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OSCE Mission to Skopje

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ANALYSIS
OF DATA OBTAINED FROM MONITORING COURT PROCEEDINGS WITHIN THE FIELD OF ORGANIZED CRIME AND CORRUPTION IN 2019

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CONTENT

INTRODUCTION

The Coalition "All for Fair Trials" is a network composed of 13 civil society organizations, established as an organization whose fundamental mission is to monitor court proceedings in North Macedonia in order to increase compliance with fair trial standards before the national courts, to identify inherited problems in the judicial system and to point out the need for legal and institutional reforms, to acquaint the public with the fair trial standards, to reduce the possibility of inappropriate treatment to parties in disputes by judges and other participants in the procedure, as well as to strengthen the public confidence in the legal system and the judiciary in general.

The growing need for reforms in recent years, and in particular the initiation of a judicial reform process that directly or indirectly affects the performance of courts, was an additional motivation for the Coalition to continue to systemically monitor court proceedings. Like in the years before, the Coalition implemented these activities in the capacity of an implementing partner financially supported by the OSCE Mission to Skopje. This year, unlike the previous 4 years, the focus was put on one particular type of crime, the organized crime and corruption.

This is not a novelty in the thematic activities undertaken by the organization. Namely, even back in 2007 the Coalition developed a program for monitoring criminal court cases related to corruption through a pilot project within which empirical materials were collected. This contemporary phenomenon was more deeply analyzed and studied based on the gathered data until 2017. However, this time, the social context around organised crime and corruption, required a more rigorous control over the institutions involved.

LEGAL FRAMEWORK

The national legal framework, which for the first time envisages a law on prevention of corruption (2002), contains numerous provisions promoting the fight against corruption and its prevention, both in the public administration and in elected/appointed officials. An upgrade of the effectiveness of the provisions of this law was made later when the State Commission for Prevention of Corruption was established, which was intended to have a role of an independent body responsible for implementing measures to prevent corruption and conflict of interest. Two years later, in 2004, the new Law on the Public Prosecutor's Office was adopted, envisaging the establishment of a specialized Department for Organized Crime and Corruption, and in 2007 this Department became a separate Public Prosecutor's Office for Prosecuting Organized Crime and Corruption (PPO POCC) acting upon cases related to organized crime and corruption across the entire territory of the Republic of North Macedonia.

Article 31 of the Law on the Public Prosecutor's Office (Official Gazette of RM no. 150 of 12.12.2007) defines the competence of this public prosecutor's office, but it also emphasizes the range of actions that shall be treated as corruption, i.e. a selection of criminal actions from the Criminal Code of the Republic of North Macedonia. This article envisages that the "Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption" is competent to act upon:

- criminal offences committed by a structured group of three or more individuals, which exists for a certain time period and is active in order to commit one or more criminal offences that

entail a prison sentence of at least four years, with an intent to acquire financial or other gain, directly or indirectly,

- criminal offences committed by a structured group or a criminal enterprise on the territory of the Republic of North Macedonia or other countries, or in instances when the crime was organized or planned in the Republic of North Macedonia or another country.
- criminal offences of misuse of official position and authority under Article 353, paragraph (5), accepting bribes of a significant value under Article 357 and illegal mediation under Article 359, all of them from the Criminal Code, committed by an elected or an appointed official, authorized person or responsible person in the legal entity;
- criminal offences of unauthorized production and trade in narcotic drugs, psychotropic substances and precursors under Article 215, paragraph (2), money laundering and other proceeds of a punishable act of a greater value under Article 273, terrorist endangerment of the constitutional order and security under Article 313, giving bribes of a significant value under Article 358, unlawful influence on witnesses under Article 368-a, paragraph (3), criminal enterprising under Article 394, terrorist organizations under Article 394-a, terrorism under Article 394-b, criminal offences of human trafficking under Article 418-a, criminal offences of smuggling of migrants under Article 418-b, trafficking of juveniles under Article 418-d and the rest of the criminal offences against humanity and international law from the Criminal Code, irrespective of the number of perpetrators.[1]"

The provisions set out in this article reflect the diverse forms in which corruption may occur, which only points to the fact that it is directly or indirectly present in today's society. The number of signed and ratified conventions as well as many legal changes speak of the existence of a sincere will and efforts being made by the state to combat corruption and tackle organized crime. However, the written word by itself is not a guarantee for successful implementation. It is precisely the apparent lack of capacity and will by the special department within the Public Prosecutor's Office, i.e. the Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, to act upon and fight this modern phenomenon, that has imposed the need to establish a separate specialized ad hoc body that would target perpetrators, who are, above all, political figures, as well as structures close to them.

The Public Prosecutor's Office for Prosecuting Criminal Offenses Related to and Arising from the Content of the Illegally Intercepted Communications, whose main purpose was to prosecute high (and organized) crime, was established on the basis of a special law in 2015. However, according to Transparency International's latest assessment and index for 2018, even after almost 4 years since the establishment of this specialized prosecutor's office, or 15, i.e. 12 years since the establishment of the PPO POCC, the Republic of North Macedonia ranks the 93rd among 180 countries, scoring 35 points on the 100 point corruption perception scale[2] (where the lower the score the higher the level of corruption).

METHODOLOGY

The methodology used by the Coalition to collect data from monitored trials, for the purposes of this analysis, consisted of a specific "field" study using two methods: 1) real time monitoring of court proceedings performed by specialized monitors who were not direct participants in the hearings and 2) a systematized questionnaire that was filled with data by the monitors after performing the monitoring.

1 Law on the Public Prosecutor's Office (Official Gazette of RM No.150 as of 12.12.2007)

2 https://www.transparency.org/cpi2018

Coalition's monitors were physically present in the courtrooms of 8 basic courts in all 4 appellate regions, mainly focusing on the special Department for Organized Crime and Corruption within the Basic Criminal Court in Skopje. With that aim, 16 professional monitors, experienced lawyers with more detailed knowledge about criminal justice, were engaged. For the needs of the research a one-day training was organized for the monitors, after which they were assigned to and attended court proceedings in the courtrooms in the capacity of public. The monitors were guided by the principles of objectivity and non-interference, and they were bound by the principle of confidentiality.

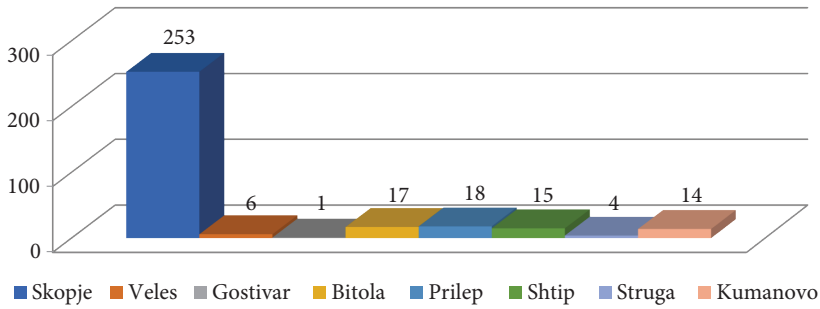
The cases covered by the research were selected randomly, although attempts were made to comprise a representative sample, i.e. to cover proceedings conducted for various crimes in the field of organized crime and corruption, reflecting the average representation of crimes in court proceedings published in the annual reports on the performance of courts as well as in the annual analyses of the Coalition.

For the needs of the research a special, systematized questionnaire was prepared which the monitors were required to complete with collected data. The questionnaire contained additional indicators for detected conditions that were specific in nature for further research. The questionnaire consisted of questions about the course of the main hearing reflecting the order of the court procedure, by placing emphasis on several institutes characteristic of the transition from the inquisitorial to the accusatory criminal procedure, aimed at profiling perpetrators of this kind of criminal acts. The questions were structured to cover qualitative and quantitative indicators of the level of application of the Law on Criminal Procedure (LCP), but also of internationally ratified documents that regulate the right to fair trial. Closed questions that allow two or more answers were the dominant part of the questionnaire and they provide for a more appropriate machine and statistical processing of certain trends observed as problematic or positive in the application of the LCP. These questions were complemented with several open questions, where monitors could narratively clarify certain answers, give their views, and note facts for which no specific question was posed in the questionnaire. In this way, it was made possible to include more procedure-related qualitative indicators and the monitors were enabled to collect data that would give a clear, direct, objective and transparent picture of the monitored criminal case or hearing.

Once collected, the data were entered into a computer database and later analyzed and processed in order to draw concrete conclusions about the situation in the monitoring period.

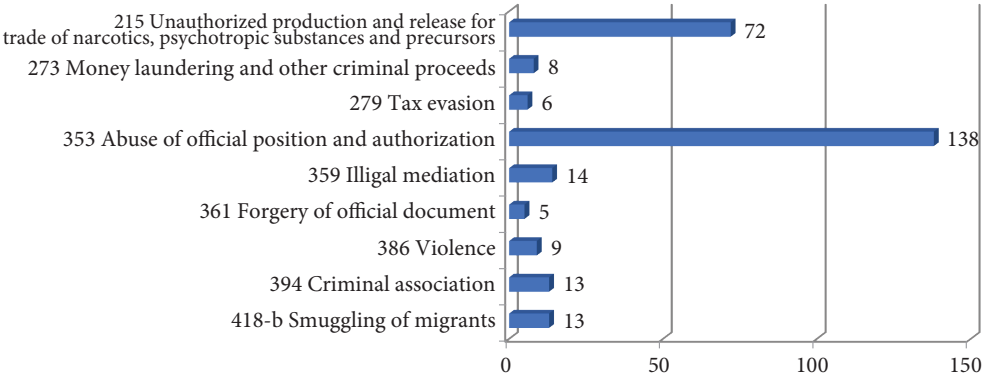
GENERAL DATA

Considering that the dominant part of crimes committed in the field of organized crime and corruption are processed in the Basic Criminal Court in Skopje, for the purpose of this research an attempt was made to comprise some of the other courts in the country acting on cases containing elements of corruption. So, in that direction, the envisaged project activities were spread through the created network of monitors and comprised eight representative basic courts from all four appellate regions, i.e. the courts in Skopje, Veles, Gostivar, Bitola, Prilep, Shtip, Struga and Kumanovo. 328 court proceedings in total were monitored within this process. Most of the hearings, i.e. cases, given the size of courts and their work volumes, were monitored in the Basic Criminal Court in Skopje-253, followed by Veles-6, Gostivar-1, Bitola-17, Prilep-18, Shtip-15, Struga-4 and Kumanovo-14 (graph no.1). The monitoring was conducted for 7 months, from April 2019 to the end of November 2018, in order to collect as much data as possible from which conclusions, guidance and recommendations could be drawn.



