



**Trafficking in Human Beings and Illegal Migration in
Macedonia
2009**

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Trafficking in Human Beings and Illegal Migration in Macedonia 2009

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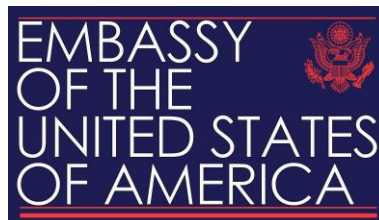
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Project "Monitoring Cases in the Area of Trafficking in Human Beings and Illegal Migration in 2009 – 2010"

In an effort to identify the factual situation in the judiciary by monitoring a certain type of cases, the Coalition All for Fair Trials for five years now has analysed the work of courts in trials on cases of trafficking in human beings and illegal migration. In cooperation with the Ministry of Interior, the Public Prosecutors' Office and the Department for Combating Organised Crime and Corruption within Basic Court Skopje 1 – Skopje, an analysis was made of the cases identified which during the project implementation period were handled in first instance court proceedings. On the basis of the data on the topic of trafficking in human beings and illegal migration that are at the disposal of the Coalition based on last year's monitoring, it is noted that until 2009 there was no case of trafficking in juveniles abused in any other way except for sexual exploitation. Although the law sets forth criminal liability of a perpetrator who shall commit an act of trafficking in juveniles by way of forced marriage or forced labour, there was no such case. This situation is problematic since the experts in the country, as well as some international institutions have already¹ presented a conclusion that Roma often organise their children, individually or in groups, to beg in urban areas or to perform a certain type of work, such as collecting plastics, paper or glass containers.

Overview of new cases per year TABLE

| | 418a | 418b/418c | 418d | 191 |
|-------|------|-----------|------|-----|
| 2009 | 2 | 15 | / | 3 |
| 2008 | 4 | 9 | 3 | 1 |
| 2007 | 2 | 2 | 0 | 0 |
| 2006 | 3 | 10 | 0 | 6 |
| 2005 | 11 | 8 | 0 | 16 |
| Total | 22 | 44 | 3 | 26 |

Research Topic

As a continuation of the last year's project, that referred to monitoring of cases of trafficking in human beings and illegal migration in the Republic of Macedonia, the project team monitored the following criminal acts:

Trafficking in human beings – Article 418 A of the CC of the RM

Smuggling of migrants – Article 418 B of the CC of the RM

Organising a group and inciting the perpetration of acts of trafficking in human beings and smuggling of migrants – Article 418 C of the CC of the RM

Trafficking in juveniles – Article 418 D of the CC of the RM

Mediation in prostitution – Article 191 of the CC of the RM

All mentioned criminal acts fall within the area of organised crime, except for the criminal act of mediation in prostitution (Article 191 of the CC), which was addressed as a matter of interest in the analysis because of it being similarly perceived as the criminal act of trafficking in human beings (418 A).

The analysis refers to legal solutions relevant to the topic of trafficking in human beings and illegal migration, as well as to certain process aspects of the procedures, above all regarding the use of evidence in court proceedings, the status of the victim, the duration of the procedure and the determining of the penalty.

Project Objectives

The objectives of this research, conducted within the framework of the project, are:

- To analyse the application of legal amendments and to propose ways to improve the prosecution of perpetrators of acts of trafficking in human beings and illegal migration in procedures before basic courts in the Republic of Macedonia.
- To support the court system in order to improve the penal and legal response to acts of trafficking in human beings by highlighting good practices and identifying certain practical problems.
- To raise awareness about the problem and the need for combating trafficking in human beings, mediation in prostitution and smuggling of migrants by preparing a final report supported by appropriate statistical indicators.

Methodology

As a continuation of the accumulated experience and the data that the Coalition has at its disposal, in this research, like previous years, direct manner of obtaining information from hearings was used. Notably, after data is received about the start of a case of trafficking in human beings or illegal migration, a team of two observers of the Coalition attend every hearing and by monitoring the procedure collect relevant data, which are later incorporated into a standardised questionnaire and sent to the Project Coordinator. The questionnaires are fed into a programme for statistical data processing (SPSS), which allows for the extraction of various statistical data relevant to this research. Based on the data obtained and the analysis of the legal provisions (above all the Law on Criminal Procedure and the Criminal Code), we attempt to gain an insight into the tendencies of perpetration and court sanctioning of acts of trafficking in human beings and smuggling of migrants in the Republic of Macedonia.

In addition, due to lack of such cases before courts, and in order to obtain direct data by street children, or persons who have direct contact with them, about possible elements of forced labour or begging, consultations were conducted with representatives of the civil association Association for Children's Rights, who, based on their personal experiences with the children taken care of in their day-care centre, confirmed the fact that they were often abused by their families in order to beg or do certain works for financial benefit that they later handed over to their parents.

Sample

The monitoring process, as part of information collection directly from court cases, covered all cases of trafficking in human beings, smuggling of migrants, organised form of trafficking and smuggling, trafficking in juveniles and mediation in prostitution that were ongoing during the research and for which the Coalition was notified.

In addition, the work of courts was monitored daily by checking their websites on the publication of judgements and notifications referring to the topic of trafficking in human beings and illegal migration.

Legislation

Trafficking in Human Beings

As a consequence of the signature of the UN Convention against Transnational Organised Crime and its two protocols by the Assembly of the Republic of Macedonia, it is for the first time that the act of trafficking in human beings is incorporated in the Macedonian penal system with the Law on Amending the Criminal Code of 25.01.2002, OG of the RM No. 04/02.

The Law on Amending the Criminal Code of 30.03.2004 (OG No. 19/04) amends Article 418 in the description of the criminal act, the severity of the sanctions threatened, and deletes paragraph 3, referring to the organisation of the crime, which, in turn, becomes Article 418c.

The Law on Amending the Criminal Code of 15.01.2008 (OG of the RM No.7/08) amends the description of the criminal act by supplementing it. These amendments to the Law require the person enabling the criminal act or the user "to know or to be reasonably expected to know" that the person is a victim of trafficking in human beings. Furthermore, a new Article is introduced which stipulates that the attempt to perpetrate the act of trafficking in human beings is punishable and that the immovable articles used while the act was being perpetrated are seized.

The Law on Amending the Criminal Code of 14.09.2009 (OG of the RM No. 114/09) adds an Article which makes the threatened punishment for the official who shall perpetrate the act while carrying out his/her official duty more severe to at least 8 years imprisonment.

With the abovementioned amendments Article 418a reads:

Article 418-a

(1) The one who by means of force, serious threat shall mislead or other forms of coercion, abduction, fraud, of abuse of one's power or another person's condition of pregnancy, feebleness or physical or mental inability; or by means of giving or receiving money or other benefits to achieve the consent of a person having control over another person, or in another way shall recruit, transport, transfer, buy, sell,

harbour or receive persons for the purpose of exploitation by way of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar attitude or prohibited transplantation of human body parts, shall be sentenced to imprisonment for at least four years.

