unequal representation of MP candidates, political parties, groups of voters and their programs). Out of these, 20 were completed with judgments in which the defendants are declared guilty and sentenced with a fine, 1 judgment in which the defendants are declared guilty and are sentenced with a warning issued by the misdemeanor court and in 7 cases the procedure is ongoing and decision has not yet been made by the competent courts.

In respect of the elections in 2009, 147 requests for initiating misdemeanor procedure have been submitted by the State Electoral Commission. Out of these, 2 requests are against political parties for misdemeanors for the early commencement of the electoral campaign. The other 145 misdemeanor requests are submitted for untimely submission of financial report in the legally prescribed deadline in article 85 paragraphs 1 and 3 of the Electoral Code. At the moment of preparation of this information by the information holder, 86 misdemeanor procedures initiated by the State Electoral Commission were completed with decisions by the competent courts.

The Broadcasting Council of the Republic of Macedonia has submitted 24 requests for initiating misdemeanor procedure before the competent courts for misdemeanors committed in relation to the presidential and local elections in 2009. Out of these, 5 requests are still under consideration, 11 have been decided with first instance sentencing judgments while for 8 requests the procedures were completed with acquittal judgments.

ANNEX 2

Record from the roundtable discussion of the professional expert public

In the framework of the Project "Transparency and Public Scrutiny of the Judicial Proceedings in the Election-related Cases" on 29 April 2010 in the Best Western Hotel, a roundtable for the professional public was held. On the roundtable, the observations, comments and recommendations contained in the Final Report stemming from the monitoring of the election-related cases were discussed, in order to directly acquaint the representatives of the institutions with the Report's findings as well as to note the comments and opinions pertinent to its content.

On the roundtable were present: judges and court associates from the first instance courts in which cases related to elections and voting have been processed, representatives of the Ministry of Justice, representatives of the election legislation working group that functions under the auspices of the Secretariat for European Affairs in the Government of the Republic of Macedonia, representatives of the State Electoral Commission (SEC), Ombudsman office, Administrative Court and Project's donors.

Having in mind the character of the Report and its content, this roundtable resulted with extensive discussion and comments upon the Report. This Record, which summarizes the discussions and the comments provided during the roundtable is attached as an annex to the Final Report and represents its integral part.

Stances and opinions of the roundtable discussions coming from the SEC:

- The Report is concrete but SEC has different views. From their side, it was stated that an error had been made that the SEC submitted criminal charge for the elections in 2009 and therefore this point in the Report needed to be corrected. As for the delivery of the evidentiary materials from the SEC to the other state institutions when they needed, it was stated that sometimes whole ballot boxes, Voters' Lists and all other materials had been delivered as requested by the Public Prosecution. The participants coming from the SEC stated that the data was not substantiated in terms of the (non)cooperation of the SEC with the public prosecutions and the courts. According to them, the electoral administration could not be blamed for everything. It was stipulated that the SEC functioned and would function in a transparent manner and cooperate with the other organs.
- In the SEC they have assessed that it is better to work between two electoral cycles or two electoral rounds in the direction of removal of the occurred problems and obstacles in the electoral process, rather than to submit misdemeanor charges. According to SEC, unacceptable and harsh is the assertion in the Report that they are the weakest link in the electoral process.
- Nevertheless, they accept the recommendations and remarks which will help the improvement of the future punishment of electoral irregularities.
- In regard to the statement contained in the Final Report that the requests for initiation of misdemeanor procedure are of a low quality, the SEC presented the latest information that there are 99 cases solved. The question was posed: how can it be stated that

the misdemeanor requests have been of low quality? Out of 99 cases 78 are completed with a condemnatory decision – so how can it be said that the misdemeanor requests are insufficiently supported with evidence?

- It was mentioned that the suggestion to form a misdemeanor panel within the State Electoral Commission (which would conduct the misdemeanor procedures and would pronounce misdemeanor sanctions for lesser misdemeanors during the electoral process) was not bad, but at the same time it should not be forgotten that the SEC was still not fully equipped and that additional finances were needed to implement such an idea.

Comments of the authors of the Report:

- Aleksandar Stojanovski – the coordinator of the Project, informed that the technical error would be corrected in regard to the criminal charge pointed out on page 9 of the Report, which was in fact submitted by the State Commission for Corruption Prevention and not by the State Electoral Commission. It was also explained that the comments from the roundtable would be summarized in an annex that would be an integral part of the Report.

- During the discussion, the methodology used for preparation of the Report was explained as well as its primary goal: to analyze the court actions on cases related to electoral irregularities. The mentioned remarks and criticism expressed by the representatives from SEC in relation to problematic formulations were accepted as well-intentioned and with the purpose of acquiring a complete and objective picture of the current situation. That is why these observations of the SEC would become a part of the Report through the annex in which they should be summarized.

- To the audience present at the roundtable, the methodology of collecting the data, subject to an analysis in this Report, was explained. It was especially clarified why the names of the interviewed judges were anonymous, but also the reasons why other state organs were not included (for ex. the SEC).

- In regard to the formulations in the text which were pointed out as contestable by the representatives of the SEC, the final goal of the Project, and consequently of the Report, was clarified. It was stated that the purpose of this Project was to analyze the entire process of the courts' actions and its results regarding the election-related cases as well as the cooperation among the involved/authorized organs which appeared as part of the different phases of the procedure.

Comments from the judges:

- It was emphasized that the Report was excellent and represented a breakthrough in this area of the judicial proceedings. It was mentioned that the Report was a good indicator of the work of the judiciary in regard to election irregularities. The part dealing with the reasons for delays of the procedure was identified as the most significant as it stated that in most of the cases (more than 60%) the reason for the delay was the absence of the main actors in the procedure. The roots of that problem were located, mostly, with the untimely delivery of court summons as well as the wrong addresses provided by the submitters of the misdemeanor charges.

- In relation to the quality of the misdemeanor requests it was mentioned that there had to be high quality of misdemeanor requests (and not only with regards to their formulation but also with regards to supporting evidence).

During the discussion, there was a proposal for a legal regulation of the pre-campaign period, in order to provide a legal basis for prosecution and sanctioning of the offenders in this period before the official start of the electoral campaign and, moreover, consistent proceedings by the authorized courts. It was also proposed to introduce a whole chapter with glossary and definition of terms for the purpose of unified and consistent approach.