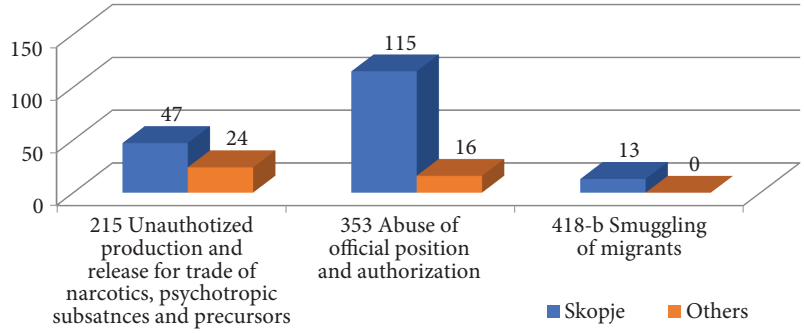
Graph no. 1

As stated in the introductory part of this analysis, only cases of organized crime and corruption were subject to monitoring, i.e. a narrower range of criminal acts. The focus is no longer on violent or property-related criminal acts, but on financial crimes and crimes committed by structured groups of three or more people, existing for a certain period of time and acting in order to commit criminal acts. On the basis of that, the results obtained from the data processing indicate that from this set of crimes, the most commonly committed one is the "Abuse of official position and authorization". This crime is immediately followed by "Unauthorized production and release for trade of narcotics, psychotropic substances and precursors", "Illegal mediation", "Criminal association", "Smuggling of migrants" and the like. Graph no.2 shows the crimes that most frequently appear in the proceedings monitored in all 8 courts in the country, without showing the insignificant percentage and representation of some other criminal acts that are included in the Criminal Code in the chapters referring to Crimes against official duty, Crimes against human health, Crimes against public finances, payment operations and the economy, Crimes against the state, Crimes against the judiciary, Crimes against the public order, etc.



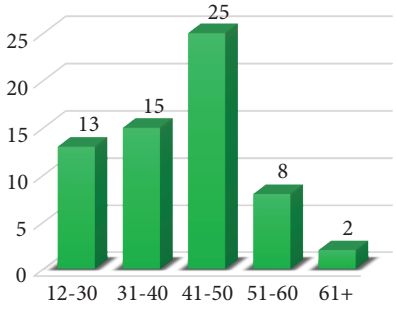
Graph no. 2

If we analyse the data by taking a comparative approach towards courts, we will notice an identically mirrored representation of criminal acts in the court in Skopje. Specifically, the Department for Organized Crime and Corruption within the Basic Criminal Court in Skopje deals with the largest volume of cases that are without any doubt most represented in the processed data – criminal acts of Article 353, Article 215 and Article 418-b of the Criminal Code.

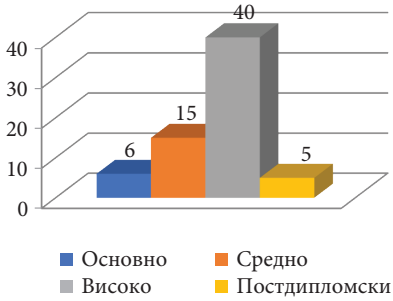


Graph no. 3

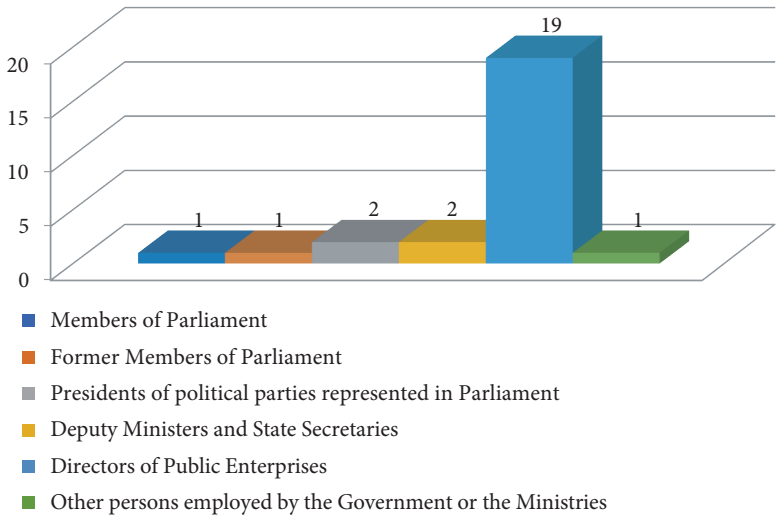
When it comes to the individual characteristics of the perpetrators of this type of criminal acts, when creating the methodological approach, it was especially important to determine the age of perpetrators, the level of their education, as well as their professional position. Thus, according to the data processed and according to the graphs shown below, it can be established that the most represented age group is the one aged 41 to 50, while when it comes to the level of education, it can be noted that the perpetrators are highly educated people. In regards to their professional positions, the defendants were most often directors of public enterprises. In addition, as to the monitoring process, it was inevitable that these proceedings be monitored since they attracted major media coverage, were of high importance to the public and represented an appropriate sample of court proceedings through which the court's approach and actions could be comparatively expressed in relation to the remaining proceedings in this area.



Graph no. 4



Graph no. 5



Graph no. 6

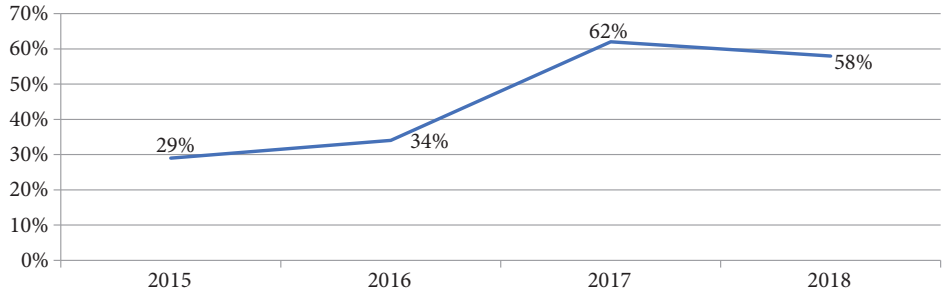
CONDITIONS TO HOLD A HEARING

The Law on the Criminal Procedure envisages the mandatory participation of some of the parties to the procedure and, in principle, a hearing cannot be held in their absence. The persons whose presence is expected and obligatory at the main hearing are summoned by the court; however, the proposal as to which persons are to be summoned by the court, and for whom the law does not have a binding effect, such as witnesses, experts, technical advisers, etc., is the disposition of each of the parties. Specifically, without their suggestion and proposal for summons, the court has no obligation to summon these persons. The obligation of the court to summon certain persons refers to the defendant, their defence attorney (of their own choice or appointed ex-officio), the authorized plaintiff (a public prosecutor or a private plaintiff), as well as the damaged party with their legal representative, i.e. proxy.

In case of absence of persons whose presence is necessary for holding the hearing, the court shall postpone the hearing. When analysing the total 2019 data, a high level of postponements of court hearings was recorded - 61%; but if we venture in a deeper analysis and segregate the data processed by the Basic Criminal Court in Skopje and other courts working on cases within this field, we will see that this percentage of total postponed hearings (61%) does not correspond to the percentage of postponed hearings in the Department for Organized Crime and Corruption within the Basic Criminal Court Skopje. Namely, in 2019, during the monitoring process conducted within the specific time period in which a total of 177 hearings in 81 cases were monitored, 49% of postponed hearings was registered in this department. That points to a significant difference from the total summary percentage, and that is especially so as a result of the fact that out of the total number of monitored hearings (328) 253 were held in Skopje, of which 177 hearings in the department, being 54% of the total number of monitored hearings.

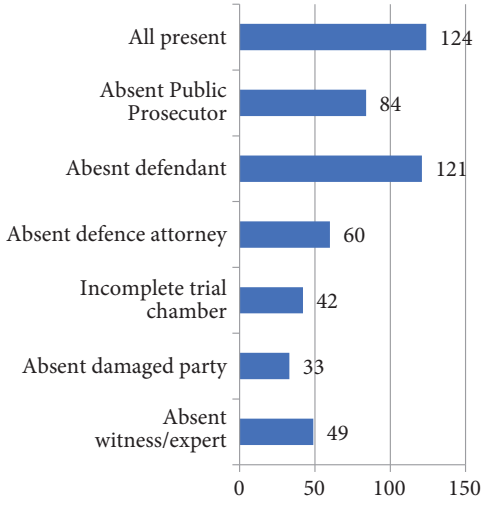
This high percentage of 61% of postponed hearings fully corresponds to the statistics of postponed hearings at the level of all appellate regions in the country for 2017 and 2018, which covered all criminal

proceedings, regardless of the thematic area of prosecution. Namely, clearly from the table below, we can see a trend of a drastic increase in postponed hearings as compared to previous years (2015 and 2016) when this percentage was practically 50% lower than the next two years.