(2) The one who shall seize or destroy an identity card, passport or someone else's identification document to commit the act of paragraph (1) of this Article shall be sentenced to imprisonment for at least four years.

(3) The one who shall use or allow another person to use sexual services or another type of exploitation of persons which he knows or is reasonably expected to know that this will result in those persons being victims of trafficking in human beings shall be sentenced to imprisonment for six months to five years.

(4) If the act of paragraphs 1,2 and 3 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least 8 years.

(5) The consent of a victim of trafficking in human beings to the intended exploitation set forth in paragraph 1 shall have no bearing on the existence of the criminal act of paragraph 1.

(6) If the act of paragraph 1 is perpetrated by a legal entity, it shall be punished by a fine.

(7) The real estate used and the articles and means of transportation used for the perpetration of the act shall be seized.

Cases in 2009

| | <i>Paragraph 1</i> | <i>Paragraph 2</i> |
|-------------|--------------------|--------------------|
| <i>418a</i> | <i>1</i> | <i>1</i> |

The basic form of the act of paragraph 1 is committed by the one who by means of force, serious threat misleads or other forms of coercion, abduction, fraud, of abuse of one's power or another person's condition of pregnancy, feebleness or physical or mental inability; or by means of giving or receiving money or other benefits to achieve the consent of a person having control over another person, or in another way recruits, transports, transfers, buys, sells, harbours or receives persons for the purpose of exploitation by way of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar attitude or prohibited transplantation of human body parts.

One of the benefits in combating this type of crime is the removal of the protection of juveniles from this Article and from Article 191 of the CC of the RM and the addition

to the Criminal Code of a new Article 418d - Trafficking in juveniles. This shuns the problems of defining the terms child and juvenile, and at the same time, ensures stronger protection, which is seen in the severity of the penalty envisaged.

Adding paragraph 5 in Article 418 a, which makes the victim's consent irrelevant to the existence of the act of trafficking in human beings, helped avoid one of the dilemmas which occurred during court proceedings previous years, where evidence was presented to prove if the victim knew that he/she was going to provide sexual or other type of services. The victim's consent to him/her being exploited was treated in court practice as an alleviating circumstance when the penalty was determined for the perpetrators of the act of trafficking in human beings. This court practice led to a range of dilemmas: whether it is possible for the victims in a situation of intimidation, coercion, fraud and the like to give a valid consent to the situation they are put in².

The addition of paragraph 4 in Article 418a sets forth a minimum sentence of 8 years in prison for an official who shall commit the act while carrying out his/her official duty.

It seems this is a consequence of the different application of the limits on punishment on the part of courts. Notably, in the previous period of monitoring cases of trafficking in human beings and illegal migration the intention is noted of determining penalties that are very close to the legal minimum. By making the minimum penalty for perpetrators – officials while carrying out their official duty more severe, the legislator forced courts to determine more severe penalties for this category of perpetrators. This amendment to the legal text would be redundant if the perpetration of the act by an official while carrying out his/her official duty was considered an aggravating circumstance when determining the penalty.

Smuggling of Migrants

The Law on Amending the Criminal Code of 30.03.2004 (OG No. 19/04) adds Article 418b, which refers to smuggling of migrants. With the addition of Article 5, which refers to a perpetrator – official who shall commit the act while carrying out his/her official duty, Article 418 b reads:

Article 418-b

(1) The one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose shall be sentenced to imprisonment for at least four years.

²See more on page 25 of the report of the Coalition "All for Fair Trials" Court Efficiency in Tackling the Phenomenon of Organised Crime 2005/2006/2007, Skopje, February 2008, Violeta Velkoska

(2) The one who recruits, transports, transfers, buys, sells, harbours or accepts migrants shall be sentenced to imprisonment for one to five years.

(3) If during the perpetration of the acts of paragraphs 1 and 2 a migrant's live or health is endangered, or if the migrant is treated in a particularly degrading or cruel manner, or if he/she is prevented from exercising the rights he/she is entitled to according to international law, the perpetrator shall be sentenced to imprisonment for at least eight years.

(4) If the act of paragraphs 1 and 2 is perpetrated against a juvenile, the perpetrator shall be sentenced to imprisonment for at least eight years.

(5) If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.

(6) The articles and means of transportation used for the perpetration of the act shall be seized.

Cases in 2009 per paragraph

| | Paragraph 1 | Paragraph 2 | Paragraph 4 |
|-------|-------------|-------------|-------------|
| 418 b | 2 | 4 | 3 |

The basic form of the act of smuggling of migrants is committed by the one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose.

In previous court practice the perpetrator of the criminal act of smuggling of migrants was a person who for cupidity illegally transferred migrants across the state border.

Paragraph 2 of Article 418 b refers to persons who recruit, transport, transfer, buy, sell, harbor or accept migrants.

Paragraphs 3 and 4 set forth the qualificatory form of the Article, that is, lay down a more severe penalty if during the perpetration of the act live and health are endangered, if the migrant is treated in a degrading and cruel manner, or if the act is perpetrated against a juvenile.

Paragraph 5 of Article 418 b was added on 14.09.2009 and aims at strengthening the threatened punishment for officials who shall commit the act within their official duty. Remarks made for Article 418 a are valid here too, that is, the possibility for courts to determine a significantly more severe penalty than the minimum one due to the aggravating circumstance that the official has committed the act while carrying out his/her official duty. On the other hand, this intervention seems to be partially justified due to the opinion of certain authors that the membership of officials (above

all employees in the police and customs authorities) in organised criminal groups is necessary to transfer migrants from one country to another.

Organising a Group and Inciting the Perpetration of Acts of Trafficking in Human Beings, Trafficking in Juveniles and Smuggling of Migrants

Article 418 c was added to the Criminal Code on 30.03.2004 (OG No. 19/04) and refers to the perpetrator of the criminal act of trafficking in human beings, smuggling of migrants or trafficking in juveniles who shall organise a criminal group, who shall join a criminal group, gang or other association, and who shall call for, incite or support the perpetration of these acts.

At the same time the law sets forth exemption from punishment for a member of a criminal group who shall uncover it before he/she commits a criminal act. Although this provision has been in the law for 6 years now, it has still not been applied to any case.

Article 418-c

(1) The one who organises a group, gang or other association for the purposes of perpetration of the criminal acts of Articles 418-a , 418-b and 418d shall be sentenced to imprisonment for at least eight years.

(2) The one who becomes a member of a group, gang or other association of paragraph 1 or in another way assists the group, gang or association shall be sentenced to imprisonment for at least one year.

(3) A member of the group of paragraph 1 who shall uncover the group before he/she commits a criminal act in or for it shall be exempt from punishment.

(4) The one who calls for, incites or supports the perpetration of the criminal acts of Articles 418-a, 418-b and 418 d shall be sentenced to imprisonment for one to ten years.