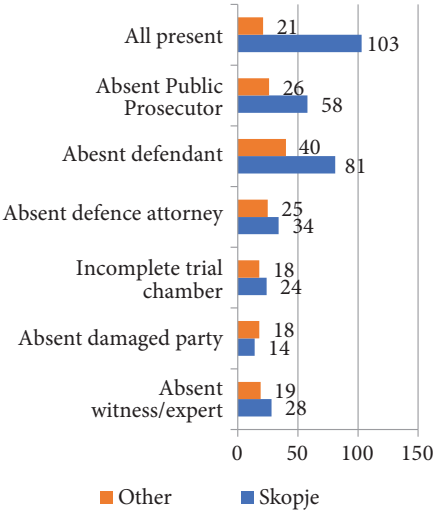


Graph no.7
(Statistics of adult-related criminal case hearings postponed in 4 appellate regions)

When it comes to postponement reasons, which are related to the absence of persons from the proceedings, the most striking reason is the absence of defendants followed by the absence of representatives of the Public Prosecutor's Office. Graph no.8 points to the frequency of absences of specific persons involved in the procedure. The percentage ratio of the statistical data shows the reasons not to hold a hearing: the absence of defendants from the proceedings was recorded in 33% of cases, the absence of the Public Prosecutor in 17%, the absence of witnesses in 17%, the incomplete composition of the trial chamber in 14% of cases, and the absence of experts in 6% of cases. Graph no.9 gives a comparative overview of absences of persons from the proceedings conducted in Basic Criminal Court Skopje and other courts in the country, from which it is inevitable to conclude that these figures also follow the analogy of the total statistical processing, given that 77% of monitored hearings were in the Basic Criminal Court in Skopje.



Graph no. 8



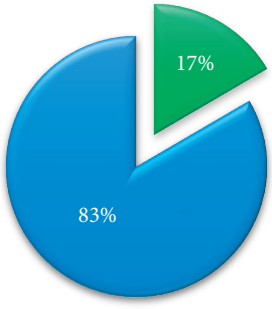
Graph no. 8

Regardless of whether it is a case of organized crime and corruption or another kind of criminal case, a noteworthy fact is that the incomplete trial chamber is more and more often identified as a reason for postponement of hearings in the past 2 years. Namely, in 2019, an incomplete trial chamber was registered in 42 hearings, out of which in 24 of cases it was a trial chamber in Basic Criminal Court Skopje, and in 18 cases in other courts in the country. In a dominant part of cases, in particular, with regard to Basic Criminal Court Skopje, i.e. the Department for Organized Crime and Corruption, it is about cases in which the presiding judges of the trial chambers and the judges that are members thereof are the same judges acting on same cases. That is, they appear alternately in one case as a president of trial chamber, and in another as a member of the chamber, so in conditions of frequent scheduling of cases, sometimes even multiple times within the working week, they are not able to get things done and be present at all scheduled trials. 12 cases were registered last year only within the Department for Organized Crime and Corruption in Basic Criminal Court Skopje, in which the main reason for postponing court hearings was precisely the incomplete composition of the trial chamber.

In order to repair any damage caused by such overlaps of chamber members or by justified absences due to health or other subjective reasons, and generally any other additional reason preventing a member of the chamber to proceed upon a case, Article 349 of the LCP envisages the possibility to engage or appoint additional judges and lay judges. Specifically, if it is likely that the main hearing will last longer, the presiding judge of the trial chamber may ask the president of the court to assign one or two judges or lay judges, to attend the main hearing and replace any trial chamber members if they are prevented from attending the hearing. This happens because the presiding judge, the judges who are trial chamber members and lay judges have to continuously attend the main hearing, so if any of the above circumstances occur and any of these persons (trial chamber member or lay judge) cannot further participate in the work of the chamber, they shall be replaced by a "reserve" member. The law envisages that these persons shall follow the hearing and be present at it, but for as long as there is no need for them to replace some of the prevented persons, they shall not participate in the hearing. This possibility is in line with the provisions on direct presentation of evidence, being an imperative in the criminal proceedings, as well as a continuity of the main hearing.

In the Basic Criminal Court Skopje, in the Department for Organized Crime and Corruption, on two occasions a positive practice of using such a mechanism was observed – provision of so-called "reserve" judges and lay judges. This mechanism was applied to the cases "Tariff" and "Titanic", initiated by the Special Public Prosecutor's Office, where the presidents of the chambers had requested and then received approval for inclusion of additional persons in accordance with Article 349 of LCP.

Although one of the reasons for postponing hearings is precisely the absence of defendants from the proceedings, LCP provides an opportunity, of course, if the conditions have been met, for the court to adjudicate in the absence of the defendant. Thus, from the total number of hearings monitored in 2019, the monitors noted that in 17% of cases the court acted, i.e. tried in the absence of the defendant.

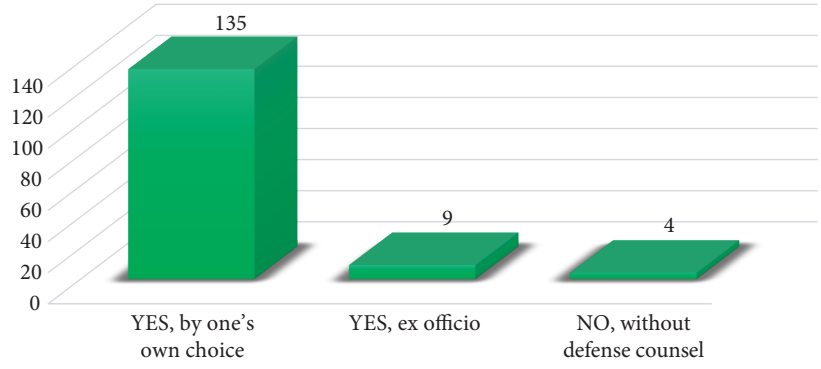


Graph no. 10

RIGHT TO COUNSEL

One of the basic rights of the defendant in the proceedings is the right to counsel. The procedural law, applicable to criminal prosecution of suspected perpetrators of criminal acts, envisages that any person suspected or accused of a crime shall have the right to counsel in the course of the entire criminal proceedings that are being conducted against them. This right of the defendant extends throughout the entire proceedings, from the first examination of the defendant up to the effective completion of the proceedings, whereby, in certain specific cases, the law provides a possibility of further strengthening this right to the extent that the court could appoint a defence attorney ex-officio if the defendant has not retained a counsel.

Having in mind the circumstances under which the crimes (that were thematically monitored last year) were committed as well as their complexity, and thus the possibility of severe sentences envisaged for this type of crimes, according to the collected data one can conclude that, for the most part, the defendants in the proceedings had their own defence attorneys. In a completely insignificant part of the proceedings the defendants were assigned defence attorneys ex-officio, whereas in only 4 cases defendants were tried without being represented by a defence attorney at the main hearing.



Graph no. 11

MEASURES FOR SECURING THE PRESENCE OF THE DEFENDANT

The data concerning the application of measures for securing the presence of the defendant represent an integral part of the analysis because through their adequate and non-selective application the assessment of the level of fairness of the criminal proceedings can be largely influenced. Similarly to last year's practices, this year our monitors also monitored the frequency of all measures to secure presence , applicable in accordance with Article 144 of the LCP, by especially focusing on the strictest measure to ensure the defendant's presence – detention, being a measure that most harshly affects defendants' right to liberty in the course of the criminal proceedings. In that regard, in addition to the number of applied measures and the manner of their application, the monitors detected the reasons for their application, making it possible to critically review justifiability and grounds for these decisions.

By analysing data obtained from monitored cases that refer to the application of measures for ensuring the presence of accused persons against last year's data, it may be concluded that this year the Coalition monitored a 1/3 less hearings and criminal cases, in other words 328 hearings were

monitored in total of 191 cases, compared to 415 hearings in 300 cases in the previous year[3]. Of these 191 cases, detention was applied to 12 defendants in 9 cases. The figures obtained, compared to last year's 29 defendants in 29 detention cases, generate the conclusion of a serious decline in the number of indicted detainees from the randomly selected cases that were subject to monitoring. Namely, the simple correlation speaks of a decrease in the number of monitored detention cases for a little over than 50% of the cases and for almost 60% of detained defendants.

However, the comparative approach to the total number of cases monitored over the past year with this year's number shows that this is not a serious decrease in the number of detention cases as compared to last year. So, unlike last year when detention was imposed in 6.7% of monitored hearings, this year the detention measure is imposed in 4.7% of monitored hearings. Finally, the actual number or percentage of detainees is obtained by comparing the number of detainees with the total number of defendants in all monitored cases. Thus, unlike last year, when the percentage of detained defendants in relation to the total number of defendants was 4.7%, i.e. out of 611 defendants only 29 were detained, this year this percentage is 8.1%, i.e. only 12 out of 148 defendants were detained.

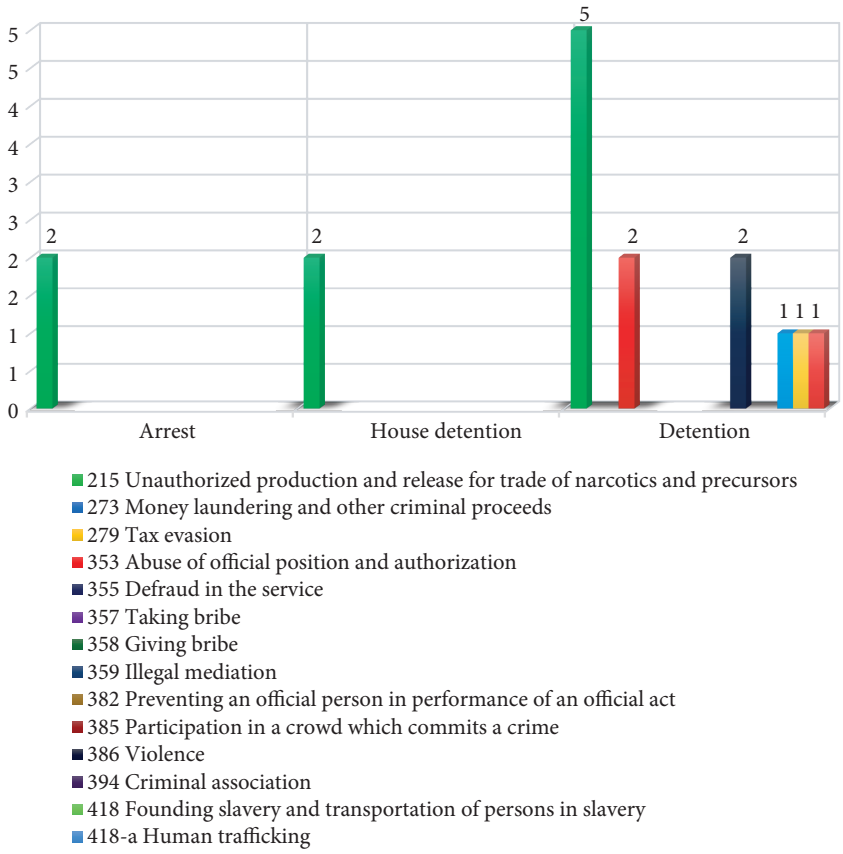
These data, in fact, generate the conclusion that this year there is a slight increase in the application of the detention measure as compared to last year. These figures, however, should not give rise to concerns due to two reasons.

The first reason is that as compared to last year we cannot conclude that we have a drastic increase in the application of the detention measure, because even with this percentage of detainees compared to the total number of defendants, the Macedonian criminal justice system is within the low threshold set by European standards where the percentage of detainees compared to all defendants is below 10%[4].

The second argument, which is more important than the first one and which directly explains the increase in the application of the detention measure, is the analysis of the type of crimes the Coalition monitors and analyses. Namely, unlike last year when subject to the analysis were all crimes prosecuted before the basic courts in the Republic of North Macedonia, regardless of the nature of the crimes, this year the analysis is focused only on organized crime and corruption cases. Hence, having in mind the type of criminality that this year's analysis deals with, the increase in the number of detained defendants is completely justified. On the other hand, these are not problematic figures, i.e. they are accurate data obtained from a random selection of cases which could to a large extent reflect the real situation in the courts across the country, is backed with the fact that this percentage of 8.1% in cases related to organized crime and corruption monitored in 2019 as compared to 4.7% in all types of criminal cases monitored in 2018 could not be interpreted as a significant increase (see graph no.12).

3 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2018, OSCE Mission to Skopje, 2019.

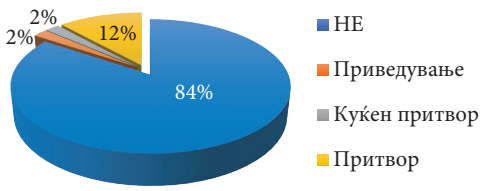
4 See: https://ec.europa.eu/eurostat/data/database or: van Kalmthout, A.M., Knapen, M.M. and Morgenstern, C., ed. Pre-trial Detention in the European Union, WLP, 2009, p. 55-56.



Graph no. 12
(Measures for securing presence and criminal acts for which such measures were imposed)

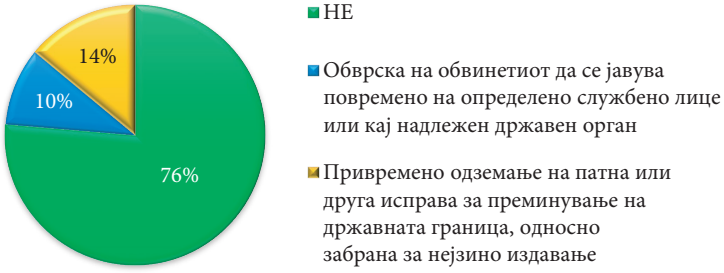
According to these data, we can conclude that most presence securing measures were imposed for the crime of Article 215 of CC - Unauthorized production and release for trade of narcotic drugs, psychotropic substances and precursors; two such measures imposed for each of the crimes of Article 353 of CC- Abuse of official duty and authorization and of Article 396 of CC – Violence; and one defendant in detention for the criminal acts of Article 418-a of CC – Human trafficking, Article 418-b of CC - Smuggling of migrants and 418-d of CC – Child trafficking. Given the crimes, we cannot comment on the courts' strictness and/or justification only in relation to the type of the crimes, because these are cases involving serious crimes for which, depending on the personal characteristics of the perpetrators, the application of stricter measures to ensure their presence is most often justified.

Data from the monitored hearings suggest that there is a serious decline in the application of lighter measures ensuring the presence of the defendant. Thus, unlike last year when such measures were imposed in 31 cases, this year similar measures have been imposed in only 12 cases (see graph no.13).



Graph no. 13
(Measures for securing presence)

Moreover, this year, out of the lighter presence securing measures, precautionary measures were ordered only against 22 persons, 9 of whom were ordered to occasionally report before a certain official or a competent state body, while the measure of temporary confiscation or prohibition of issuance of passport or equivalent international travel document was ordered against 13 persons. Finally, house detention was ordered against two defendants in two cases. Unfortunately, this year the application of the guarantee measure was not identified in any of the randomly selected cases for monitoring. The data concerning the application of lighter measures ensuring the defendant's presence, are, in fact, closer to the figures from two years ago[5] (see graph no.14).



Graph no. 14
(Precautionary measures)

Having in mind only the data pertaining to application of presence ensuring measures gathered from the monitored cases, it may be concluded that our courts largely respect the right of defendants to be presumed innocent and did not overly order measures that seriously violate their constitutionally guaranteed right to liberty[6]. With this in mind, we can reiterate our last year's satisfaction with the restrictiveness of the court in applying measures for ensuring the presence of the defendant, i.e. it can be concluded that our courts fully respect the right to liberty of the defendant in cases of organized crime and corruption.

However, observing these measures from such a perspective is one-sided, as it does not take into account the purpose of these measures, i.e. by favouring the right of the defendant to liberty, the right to effective trial and effective action is neglected. Given the high percentage of postponed hearings

5 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2017, OSCE Mission to Skopje, 2018.

6 See: Josipović Ivo, Uhićenje i pritvor, Targa, Zagreb, 1998, p. 38-40, and Tombs Jacqueline and Jagger Elizabeth, Denying Responsibility, Sentencers' Accounts of their Decisions to Imprison, British Journal of Criminology, 2006, (803-821), p. 810.

due to defendant's absence, it seems that the efficiency of the criminal justice system in the monitored cases cannot rely upon the application of the measures ensuring the defendant's presence. In other words, we can conclude that, unfortunately, judges often and too easily postpone court hearings where the defendant is absent, and when assessing the reasons for the defendant's absence, it often seems that judges perhaps have excessive understanding for the defendant's condition, thus failing to apply stricter measures to ensure their presence. Therefore, the authors consider that the high percentage of postponed hearings can be reduced to a certain extent by more frequently applying lighter measures for ensuring the presence of the defendant. By appropriately combining these lighter measures, an appropriate measure of coercion of appropriate quality and quantity could be created ensuring that the defendant is regularly present at court hearings, thus avoiding a situation in which the measures for ensuring the defendant's presence would get a punitive character.

Another conclusion is that judges do not have sufficient resources and procedural tools to check whether a defendant is absent for justified reasons or they are merely deceiving the court. Given this, judges could justify their decisions for a more frequent application of measures to ensure the presence of defendants during criminal proceedings. That is why we consider that it is necessary to revisit last year's conclusion for legal amendments through which a special unit could be introduced to the criminal justice system that would serve the judges with data about defendants' profiles. One of the ways to realize this recommendation is to amend and improve the Law on Probation, where probation officers could be authorized to assist judges; probation officers presently have similar authorizations since they are entitled, according to Article 11 of the Law on Probation, to prepare risk assessments as to convicts and defendants[7]. Of course, such legal amendments would inevitably lead to a significant increase in human and material capacities of the probation service, for which we are pleased to state that it has slowly started to exercise its legal competence and function.

Similar arguments in direction of a special service to assist judges in creating the social profile of the defendant are considered to be favouring the application of the home detention measure, which, unfortunately, this year has been reduced to only 2 cases compared to the last year's 14 cases. However, in comparison with 2017, when this measure was not even once ordered, we consider that we should welcome the fact that the court found strength to apply this lighter measure in at least 2 cases[8]. In that regard, we consider that it is necessary to revisit last year's conclusion regarding the proper application of the home detention measure and its restriction only to certain categories of persons.

We can be satisfied this year that this problem is properly addressed in the amendments to the LCP, which are in their final stage in a Parliamentary procedure. Unfortunately, they have not been adopted by the Assembly of the Republic of North Macedonia yet. In this regard, we can conclude that the Coalition's recommendations have been fully accepted and integrated into the proposed legal amendments to the LCP; they refer to the limitation of the application of the home detention measure comprising only the elderly and frail, pregnant women and chronically ill defendants[9], , having in mind the specifics of the home detention sanction in the Criminal Code.

However, unfortunately, we still do not have a proper intervention in the Law on Probation and in the LCP, with adequate provisions for improving the application of the home detention measure with electronic monitoring, through which the application rate of this measure could be increased and

7 Official Gazette of RM, No. 226/2015.

8 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2017, OSCE Mission to Skopje, 2018.

9 Ibid

improved. Given the similar mode of application of these two different measures, we consider that the presence securing measures - home detention and home detention with electronic monitoring - should fall within the competence of probation officers so that courts could be confident in the confidentiality and appropriateness of the application of these measures.[10]

It is precisely the similarity in the practical application of the lighter presence securing measures and the alternative sanctions by law enforcement organs, as well as the level of professional training of probation officers, that led us to the conclusion that, given the existence of a strong probation service with expanded authorizations to assist the court in the socio-economic profiling of the defendant in the criminal procedure, lighter measures could be more often applied, at the expense of detention, whereby the application of an effective combination of lighter measures would not call into question the defendant's presence at criminal proceedings[11].