Cases in 2009 per paragraph

| | Paragraph 1 | Paragraph 2 |
|-------|-------------|-------------|
| 418 c | 3 | 1 |

Although Article 418c refers to the organisation of and membership in a criminal group for the purposes of perpetration of the acts of trafficking in human beings, smuggling of migrants and trafficking in juveniles, in the court practice in the Republic of Macedonia so far all cases adjudicated against an organised group refer to the criminal act 418 b - smuggling of migrants.

Trafficking in Juveniles

Article 418 d of the Criminal Code of the Republic of Macedonia was introduced with the Law on Amending the Criminal Code of 15.01.2008 (OG No. 7/08).

Article 418-d

(1) The one who recruits, transports, transfers, buys, sells, harbours or accepts a juvenile for the purpose of exploitation by way of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar attitude or prohibited transplantation of human body parts shall be sentenced to imprisonment for at least eight years.

(2) The one who commits the act of paragraph 1 by means of force, a serious threat by means of misleading or other forms of coercion, abduction, fraud, of abuse of one's power or another person's condition of pregnancy, feebleness or physical or mental inability; or by means of giving or receiving money or other benefits to achieve the consent of a person having control over another person shall be sentenced to imprisonment for at least ten years.

(3) The one who uses or enables another person to use sexual services or other type of exploitation of a juvenile which he knows or is reasonably expected to know that this will result in the juvenile being a victim of trafficking in human beings shall be sentenced to imprisonment for at least eight years.

(4) The one who shall seize or destroy an identity card, passport or someone else's identification document to commit the act of paragraphs 1 and 2 shall be sentenced to imprisonment for at least four years.

(5) If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.

(6) The consent of a juvenile to the actions set forth in paragraph 1 shall have no bearing on the existence of the criminal act of paragraph 1.

(7) If the act of paragraph 1 is perpetrated by a legal entity, it shall be punished by a fine.

(8) The real estate used and the articles and means of transportation used for the perpetration of the act shall be seized.

The Law on Amending the Criminal Code of 14.09.2009, as in the abovementioned Articles, adds paragraph 5, which sanctions the perpetration of the act by an official while carrying out his/her official duty with a sentence of at least 10 years.

Although in the Annual Report of the National Rapporteur on the Fight against Trafficking in Human Beings and Illegal Migration in 2009, of a total of 9 identified victims of trafficking in human beings, 7 were juveniles (at the age of 16 to 18 years),

there was not a single case that started in court procedure during the period of research.

Mediation in Prostitution

Although the act of mediation in prostitution of Article 191 of the Criminal Code of the Republic of Macedonia does not fall within the group of acts of organised crime, due to its similarity to the act of trafficking in human beings it is a matter of interest in this analysis.

In the last 2 years (2008 and 2009) a number of interventions were made in this Article that refer, above all, to making the penal policy more severe, as well as to adding the legal entity as a perpetrator of the act.

Article 191

(1) The one who recruits, induces, incites or entices a person for prostitution or the one who in any way participates in handing a person over to somebody else for the purposes of prostitution shall be sentenced to imprisonment for five to ten years.

(2) The one who for the purpose of gaining benefits enables someone else to use sexual services shall be sentenced to imprisonment for three to five years.

(3) The one who for the purpose of gaining benefits by means of force or a serious threat to use force shall force or by means of fraud shall induce another person to give sexual services shall be sentenced to imprisonment for at least eight years.

(4) The one who organises the perpetration of the acts of paragraphs 1 to 3 or who shall commit the acts while committing family violence shall be sentenced to imprisonment for at least ten years.

(5) If the act of this Article is perpetrated by a legal entity, it shall be punished by a fine.

(6) The real estate used and the articles used for the perpetration of the act shall be seized.

Article 191 of the CC of the RM in the basic form of the act sanctions the person who recruits, induces, incites or entices a person for prostitution or a person who in any way participates in handing a person over to somebody else for the purposes of prostitution.

Paragraph 3 of Article 191 refers to qualificatory forms of the act perpetrated by means of force, of a serious threat to use force, of coercion or of fraud. The minimum penalty for that type of criminal act set forth in paragraph 3 is eight years in prison.

Paragraph 4 sanctions the organiser of the perpetration of the acts, as well as the perpetrator who shall commit the act while committing family violence, for which a minimum penalty of at least 10 years in prison is envisaged.

Cases in 2009 per paragraph

| | Paragraph 1 |
|-----|-------------|
| 191 | 3 |

The 3 cases identified for the act of mediation in prostitution were handled in the basic courts in Skopje, Prilep and Tetovo. The cases in Skopje and Tetovo refer to acts perpetrated long time ago due to which the judgements for the perpetrators are 6 months in prison, that is, 8 months in prison because of the principle of using the more lenient law for the perpetrator, whereas the case handled in Basic Court Prilep refers to an event reported in 2009, but for it an acquittal was passed.

A question is raised as to whether the more severe penal policy has dissuaded the perpetrators from perpetrating this type of criminal activity, or, on the other hand, the Public Prosecutors' Office does not decide to institute a procedure for certain cases that would result in such a severe penalty. In support of the latter opinion is the data that the media, after information supplied by MoI, in 2009 on several occasions informed about police actions in night clubs and bars where unregistered female workers from Macedonia and foreign countries were found, whereas the actions ended only by pressing charges for violations to the Law on Labour Relations, that is, for failure to register a worker.³ Although the Coalition does not have data about the findings obtained during police actions, that is, whether they were cases of trafficking in human beings or mediation in prostitution indeed, still the figure of 46 uncovered unregistered foreign female citizens (16 from Serbia, 23 from Albania and 7 from Bulgaria), who worked as waitresses and singers, requires a distrustful attitude in resolving these cases.

Thus, in the Daily Bulletin of MoI of 02.02.2009 the public is informed that PS Gostivar has pressed criminal charges against two persons, owners of catering facilities, for a criminal act “violation of the right to social insurance”. Further down the notification reads that on 01.02.2009 police officers performed checks in the catering facilities of the persons reported and found 12 foreign female citizens (five Bulgarian, four Albanian and three Serbian) who worked illegally in the facilities as singers and waitresses and the persons reported did not pay contributions for social insurance for them.

The same daily bulletin describes another case where SoI Tetovo has pressed criminal charges against two persons, owners of catering facilities, for a criminal act “violation of the right to social insurance”. On 18 and 22.01.2009 checks were performed in two catering facilities where two Macedonian and one Albanian female citizens were found working in the facilities, and after the measures taken it was determined that the persons reported had not paid contributions for social insurance for them for the period 2006-2009.

³ Daily Bulletin of MoI, <http://www.moi.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=209>

This raises the question of whether the lack of court cases of mediation in prostitution, and the relatively small number of cases of trafficking in human beings, really reflect the situation in society that this phenomenon is eradicated.

Comparative Overview of the Legal Incriminations of the Acts

During previous years, especially in the period from 2005 to 2008, within the framework of the research into the linkages and the alleged similarity of the legal qualifications of the acts of trafficking in human beings 418-a and mediation in prostitution of Article 191, the Coalition alarmed the experts about the consequences arising thereof. Notably, when a procedure was instituted according to Article 418-a, it was often that the defence focused on obtaining a re-qualification of the act by the public prosecutor and on passing judgement based on Article 191 mediation in prostitution. The reason was that for trafficking in human beings the minimum sentence was 4 years in prison, whereas for mediation in prostitution a minimum sentence of 6 months in prison was set forth. By re-qualifying the act, if the perpetrator is convicted, he/she would receive a much less severe penalty. However, the latest legal amendments seem to have taken another route. Article 191 paragraph 3 sets forth *that the one who for the purpose of gaining benefits by means of force or a serious threat to use force shall force or by means of fraud shall induce another person to give sexual services shall be sentenced to imprisonment for at least 8 years*. On the other hand, in paragraph 1 of the Article on trafficking in human beings, where, inter alia, actions set forth in Article 191 are stated, the sentence envisaged is 4 in prison. This solution could dissuade the prosecution authorities from instituting criminal procedures for all identified acts of mediation in prostitution in the future, exactly because of the severe sanction envisaged.

The Coalition's research team recommends that paragraph 3 of Article 191 should be deleted and all acts of induction into prostitution by means of force or threat should fall within the Article Trafficking in Human Beings.

In Article 191, paragraph 1, which sets forth the basic form of the act of mediation in prostitution, a sentence of 5 to 10 years is envisaged. This seems to be too severe a sentence, considering the sentence for trafficking in human beings, whose legal minimum is set to 4 years in prison. In the future this could result in more severe penalties for persons who mediate in the prostitution of sexual workers and do not use force or threat, do not limit the freedom to movement and the like than for persons who, performing the act of Article 418-a, have committed acts of coercion, limitation of the freedom to movement and the like.

With regard to the acts of trafficking in human beings, trafficking in juveniles and mediation in prostitution, on annual level, a reduced number of active cases for the abovementioned acts is noted in basic courts. In the period from September 2009 to March 2010 only two cases of trafficking in human beings were active before the Basic Court in Skopje, whereas for mediation in prostitution 3 cases were active (one each in Skopje, Tetovo and Prilep).

With regard to the acts of smuggling of migrants and organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, better efficiency is noted in uncovering and processing court proceedings.

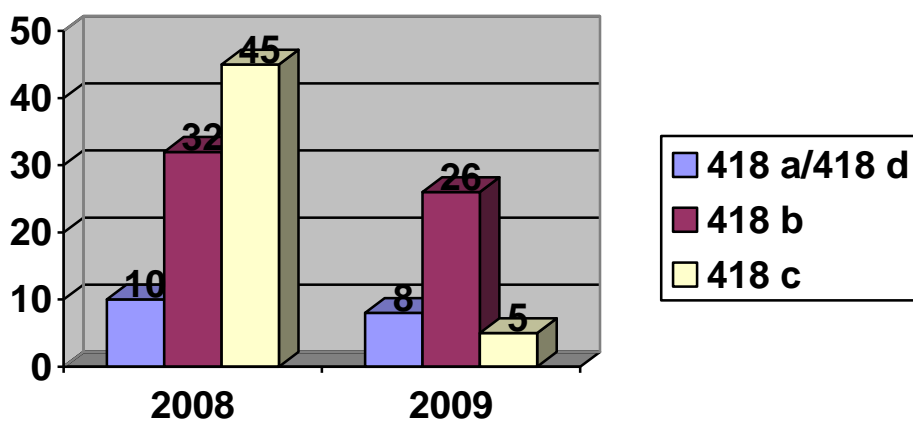
Uncovering Perpetrators

According to the Annual Reports of the National Commission for Combating Trafficking in Human Beings and Illegal Migration for 2008 and 2009, state authorities uncovered the following criminal acts:

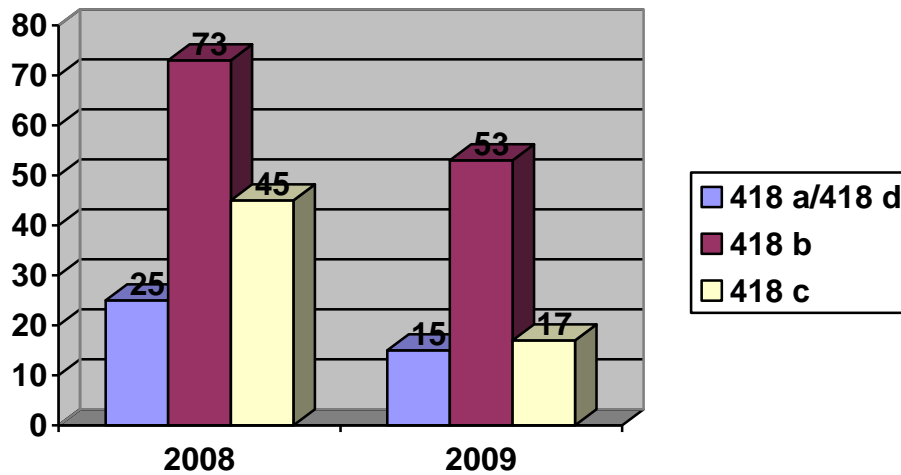
in 2008 10 cases were uncovered of the criminal act 418 a with 25 reported perpetrators, 32 cases of the criminal act 418 b with 73 reported perpetrators, 9 cases of the criminal act 418 c with 45 reported perpetrators.

In 2009 state authorities uncovered 8 cases of trafficking in human beings with 15 perpetrators, 26 cases of smuggling of migrants, punishable according to Article 418 b, and 5 cases of 418 c with 17 reported perpetrators.

Number of cases reported in 2008 и 2009



Number of reported persons



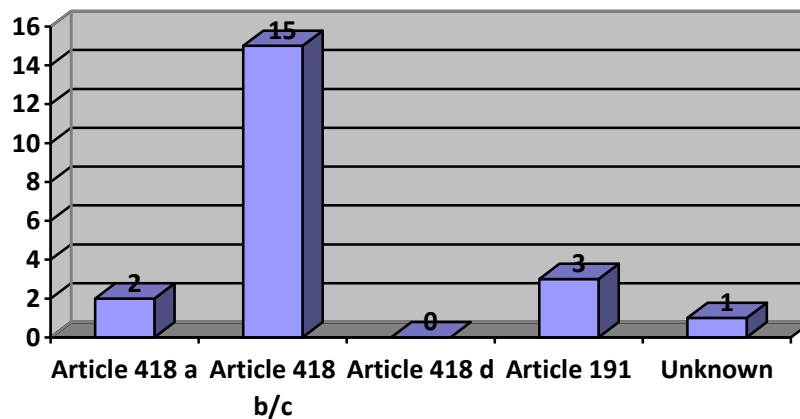
It is noted that in 2009 the number falls of reported cases and persons for criminal acts of trafficking in human beings and illegal migration.