As to the limited application or non-application of the guarantee measure, several arguments can be advanced, the first of which is the already widely elaborated problem concerning the availability of data about the defendant's property, as well as the problem concerning the complex ownership structure of property deposited by defendants as a guarantee that they would attend the hearings. Moreover, we consider that if the court had sufficient and appropriate data about the real property status of the defendant, it would often be satisfied with lower guarantee amounts, which in certain cases would be easier to effectuate in cases of unjustified absence of defendants from trials. Therefore, if the court had full insight into the financial and personal profile of the defendant before making a decision, it could independently and most appropriately determine the amount of the guarantee. This would avoid the practice where defendants propose excessive property as guarantee; property that is hardly transferable or effectuated in the event of escape of the defendant; in this case it does not represent a guarantee to the court that the defendant would appear regularly during all hearings of the main trial. This is for the simple reason that in case of flight, the deposited property, having such a complex ownership structure, would not be effectuated or liquidated by the court or by state institutions and thus, in case of failure of the guarantee, they would not be able to truly realize the threat (the confiscation). Therefore, we consider that the introduction of a special competence for specific profiling of the social and financial characteristics of the accused by establishing special services, either within the public prosecutor's office or within the probation services, could help in direction of overcoming the current enigma that exists in domestic courts as to the application of the guarantee measure[12].

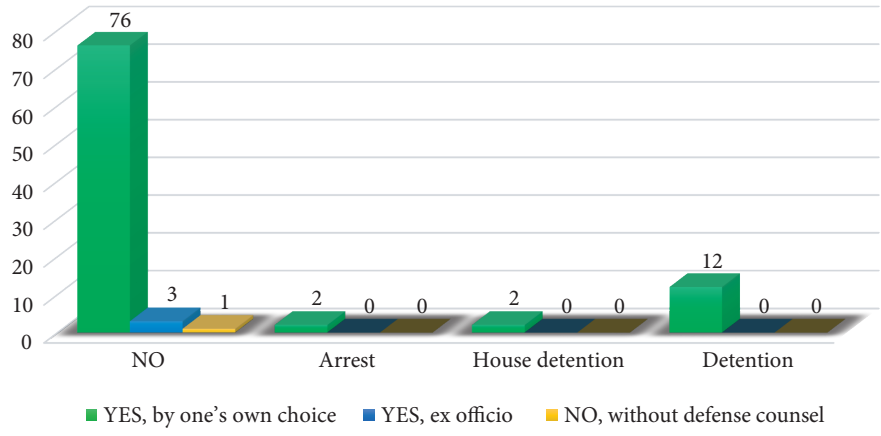
10 See: Hucklesby Anthea and Marshall Emma, Tackling Offending on Bail, The Howard Journal, Vol. 39, No.2. May, 2000, p. 150-170, or Misoski B., Can Law on Probation Improve the Implementation of the Measures for Providing the Defendant's Presence in the Criminal Trials in the Republic of North Macedonia?, EU AND MEMBER STATES – LEGAL AND ECONOMIC ISSUES Vol 3 (2019). https://hrcak.srce.hr/ojs/index.php/eclic/index

11 Empire case from the national jurisprudence, in which one of the defendants complained that by applying the precautionary measure Temporary confiscation of a passport or another document for crossing of the state border, i.e. prohibition on their issuance, their liberty was overly restricted, and demanded this measure be replaced with another measure – the guarantee measure. This only speaks in favor of the conclusion that if these measures are properly dosed and planned, they can represent a significant guarantee that the defendant will appear before court during criminal proceedings, instead of applying the strictest measure, at least according to the definitions, the detention measure.

12 See the competence of the probation services, for example, in Netherlands or France, see in: van Kalmthout, A.M., Durnescu, I., Probation in Europe, p. 23-30; or in USA Federal Pretrial Risk Assessment Instrument, User's Guide, Office for Probation and Pretrial Services, 2016. Accesible on: https://www.ncjrs.gov/ or Cesaro Gianluka, "Probation officers are key actors in reforming pre-trial detention and ensuring effective cross-border justice in the EU", accessible on: http://cep-probation.org/probation-officers-are-key-actors-in-reforming-pre-trial-detention-and-ensuring-effective-cross-border-justice-in-the-eu/

An additional argument regarding the (non)application of the guarantee measure is the fact that this measure, unfortunately, is still perceived as a replacement measure to detention, so the guarantee is often proposed as a replacement for the detention measure initially ordered during the investigation. In this regard, we consider that this practice somehow has a demotivating effect on the court putting it away from applying the guarantee measure during the monitored main hearings, in view of the fact that the court already ruled upon the proposed measure, whereby from the initial proposal to the second proposal there has been no major change in the factual circumstances of the defendant, the facts or his property status.

Regarding the effective legal assistance provided by the defence attorney, we are pleased to state that this year in all cases defendants who were put in detention had their own defence attorney. On the other hand, in no case a defence attorney was assigned ex-officio to a defendant, which is somehow expected, given the profile of the defendants in the monitored cases of organized crime and corruption (see graph no.15).



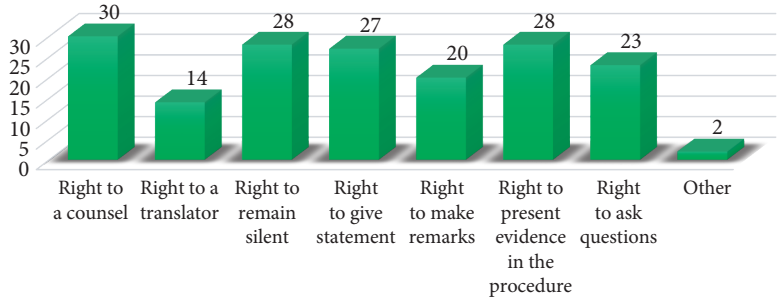
Graph no.15
(Presence of a defence attorney and detention)

ADVICE ON THE RIGHTS

The status of the indicted person in the proceedings is largely specific in itself, especially if we take into account the fact that in criminal proceedings the defendant is faced with a restriction of his/her liberty. In order to protect the defendant from arbitrary actions by state organs at any stage of the proceedings, the state guarantees certain procedural rights and if they are not observed, then the guaranteed right to a fair trial might be violated.

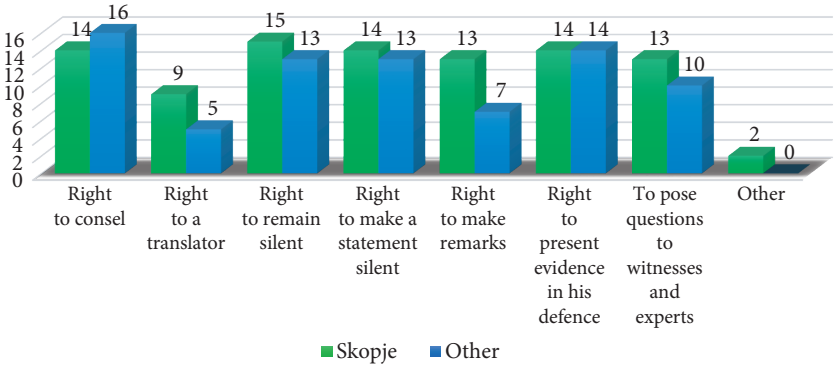
The grounds of the procedural guarantees in the proceedings are set in the phase when the defendant is acquainted with the content of the indictment and the qualification of the crime that they are charged with. During the monitoring of proceedings, the monitors found that in 15% of cases (half of which were conducted in Basic Criminal Court Skopje and the other half in Basic Court Kumanovo), the defendants were not asked at all by the court as to whether they understood the charges against them.

The defendant enjoys protection to the extent envisaged by law. So, according to the law, if the court acts contrary to the provisions envisaging obligatory advice on the defendant's rights, the defendant's statement cannot be used during the court proceedings. This is the reason why this year's analysis also analyzed the advice on the defendant's rights. So, during the processing and analysis of data collected by the monitors, we established (graph no.16) that the most common rights the defendant was advised on were the right to counsel, the right to present evidence and the right to remain silent, unlike last year's data which suggested that the rights most frequently advised on were the right to make a statement, the right to present evidence in one's defence, as well as the right to remain silent, followed by the right to remark and counsel. What is identical to 2018 data is the advice on the right to translator, which is obviously used restrictively, both in organized crime and corruption-related cases or adult-related criminal cases.



Graph no.16
(Rights advice)

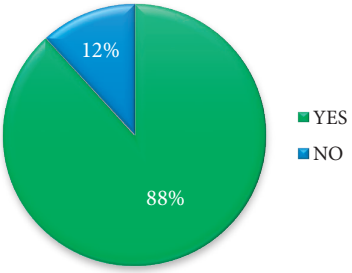
Considering the amount of cases monitored in Basic Criminal Court Skopje, and the amount of cases monitored in other cities, the advice on rights have a similar ratio, with the right to translator and the right to make remarks being the least advised rights in the other courts in the country (see graph 17).



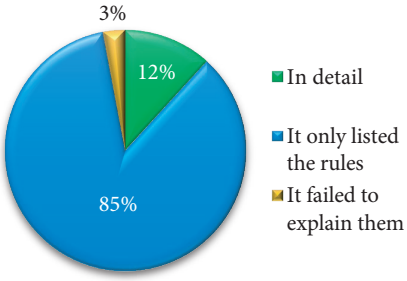
Graph no.17
(Advising on rights in Basic Criminal Court Skopje as compared to other basic courts)

The Commentary to the LCP suggests that "each advice of Article 206 (1) LCP, should be individually given to the defendant and the defendant should be given a possibility to express

themselves as to each of the rights of paragraph 1 to this Article[13]." If this interpretation by the authors had been accepted by the judges implementing the law, then graph 16 or 17 would have fully contained all the categories of envisaged rights and now they would have shown an amount of 100 percent, but given that this is not the case, it remains that this question be addressed to practitioners in order to improve the situation in terms of advising on rights. However, advising on the defendants' rights means not only listing the rights, but an explanation thereof that is understandable to the defendant. This is another situation that, perhaps, requires intervention when the law is applied as in 12% of cases the monitors registered that the defendant's rights were not appropriately explained. That happened since these rights were not explained in a language sufficiently understandable to the defendant (graph no. 18). Such a negative practice was noted in the basic courts in Bitola and Struga and within only one case in Basic Criminal Court Skopje.