This situation as reported by the National Commission for Combating Trafficking in Human Beings and Illegal Migration does not reflect the factual situation identified in the basic courts in the Republic of Macedonia, which is marked by a decreasing trend in the number of criminal cases and defendants compared to the number of criminal charges and reported persons.

It is noted that based on the cases that the Coalition obtained through written correspondence with the courts, on the one hand, and the analysis of the judgements published for the period before the project started, for the period between September 2009 and March 2010, only three cases of trafficking in human beings – according to Article 418 a were processed, 15 cases of smuggling of migrants according to Article 418 b and organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, punishable according to Article 418 c.

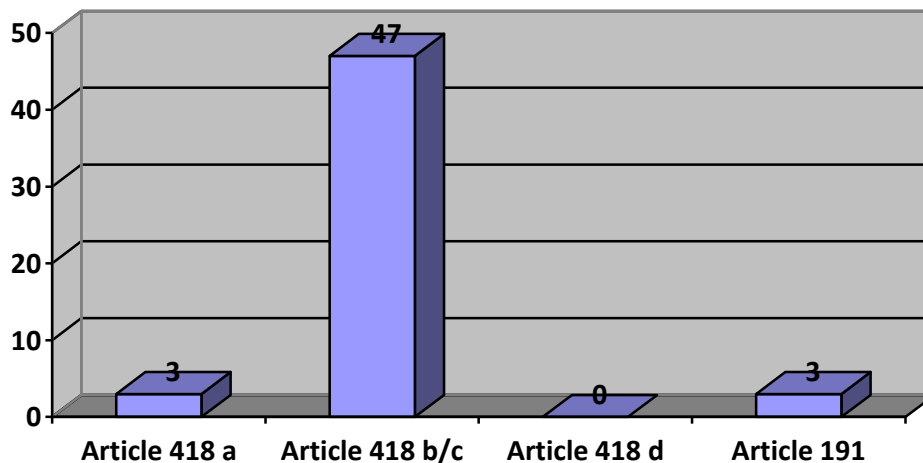
In 2009 in the basic courts in the RM not a single case of 418 d - trafficking in juveniles was noted, whereas according to Article 191 - mediation in prostitution 3 cases were handled (1 each in Basic Court Tetovo, Basic Court Skopje and Basic Court Prilep), of which one for a criminal and legal event that took place between 2001 and 2003, one for a criminal and legal event of 2008, and one in 2009.

Number of cases



In the abovementioned monitored cases the number of defendants is as follows:

Number of reported persons

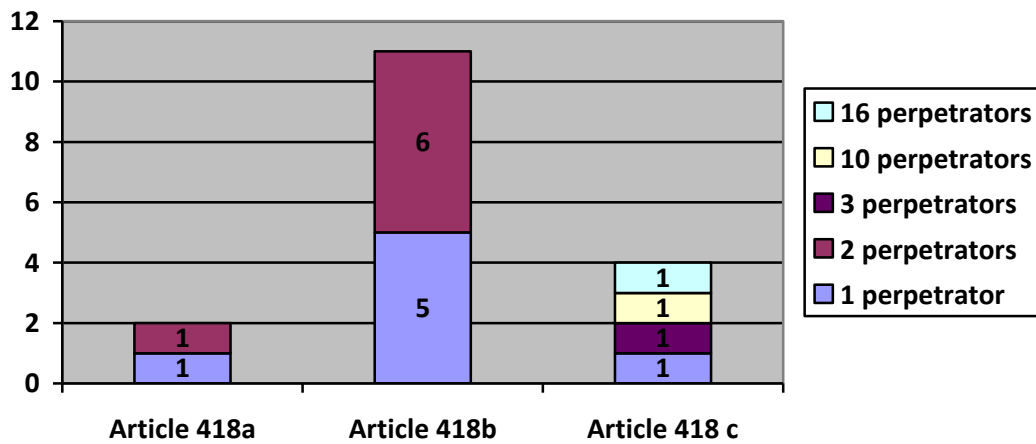


Perpetrator's Profile

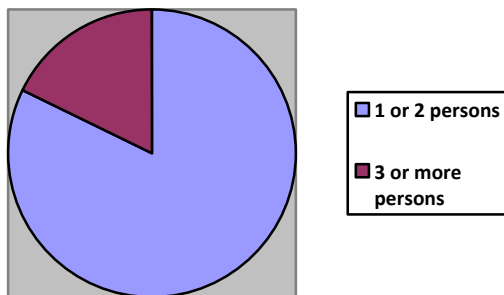
According to the analysis of the defendants in the cases before the basic courts in the RM in the period from September 2009 to March 2010, a number of data were determined that are interesting for observation.

The cases of trafficking in human beings and illegal migration in the Criminal Code of the Republic of Macedonia are recognised as organised crime cases. For a criminal act to be accepted as an act of organised crime, apart from other characteristics (formation for a long period during which one or more criminal acts will be committed for gaining profit by means of violence...), it should be organised by an organised group, that is, by 3 or more persons.

Based on that circumstance (the number of reported perpetrators), the following results are obtained:



The number of participants in the group, for all identified criminal acts of organised crime is as follows:



This situation leads to two conclusions, as follows: it is either that in most uncovered criminal acts of trafficking in human beings and illegal migration the prosecution authorities do not identify the whole group, or it often happens that perpetrators, taking advantage of certain accidental circumstances, take unorganised actions that contain elements of trafficking in human beings or smuggling of migrants. Comparison between the period of 2004 up to now, since the Coalition has carried out monitoring of court cases in this area, shows that in the past period there has been improved efficiency of prosecution authorities in uncovering organised groups in acts of smuggling of migrants, above all, due to the increased use of special investigative measures that the prosecution authorities have available. In 2009 measures were taken to identify organised groups of perpetrators of the criminal act of smuggling of migrants, which resulted in 2 criminal cases, one against 10, and one against 16 defendants. However, the same measures are exceptionally rarely applied to uncovering acts punishable according to Article 418-a, trafficking in human beings. In criminal and legal events qualified as trafficking in human beings and punishable according to Article 418 a of the Criminal Code, the statement of the witness – the victim is still used as the main means of evidence.

Ethnic Representation

The analysis of the perpetrators according to ethnic representation in the cases handled according to Article 418 a shows that all three defendants are Macedonian citizens of Albanian ethnic background.

In the cases of smuggling of migrants and organised form of smuggling there is a wide variety of perpetrators according to their ethnic background.

Notably, out of 53 defendants, 50 persons are citizens of the Republic of Macedonia, and of them 15 are Macedonian, 22 Albanian and 4 other, whereas the three accused foreign citizens are citizens of Greece, Turkey and Nigeria each.

| | |
|--|-------------------|
| Citizens of the Republic of Macedonia | 50 persons |
| Ethnic background - Macedonians | 15 persons |
| Ethnic background - Albanians | 22 persons |
| Ethnic background - Other | 4 persons |
| Ethnic background – no data | 9 persons |
| Citizens of Greece | 1 person |
| Citizens of Turkey | 1 person |
| Citizens of Nigeria | 1 person |

Diverse ethnic background is particularly evident in organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, punishable according to Article 418 c, where transnational linkages of the organised criminal group may be noted.

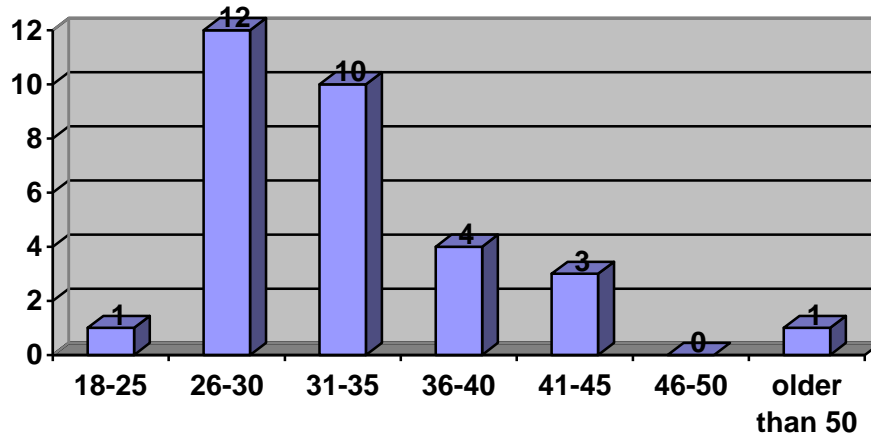
Age

According to the report of the Coalition of 2008⁴, most of the defendants, that is, around 40% of the defendants, are 31 to 40 years of age.

This analysis notes a rapid drop in the age limit of defendants, that is, 71% are 25 to 35 years of age.

During the research data about age were obtained for 31 persons. Of them, 1 is 18 to 25 years of age, 12 are 26 to 30 years of age, 10 are 31 to 35 years of age, 4 are 36 to 40 years of age, 3 are 41 to 45 years of age and one persons is older than 50 years.

⁴ See more on page 43 of the report of the Coalition “All for Fair Trials“ Court Efficiency in Tackling the Phenomenon of Organised Crime 2005/2006/2007, Skopje, February 2008, Violeta Velkoska

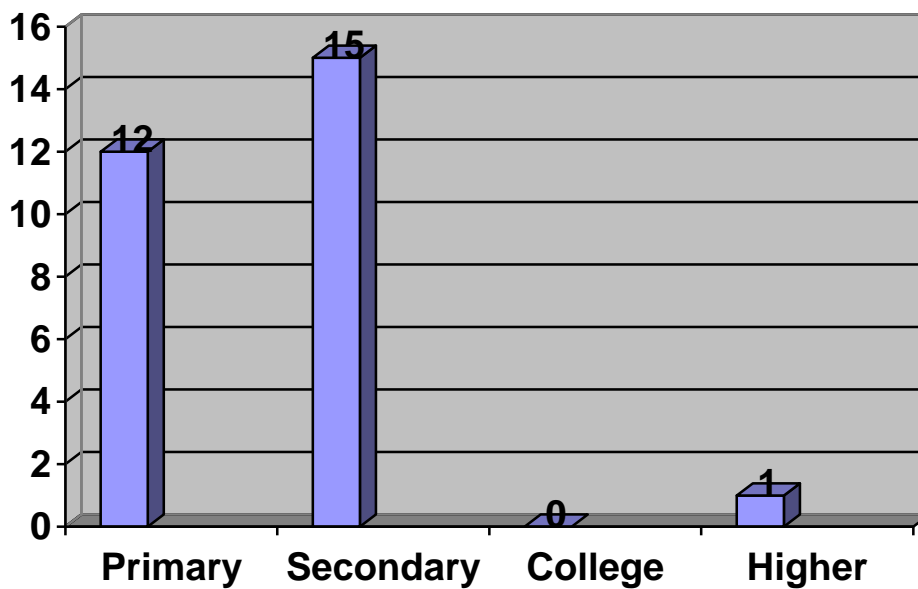


Education

The educational qualifications of the defendants for whom we have data are as follows:

Two defendants for trafficking in human beings have secondary, that is, higher education. Of the remaining 21 persons accused of smuggling of migrants and organising a group, 9 have primary and 14 secondary education.

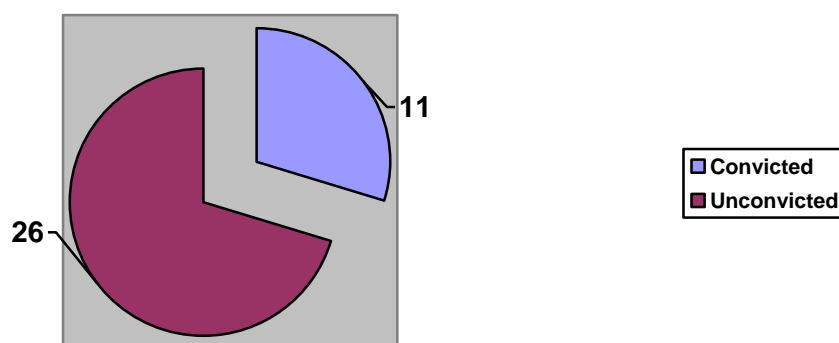
All three defendants for mediation in prostitution have primary education.



Recidivism

The data about the previous convictions of defendants is of particular interest as it plays an important role in determining the severity of the sanction that the court will decide on for the guilty perpetrator as well as in analysing the profile of the perpetrator of this type of criminal acts.

The Coalition obtained data about the previous convictions of 37 persons. Of them, 26 are previously unconvicted, whereas 11 are convicted.



Out of 11 previously convicted persons, the penalties imposed for the acts that are of interest for this analysis fall within the framework legally envisaged, and are at a level of severity for the perpetrators of the criminal acts for whom a procedure is handled for the first time. According to the data of the Coalition, recidivism has not significantly contributed to increasing the penalties individually determined.

Profession

We have data about the professional engagement of the two defendants according to Article 418 a - trafficking in human beings. Of them, one is an owner of a catering facility, and one is a student. Although the number of two persons, for which we have data, is too small to make any conclusion, the professional engagement of one of them as an owner of a catering facility seems to be in line with the last year's research of the Coalition, where more than 50% of the perpetrators of the act of trafficking in human beings were owners of night bars, clubs and catering facilities.

Regarding the acts of Articles 418 b and 418 c, for the profession of 39 persons the situation is as follows:

14 of the defendants are unemployed, 6 are workers, 4 farmers, 2 members of MoI, 4 taxi drivers or drivers and 1 owner of a night club. Unemployed persons are most frequently involved in the perpetration of the acts of smuggling of migrants and organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, however, two cases were noted of persons employed in the Ministry of Interior, which is in line with the tendency of making the penalties for this type of perpetrators more severe, which would, in turn,

lead to reducing the risk of perpetration of the act by persons whose job it is to eradicate this type of crime.