Graph no. 18



Graph no. 19

Although there is an improvement compared to last year with respect to the explanation of the defendant's rights in a language understandable to the defendants, we did note a certain setback in that respect. Namely, the percentage of explanation of the rights in language understandable to the defendant was 93% in 2017, dropping to 75% the year after, and then in 2019 there is an upward trend, reaching 88%. While researching this issue more deeply, in terms of the scope of explanation, we have found a large percentage of hearings in which the judge only listed the rights (85%), and in a minimal part (3%) the rights were not explained at all. Such negative statistic refers to the Basic Court Bitola where in a large number of hearings the rights were only listed, but there were also hearings where they were not explained at all.

APPLICATION OF THE ADMISSION OF GUILT

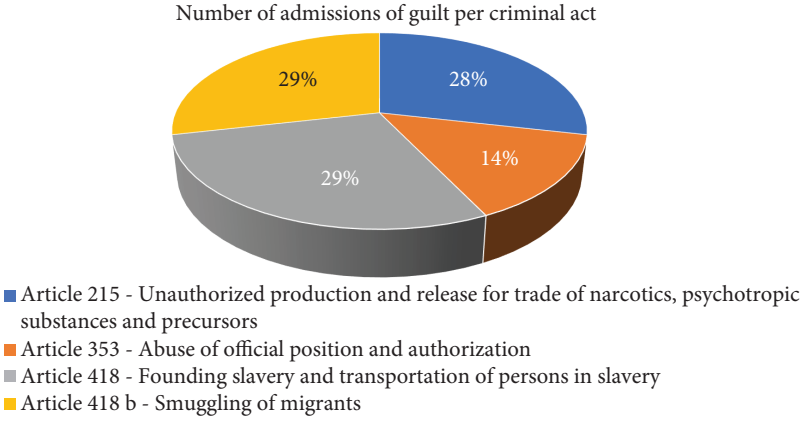
The procedure for admitting guilt during the main hearing is an indispensable element of the analyses of the Coalition for Fair Trials, through which the fairness of monitored proceedings is analyzed[14]. The specifics of the criminal proceedings in which the defendants enter guilty pleas are interesting for analysis from both a theoretical and a practical point of view. The level of observation

13 Kalajdjiev G., Lazhetikj G.. Nedelkova L., Denkovska M., Trombeva M., Vitlarov T., Jankulovska P., Kadiev D., Commentary on the Law on Criminal Procedure, OSCE, Skopje, 2018

14 A procedure that has been recognized in many legislations around the world, as well as by the Council of Europe through the Recommendation No. (87) 18, of the Committee of Ministers to Member States Concerning the Simplification of the Criminal Justice. See also: Buzharovska G., Misoski B., Plea Bargaining under the CPC of the Republic of Macedonia, in Simplified Forms of Procedures in Criminal Matters – Regional Criminal Procedure Legislation and Experiences in Application, Ivan Jovanovic and Miroljub Stanisavljevic eds., OSCE Mission to Serbia, 2013

of procedural rights of the defendant in correlation with the defendant's voluntary waiver of one part of the procedural guarantees for a fair trial have a particular impact on the overall public perception about the fairness of the criminal proceedings, apart from the impact of such summary procedure seen through the prism of the procedural economy and the saving of judicial resources and the impact of such procedural actions. Moreover, the impact of the defendant's admission of guilt on the other procedural actions undertaken during criminal proceedings, primarily on the evidence and degree of proving is among others directly related to the degree of efficiency of the criminal justice.

In cases monitored this year, the monitors noted only 7 admissions of guilt. Such data speak of the fact that the admission of guilt made during the main hearing becomes a rarity in the monitored cases. Namely, unlike the 40 admissions of guilt recorded in 2017[15] and the 26 in 2018[16], this year, unfortunately, our monitors witnessed only 7 admissions of guilt made by defendants during the main hearing. Such an exponential decline in admissions of guilt made by defendants during the main hearing possibly reveals a systemic issue in relation to the application of this institute in criminal proceedings.



Graph no. 20

Namely, despite the observed negative preconditions for the decline in the number of admissions of guilt made by defendants during the main hearing, such as the abolition of the predictability of the criminal sanction, which was interpreted as a desired epilogue with the abolition of the widely criticized[17] and slackly put together Law on Determining the Type and Measuring the Severity of Criminal Sanctions, it seems that such a practice of failing to use the admission of guilt of the defendant during court proceedings is becoming an issue with problematic proportions. We can point to two reasons for the court's failure to use this institute.

15 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2017, OSCE Mission to Skopje, 2018.

16 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2018, OSCE Mission to Skopje, 2019.

17 See: Kanevchev M., About some (controversial) solutions from the Law on Determining the Type and Measuring the Severity of Criminal Sanctions, MRCLC, year. 24, no. 1, 2017, available on: http://maclc.mk/Upload/Documents/Metodija%20Kanevchev%202.pdf or Tupancheski N., Deanoska Trendafilova A., One year after the application of the Law on Determining the Type and Measuring the Severity of Criminal Sanctions – problems and challenges, MRCLC, year.24, no.1, 2017, available on:http://maclc.mk/Upload/Documents/Tupanceski,%20Deanoska.pdf

Above all, one reason for not using the admission of guilt as an effective and fast way to end criminal proceedings is the mild criminal policy, which means that the defendant would usually receive either the same or a lighter criminal sanction after the regular criminal proceedings compared to the sanctions following a guilty plea. We therefore consider that it is advisable to prepare a specific Guide for judges and parties in criminal proceedings, through which the proposed sanction and its reduction in relation to the crime of concern would become evident if a defendant decides to admit guilt. However, we consider that this Guide should not have a binding force; it should only be instructive and prepared in accordance with real, objectively measurable and statistical and fair criteria[18]. In other words, it should be quite the opposite of the former and fortunately no longer in force Law on Determining the Type and Measuring the Severity of Criminal Sanctions. Certainty and severity of sanctions should be predictable by using the ACCMIS to generate average sanctions for similar crimes. However, given the degree of quality that can be attributed to this system now, we consider that such a way of determining average sanctions would be possible and safe only after the ACCMIS system has been thoroughly reformed and upgraded and properly applied for several years, aimed at obtaining relevant statistical indicators from cases entered in this system[19].

The second reason why this procedure is not used often in criminal proceedings can be attributed to the longevity of criminal proceedings and the uncertainty of punishment after the conducted criminal proceedings, being something that we have started to witness more and more often. Namely, due to the frequent postponements of court hearings, often at the fault of the defendants and their defence attorneys[20] who find procedural possibilities to delay the criminal proceedings even after the statute of limitations has applied, it seems that sometimes it is really improper to expect that the defendants would like the criminal proceedings against them to be completed in only one hearing and within a relatively short and quick time interval.

An additional argument supporting this claim is the fact that out of 7 admissions of guilt made during the main hearing, 5 were made for minor criminal acts subject to summary proceedings, whereas only 2 admissions of guilt were made for criminal acts punishable by over 5 years of imprisonment and for which regular criminal proceedings were conducted. This means that defendants are not ready to immediately plead guilty for more complex and serious crimes; they usually decide to enter guilty pleas only for lighter crimes subject to summary proceedings.

In this regard, we consider that it is necessary to increase the efficiency of the court's actions, thus increasing the certainty of a final epilogue of the criminal proceedings, being a basis for increasing the number of admissions of guilt made by defendants during criminal proceedings.

An additional argument regarding the decline in the number of admissions of guilt can sometimes be found on the evidence-related side of the indictment. Namely, it seems that in conditions

18 According to the way of preparation of U.S Federal instructions for sentencing see Gruevska, Drakulevski A., Misoski B., Comparative analysis of the instruction mechanisms concerning the process of measuring the severity of sentences: Instruction on measuring sentences in USA, MRCLC, year 21, no.1, 2014, available on: http://maclc.mk/Upload/Documents/06.pdf. We also warn that we should be careful not to repeat the mistake that was made with the Rulebook on measuring the severity of sentences, adopted by GNM, which was also an interesting moment in the recent Macedonian legal history. See: Lazhetikj Buzharovska G., Unharmonized penal policy and its impact on the plea bargaining according to the Law on Criminal Procedure, MRCLC, Vol. 21, no. 1, 2014. available on:http://maclc.mk/Upload/Documents/03.pdf

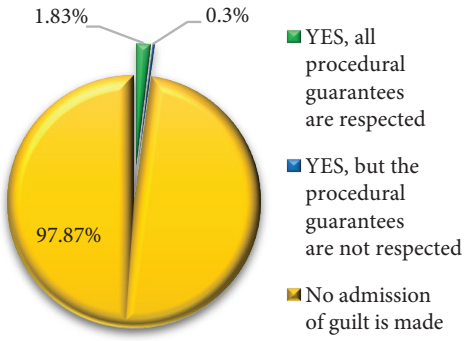
19 In this way, the experiences of the courts in England could be followed, for more see: M. McConville, "Plea Bargaining: Ethics and Politics", Journal of Law and Society, Vol. 25, no. 4, 1998, p. 570 and other; or Sprack John, A Practical Approach to Criminal Procedure, Oxford University Press, 10-th Edition 2005, p. 92.

20 In that direction see the latest data of the Basic Criminal Court concerning the application of the statute of limitations in the case known as "TNT".

of lengthy court proceedings the witnesses have a tendency to change their opinion because of fear of uncertainty of the criminal proceedings. This may primarily be concluded considering the complex nature of the criminal acts that were subject to monitoring and analysis this year, as well as the fact that these cases often see defendants who have strong social connections through which sometimes, in the proceedings, they calculate the possibility to influence certain evidence, primarily witnesses, in their favour. Truth be told, the current set-up of the system of the criminal procedure in which such evidence is only collected during the investigation and presented only at the main hearing, where the statements of witnesses are only noted on the record during the investigation, and less frequently recorded by the public prosecutor, thus of limited use at the main hearing, has a great influence on witnesses and their willingness to testify in trials. Therefore, we consider that especially in these cases judges should take into account the LCP provisions and apply them in the sense that hearings are more frequently scheduled and attendance of all entities in the criminal proceedings is harmonized, instead of scheduling one to two hearings per month.