Overview of Criminal Procedures

Use of Means of Evidence

During the court proceeding, at every hearing, two observers of the Coalition are in attendance, who monitor the whole criminal procedure, especially focusing on certain issues that are relevant for a fair trial. In 2009 in more than 50 hearings monitored, according to the observers' personal impressions, the conditions for holding the main hearing were, without exception, good or excellent. The formal conditions stipulated in Article 329 of the Law on Criminal Procedure, on the start of the main hearing, were completely fulfilled in all hearings. In all hearings the defendant was advised about the right to defend himself/herself by remaining silent, but this right is used exceptionally rarely.

In the evidence procedure the most frequently used evidence actions are a witness's statement and a statement of the damaged party – witness. Furthermore, for the acts of smuggling of migrants the following is used as physical evidence: confirmation of telephone numbers, listing of telephone calls, records of persons recognised, inspection into the penal records for previous convictions, photocopies of travel documents, identification documents, vehicle registration certificates and confirmation for temporarily seized articles.

For the acts of trafficking in human beings and mediation in prostitution, a defendant's statement and a statement of a witness – the damaged party are the most frequently used means of evidence, and if the damaged party is not available, the statement made for the minutes of the previous procedure is used, inspection into the documentation on the articles seized (most frequently money) and opinion of an expert witness to determine the psychological condition of the victim or the defendant.

The legally provided possibility for the defendant to give his/her defence in his/her mother tongue is used by 4 defendants, as follows: three times for interpretation from Albanian and once from Turkish, and in all four cases it was concluded that the interpretation was excellent.

The public was excluded from a total of 7 hearings, as follows: 4 times for keeping secret and 3 times to protect the interests of a juvenile.

From all the data analysed, it is only in one case handled according to Article 418 b paragraph 4 that during the main hearing the juvenile victim was advised about the right of Article 331 paragraph 2 of the Law on Criminal Procedure to give a proposal for compensation claim. The monitoring team of the Coalition could not obtain information about whether a proposal for compensation claim was given in the other cases, especially in the two cases of trafficking in human beings, considering that a property and legal claim may be filed in the previous procedure or in writing, and on the other hand, those two cases are still active, that is, judgements have still not been passed.

Special investigative measures set forth in Article 146 of the Law on Criminal Procedure, this year as in the previous years, were applied only to uncover the perpetrators of the criminal act of organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, punishable according to Article 418 c. In 3 cases handled in 2009 according to Article 418 c, special investigative measures were used to provide evidence, as follows:

- Interception of communications and entry into residences and other premises or into vehicles to create conditions for interception of communications;
- Secret observation, monitoring and visual and audio recording of persons and articles with technical equipment;
- Seeming (simulated) purchase of articles, as well as seeming (simulated) giving of bribe and seeming (simulated) receiving of bribe;
- Controlled delivery and transport of persons and articles;
- Use of persons with hidden identity to monitor and collect information and data; and
- Registering seeming (simulated) legal entities or using existing legal entities to collect data.

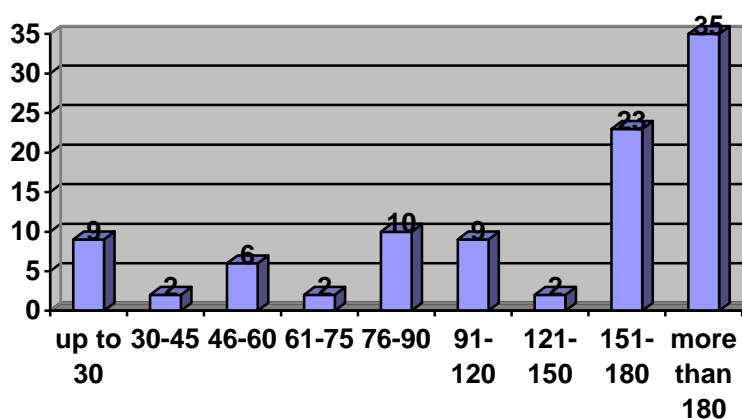
According to the data of the Coalition analysed, special investigative measures are still not applied to uncover the perpetrators of trafficking in human beings.

Detention and Other Preventive Measures

Detention is undoubtedly the measure most commented on by experts from the point of view of how often it is imposed, whether the reasons for imposing it are elaborated and whether it is justified, that is, whether the objectives may be achieved by imposing another measure. From the beginning of monitoring of the cases of trafficking in human beings and illegal migration until the beginning of 2009, the Coalition monitored cases with 236 defendants, of whom on 133 the measure detention was imposed, that is, on around 56%.

The total duration of detention for the persons for whom we have data for the period from 2005 until the beginning of 2009 is as follows:

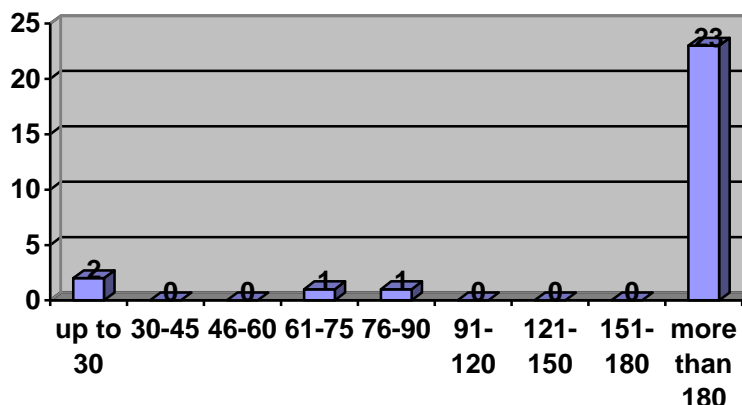
Detention from 2005 - 2008



In the period from the beginning of 2009 until March 2010, out of 53 defendants, on 31 the measure detention was imposed, which is 58.5%.

It is noted that in 2009 the time spent in detention is significantly longer. Of the data about the duration of the measure detention obtained for 27 defendants, 2 are detained up to 30 days, on 1 defendant detention of 72 days was imposed, on 1 defendant 90 days and 23 defendants were detained for more than 180 days.

Detention in 2009



On the other hand, for 10 defendants the measure detention was replaced by house arrest, and on one defendant the measure house arrest was imposed as the only measure for securing attendance. Apprehension of a defendant in order to hold the main hearing was applied on two occasions.

This situation where detention (although being the most severe measure for securing attendance) in most cases lasted more than 180 days, undoubtedly leads to the opinion that although courts consider these cases urgent, due to detention, there are still problems that lead to prolongation of procedure. Making the whole procedure shorter, from uncovering the act to passing the judgement, would be more successful if investigation was carried out quickly and with quality, which would eliminate the collection of evidence during the main hearing.