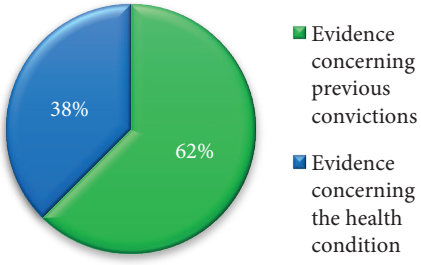
On the other hand, while analysing the fairness and legality of the proceedings in which admissions of guilt were made, we cannot conclude that there were major procedural violations causing non-application of this institute or a drastic decrease in its application.

Namely, if we take into account the data from the hearings provided by our monitors, in which admission of guilt was made, we can conclude that in 6 out of 7 cases the court acted in accordance with the LCP provisions, observed the rights of the defendant and provided clear advice on the type of indictment against the defendant, the consequences from the guilty plea, and made appropriate professional effort to assess whether the guilty plea was made knowingly and voluntarily (see graph no. 21).



Graph no.21
(Admissions of guilt made)

As to whether the admissions of guilt were factually backed, evidence in relation to previous convictions of the defendant was presented in 6 cases, and in 3 cases evidence was presented in connection with the health condition of the defendant. We consider that the practice of assessing the health condition of the defendant is particularly to be welcomed, especially in cases where the court doubts the defendant's ability to admit guilt (graph no.22).

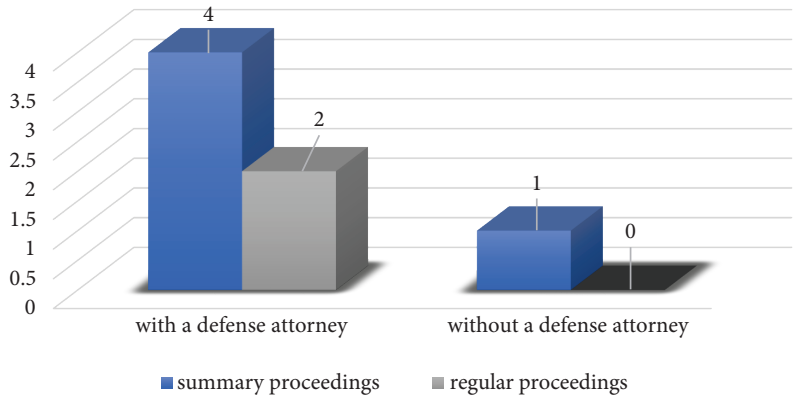


Graph no.22
(Evidence presented after making admission of guilt)

We welcome the fact that in all cases in the regular procedure in which an admission of guilt was made, the defendant was accompanied by a defence attorney who did not object to the lack of time

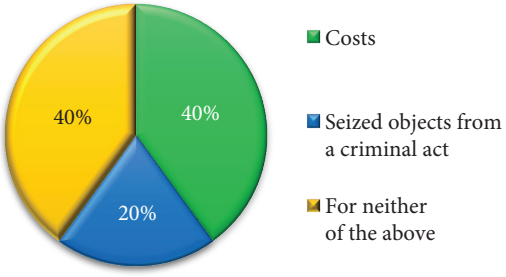
to properly prepare effective defence of the defendant. However, regrettably, there is one admission of guilt made in summary proceedings in the absence of a defence attorney. Although this is not expressly contrary to the LCP provisions, we consider that in such cases, given the particularly important procedural guarantees put at the disposal of the defendant during the main hearing which they voluntarily waive by admitting guilt, the court should warn and advise the defendant to seek assistance from a defence attorney (see graph 23).

Admissions of guilt made in regular and summary proceedings with and without a defence attorney



Graph no 23
(Admission of guilt and defence attorney)

We consider that the effective role of the court[21] in the protection of the defendant's rights in conditions of admission of guilt made in summary proceedings in the absence of a defence attorney should be additionally studied. We think that it might be reasonable to consider correcting the LCP provisions by introducing a mandatory presence of a defence attorney if the defendant feels prepared to admit guilt during the main hearing and in the summary proceedings, being an additional guarantor of the rights of the defendant, irrespective of the fact that in such cases the court is the one who guarantees these rights to the defendant.



Графикон бр.24
(Одлука на судот)

21 To that aim, one could use the information of the original model detected by Alshuler in: Alschuler, Albert W., The Trial Judge's Role in Plea Bargaining, Part I, Columbia Law Review, Vol. 76, No. 7. 7. (Nov., 1976), pp. 1059-1154, as well as of domestic authors: Misoski B. , Ilikj Dimoski D., Judges' Role in the Evaluation of the Defendant's Plea within the Sentence Bargaining Procedure, Journal of the Faculty of Security, Skopje, University St. Klement of Ohrid, Bitola, 2016.

In the cases resulting in guilty pleas, we are happy to see an increase in the number of decisions reached by the court on the secondary elements of the criminal case besides the main ones related to the type of crime. Thus, according to the data of our monitor, we can establish that the court ruled on seized items and court costs, which is in fact a legal obligation in such cases. In this regard, we would like to repeat the last year's conclusion[22] that the increase in the percentage of decisions made by the court on other elements of the case besides the sanction, especially with regard to any damage, would increase the public confidence in the judiciary as the public impression would be that the court had completely resolved the case in relation to all interested persons. This way, a conclusion is generated by the public that, in cases of guilty pleas, all the characteristics and guarantees of the criminal procedure have been observed and the proceedings are perceived as fair and acceptable. Therefore, we consider that judges should make increased efforts in such cases and more often decide on compensation of damages, by refraining to refer the damaged parties to civil disputes (see graph no. 24).

The admission of guilt at a main hearing, according to our data from the monitored cases, seems to have developed certain specifics in relation to the original solution borrowed and adapted from the US criminal justice system. In this regard, we can single out some interesting conclusions that are somehow problematized in practice by the theoretical views on the fairness and effectiveness of the admission of guilt, which, in turn, seem to require change or correction and improvement, or appropriate commentary on the proper application of the LCP provisions regulating the admission of guilt.

The first aspect worthy of a comment is the court's degree of conviction in the admission of guilt. Namely, according to the monitored practice, there is obvious impression that the court gives too much faith in the admission of guilt made by the defendant[23] and, in general, only exceptionally evidence is adduced in support of the veracity of the admission of guilt made by the defendant. According to this, there is an obvious impression, which is also wrong, that the admission of guilt made by the defendant is the crown evidence with a supreme evidentiary value, which is a formalization of the evidence. According to the court's theoretical concepts, from the comparative law, we consider that it is advisable to repeat the conceptual specifics of the admission of guilt made during the main hearing in relation to its evidentiary value. Namely, according to the original criminal law system in the United States, in case of a guilty plea made by the defendant during the main hearing, the court should be convinced at a level that is between preponderance of the evidence and persuasion beyond reasonable doubt[24]. Or, in practice, this would mean that the public prosecutor should have appropriate evidence in the quality of which they are convinced beyond reasonable doubt that after conducting regular criminal proceedings by presenting the very evidence they would be able to convince the court of the defendant's guilt beyond reasonable doubt[25]. In no case is the federal court in the United States limited

22 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2018, OSCE Mission to Skopje, 2019.

23 As to the evidentiary value of the admission of guilt see Damaška M., Okrivljenikov iskaz kako dokaz u suvremenom krivičnom procesu, Narodne Novine, Zagreb, 1962, p. 65.

24 See: Hall D.E., Criminal Law and Procedure, 5thEdition, Delmar Cengage Learning, 2009,p. 394, or Tapper, C., Cross and Tapper on Evidence, 12th Edition, Oxford University Press, p. 627 or Ingram L.J., Criminal Evidence, 12-ed. Elsevier, 2015; as well as, for example: Viano, E., Plea Bargaining in the United States: a Perversion of Justice, Revue Internationale De Droit Penal 2012/1-2 (vol. 83), available on: https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-109.htm#

25 See: Israel J.H., Kamisar, Yale, LaFave W. R., Criminal Procedure and the Constitution, Leading Supreme Court Cases and Introductory Text, 2003 Edition, ThomsonWest или Bibas S., Incompetetnt Plea Bargainig and Extrajudicial Re-forms, Harvard Law Review, Vol. 126, 150:2012, available on: https://www.law.upenn.edu/cf/faculty/sbibas/workingpa-pers/126HarvLRev150(2012).pdf

in its entitlement to present any evidence from the list of evidence attached to the indictment, but what is essential to this institute in the United States is that the court, in order to assess the defendant's awareness and voluntariness of the admission of guilt, can ask the defendant, during the hearing, that they themselves fully acknowledge the criminal act for which they admit guilt and describe how the criminal act has been committed, at least as described in the indictment. This way, the United States federal courts can assess whether it comes to a true and complete, or partial and false admission of guilt, thus knowing whether to accept or not the admission of guilt.

Unlike the Federal Rules of Criminal Procedure and the practice of federal courts in the United States, in our country the process seems to be upside down, so after the presentation of the indictment by the public prosecutor, the court only determines whether the defendant is aware of what they are admitting to and whether the admission of guilt is made on a voluntary basis, without asking the defendant to testify and explain how and why the crime they are charged with was perpetrated. In fact, such a testimony and explication represents a full admission of guilt similar to the original Anglo-Saxon solution. Viewed this way, in our country the procedure in which the defendant makes admission of guilt is unjustifiably formalized, and the admission of guilt is glorified.