On the other hand, it is encouraging that compared to previous years the court imposes the measure house arrest more frequently on defendants for whom it will assess that this measure is effective. Although these are cases of serious criminal acts for which the threatened imprisonment sentence is more severe, the frequent use of house arrest and guarantee will avoid the conclusion from past years that detention sometimes gains the character of penalty, which is certainly not the intention of the law.

Per criminal act the situation is as follows:

Since the beginning of monitoring of the criminal and legal processing of the acts of trafficking in human beings and illegal migration, from 2005 until now, out of 65

defendants for the criminal act 418 b, on 51 the measure detention has been imposed, which is 78.5%.

Out of 41 defendants for 191, that is, mediation in prostitution, the measure detention has been imposed on 7, that is, 17 %.

Out of 49 defendants for trafficking in human beings 418 a, the measure detention has been imposed on 24 persons, that is, 49%.

Out of 55 defendants for organised form, that is, 418 c, the measure detention has been imposed on 43, that is, for 78%.

8 defendants have been accused for trafficking in juveniles, and the measure detention has been imposed on 7, that is, 78.5 %.

In the same period, as opposed to the relatively frequent imposition of the measure detention, for 17 persons the court ordered apprehension, 5 persons had their travel documented seized, 6 persons gave guarantees for them to be released pending trial, 3 persons promised they would be available to the court, and for 15 persons house arrest was determined.

Other measures for securing attendance

| | |
|--|------------|
| Order for apprehension | 17 persons |
| Seizure of travel document | 5 persons |
| Guarantee provided in order to be released pending trial | 6 persons |
| Promise given to be available to the court | 3 persons |
| House arrest | 15 persons |

Duration of Procedure

If one considers fair trial, then the duration of the procedure is an unavoidable part of analysis.

The average duration of procedure is the average time between the filing of indictment (that is, the decision on a possible complaint against the indictment) and the passing of a first instance judgement.

During the past 5 years we had two different situations which directly reflected in the duration of the procedure. Notably, until the Law on Amending the Law on Courts entered into force on 13.03.2008, the cases of trafficking in human beings and illegal migration were adjudicated by the basic courts with increased competencies. With the abovementioned law a specialised court department was formed which is, inter alia, competent to adjudicate upon the criminal acts of trafficking in human beings of Article 418-a, criminal acts of smuggling of migrants of Article 418-b, trafficking in juvenile of Article 418-d and other criminal acts against humanity and international law of the Criminal Code, irrespective of the number of perpetrators. 2008 saw a mild decrease in the duration of the procedure, and in 2009 the average duration of the cases on acts 418-b and 418-c is around 6 months.

Bearing in mind that all three cases of 418-a (trafficking in human beings) identified in 2009 are active when this analysis is being prepared, their average duration cannot be ascertained, but it will undoubtedly be longer than 6 months.

Regarding cases of mediation in prostitution, two cases were completed in approximately 10 months, whereas the case handled in Basic Court Tetovo lasted 6 years.

Reasons for Adjournment of Hearing

| | |
|------------------------------|----|
| Defendant's absence | 14 |
| Defender's absence | 5 |
| Witness's absence | 6 |
| Calling new witnesses | 11 |
| Collecting physical evidence | 8 |
| Closing arguments | 5 |
| Pronouncing a judgement | 5 |
| The damaged party's absence | 1 |
| PPO's absence | 4 |
| Incomplete court composition | 1 |
| Miscellaneous | 4 |

According to the Law on Criminal Procedure, if the main hearing cannot begin due to absence of a participant in the procedure or if a hearing cannot finish, the court shall adjourn the main hearing. The adjournment of the main hearing directly leads to procedure prolongation, which is a reason for monitoring the adjournment on the part of the research team. Out of a total of 64 adjournments of hearings, 19 were adjourned due to defendant's or defender's absence. The same number of hearings was adjourned due to calling new witnesses or collecting physical evidence. If the court does not allow possible abuse of the Law on Criminal Procedure by defendants and their defenders who through absence prolong the procedure, on the one hand, and if during the investigative procedure all necessary physical evidence and all necessary witnesses are provided, on the other hand, the number of adjournments of hearings will be reduced by 60%. Although the number of adjournments of the main hearing due to reasons within the court or due to public prosecutor's absence is small (only in 5 cases), efforts should be made to reduce them to a minimum, particularly by planning trials and other work activities.

Penal Policy

Severity of penalties per article and paragraph and comparison between years

In the three cases handled before the basic courts in the Republic of Macedonia in 2009, according to Article 191 paragraph 1 of the CC of the RM, for the act of

mediation in prostitution penalties of 6, that is, 8 months in prison were imposed on two persons, whereas an acquittal was passed for one person due to lack of evidence. Regarding the act of smuggling of migrants, the severity of sanctions falls within the following limits:

Smuggling of migrants - 418-b

| 418-b | 6 years | 5 years | 3 years | 2 years |
|-------------|--------------------|-----------------------------|--------------------|---------------------|
| Paragraph 1 | 1 convicted person | 1 convicted person | 1 convicted person | 3 convicted persons |
| | 1 year | 1 years and 6 months | 6 months | |
| Paragraph 2 | 13 | 1 convicted person | 1 convicted person | |
| | 4 years | | | |
| Paragraph 4 | 3 persons | | | |

Article 418-b paragraph 1 sets forth a minimum penalty of 4 years in prison. Out of 6 persons convicted according to this paragraph, 2 received a penalty within the legal boundaries, whereas 4 persons were convicted below the legal minimum. Those convicted according to Article 418-b paragraph 2 in almost all cases received a penalty within the legal framework.

All 3 persons convicted according to Article 418-b paragraph 4, punished for smuggling of juveniles, received an imprisonment sentence of 4 years each, although the law sets forth a minimum penalty of 8 years in prison. For all 3 convicted persons the institute of mitigating a penalty was applied.

According to Article 418 b paragraph 6 of the CC of the RM, the articles and means of transportation used for the perpetration of the act are seized. On the basis of this Article the following were seized by the persons convicted for smuggling of migrants: 3 vans, 20 passenger vehicles, 5 mobile phones, one laptop computer and cash assets.

Organising a group and inciting the perpetration of acts of trafficking in human beings, trafficking in juveniles and smuggling of migrants, 418-c

| 418 c | 9 years | 5 years | 4 years |
|-------------|-----------------------------|----------------------------|---------------------|
| Paragraph 1 | 1 convicted person | 2 convicted person | 3 convicted persons |
| | 2 years and 6 months | 1 year and 6 months | 1 year |
| Paragraph 2 | 1 convicted person | 7 convicted persons | 3 convicted persons |

Out of 6 persons convicted according to Article 418-c paragraph 1, only on one person an imprisonment sentence was imposed within the legally envisaged penalty, whereas when determining the penalty for 5 convicted persons, a penalty below the legal minimum was imposed.

On all 11 persons convicted according to paragraph 2 an imprisonment sentence was imposed within the legal framework, that is, at least 1 years in prison.