The corrective mechanism in our criminal justice system is consisted of paragraph 3 of Article 381 of LCP which regulates the procedure for admission of guilt. Namely, in our criminal justice system the protection mechanism enabling the court to avoid false or incomplete admissions of guilt is composed of two parts. The first part consists of a stage in which the court assesses whether the guilty plea is entered by the defendant on a voluntary basis, whether the defendant is aware of the resulting legal consequences and whether they are aware of the consequences of the compensation claim and the costs of the criminal proceedings (paragraph 2 of Article 381). This is being done immediately after the opening remarks and advising the defendant of their rights, in sense of Article 380 and paragraph 1 of Article 381 of LCP. On the other hand, the second part is realized after the assessment of the awareness and voluntariness of the defendant's admission of guilt, where, in sense of paragraph 3 of Article 381 of LCP, in the evidentiary procedure the court shall present only the evidence related to the decision on the sanction.

What we consider to be incorrect or, moreover, a too restrictive interpretation of the LCP provisions by the court, is the fact that there is a practice in the courts in the Republic of North Macedonia where the decision on the sanction is backed only by taking into account the evidence of previous convictions of the defendant. It does not represent in itself significant evidence in order to mete out the type and the severity of the criminal sanction and absolutely has no evidentiary value as to the veracity of the admission of guilt.

In this regard, we consider that through such an undoubtedly narrow interpretation of the provision of paragraph 3 of the article, the admission of guilt gains unjustifiably greater weight than any other evidence. Therefore, we consider that in sense of the modern theoretical postulates for equal evidentiary value and force of the confession, we should proceed with certain corrections of the procedural law in two directions. The first correction, and at the same time a simpler one, is to delete the words from the part of paragraph 3 of Article 381 that refer to the types of evidence, i.e. the words "evidence that refers to the decision on the sanction". This is all the more so because in our law there is no division of evidence into evidence supporting the sanction decision and evidence supporting the guilt decision.

In this way, the court could present as much evidence in quantity and quality as it needs to be convinced of the veracity of the admission of guilt.

According to the last year's proposals[26], the second amendment to LCP should refer to the introduction of a special evidentiary hearing for measuring the severity of the sanction, according to the original US model[27], which would oblige parties to present that they are in possession of evidence with a degree of preponderance of conviction that the admission of guilt is true or not, and then, upon an any objection raised by some of the parties, the challenged evidence could be presented and evaluated in a contradictory procedure. The answer to whether and to what extent this proposed opportunity could have an impact on the practice deserves further analysis and research, which should undoubtedly be carried out and whose results, we hope, would contribute to an increase in the application of this institute in our criminal procedural law.

MAIN HEARING - EVIDENTIARY PROCEDURE

With the transition from accusatory to adversarial system in the Law on Criminal Procedure, the dynamics of the proceedings and the rules by which they take place changed, but the rights of the parties in the proceedings were improved, especially with respect to the procedural guarantees for defendants. Consequently to this, the key stage in the proceedings - "the proving", was vested a completely different dimension than before. The presentation of the evidence on which the indictment and the defence are to be based, the examination of witnesses in the proceedings, the role of the court in conducting the proceedings, the use of additional expert resources by both the prosecution and the defence, the examination of the defendant, if any and if the defendant wishes to be exposed to this process, etc., are only some of the key changes built into the current LCP, the application of which, despite many years of practice, is not yet complete and proper.

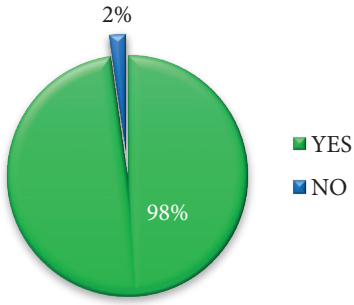
The phase when evidence is adduced is an essential part of the procedure. This is because in the end, the evidence and the possibility to refute it as well as the ability of the public prosecutor to prove beyond reasonable doubt the merits of the indictment and thus the commission of a certain criminal act, are assessed by the manner in which evidence was adduced.

As the burden of proof is on the public prosecutor's office, the law envisages that the prosecution should have priority in the order of presentation of evidence. So, first, all evidence proposed in the list of evidence filed with the indictment is presented by the public prosecutor's office, followed by the presentation of the evidence by the defence. In order to refute the presented evidence, the law allows production of additional evidence upon a proposal made by any of the parties, but only evidence that the parties were unable to propose in their list of evidence or evidence that they were unaware of until then.

26 See: Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2018, OSCE Mission to Skopje, 2019

27 See: Haddad, James B., et al, Criminal Procedure, Cases and Comments, 5-th ed. Foundation Press, New York, 1998.

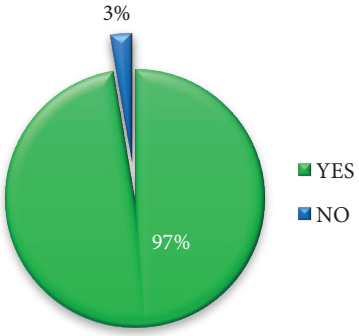
As shown in graph no.25, the evidence, in principle, is presented in accordance with the legally envisaged order. However, some minor exceptions were noted in 2% of the monitored hearings when this rule was not followed, i.e. the order was changed for purposes of "economy of the procedure". This is so because judges wanted to grasp the opportunity and take advantage of the presence of some of the proposed witnesses to examine them while they were still in the court building. The court can make such an exception in accordance with paragraph 1 of Article 385 of LCP, envisaging that the court can assess if the conditions for "accelerating" the procedure have been met, being in favour of the economy of the procedure.



Graph no 25
(Was the evidence presented according to the legally envisaged order)

Of particular importance to the proper presentation of evidence and to the convincing value of the theories of case of both parties (the public prosecutor's office and the defence) is that each party is given an opportunity to create their own schedule and plan of presentation of evidence, as well as an opportunity for the parties to present the evidence they proposed.

According to the processed data collected from the field, the analysis shows that in only 3% of cases there were deviations in the list of evidence of one of the parties. Statistically seen, given the data from the past years, this figure is becoming constant, i.e. there is neither improvement nor regression.

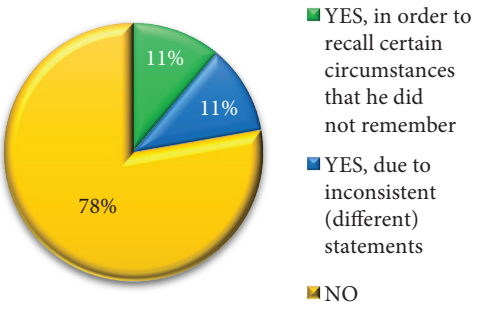


Графикон бр. 26
(Дали изведувањето на доказите беше согласно листата на докази на странката)

Having in mind that the burden of proof is with the public prosecutor and given the fact that this is an accusatory procedure, the law envisages that evidence is presented directly at a main hearing, as this opens the possibility for cross-examination by the opposite side. The idea of directly presenting evidence is in the context of that the witness should be examined at the main hearing in person, instead of replacing the witness examination by reading out a record of the witness' previously given statement. However, the law allows exceptions to this type of presentation of evidence (Article 388, paragraph 5 of LCP) and allows the adducing of previously given statements, of course, if appropriately recorded by competent authorities. Thus, in order for the statements of some persons to be later used and adduced during cross-examination or for refuting the already stated allegations, and for assessment of the veracity of the statements given at the main hearing, the parties in the proceedings have the opportunity to practice this exception to the rule regulating the direct presentation of evidence, in accordance with the law.

The application of this exception was noted in the proceedings that were subject to monitoring during the past year, after which we obtained the data shown in graph no.27 below. Namely, the largest

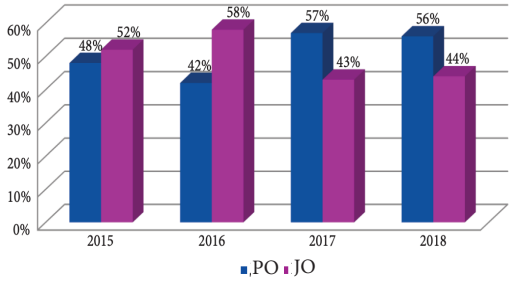
percentage of cases did not deviate from the rule regulating the direct presentation of evidence (78%), and when such deviation occurred, it was due to the need to recall circumstances that the witness could not remember (11%), as well as due to inconsistencies in earlier statements (11%).



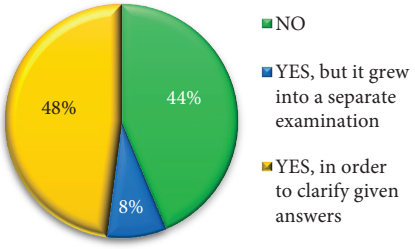
Graph no 27

(Were preliminary proceedings statements used in the examination)

The passive role of the court, as per the current Law on the Criminal Procedure, implies monitoring the proceedings, as well as controlling the manner and order of examination of witnesses and experts, as well as the presentation of evidence, by safeguarding the procedure's effectiveness and economy. Although in recent years we have seen a difficult transition in the role of the court from a complete controller of the proceedings to a relatively passive monitor, we can note that the court undertakes more appropriate actions in the type of thematic proceedings that were subject to monitoring, i.e. proceedings in the field of organized crime and corruption. Specifically, if we look at the statistics for the past years resulting from monitoring of proceedings within the courts' criminal departments dealing with adult perpetrators, we can see that the "new" role of the court (passive) is not properly applied (graph no. 28). In a large percentage of proceedings, the court still assumes an active and controlling role in the examination of witnesses. However, when it comes to cases of organized crime and corruption, we have noted a minimal, yet visible improvement, i.e. a better result with respect to this issue. Thus, last year we identified a situation of application of such actions by the court which are largely restricted by the law; with respect to 2018 adult related criminal cases, the level of additional examination performed by the court in order to clarify answers was at about 50%, slightly higher than the percentage in the organized crime cases (graph no. 29). However, we have identified a higher percentage of cases in which the examination grew into a separate examination (see graph no.29), unlike the percentage of last year's criminal acts, which was twice as low in comparison with 2019 organized crime cases.



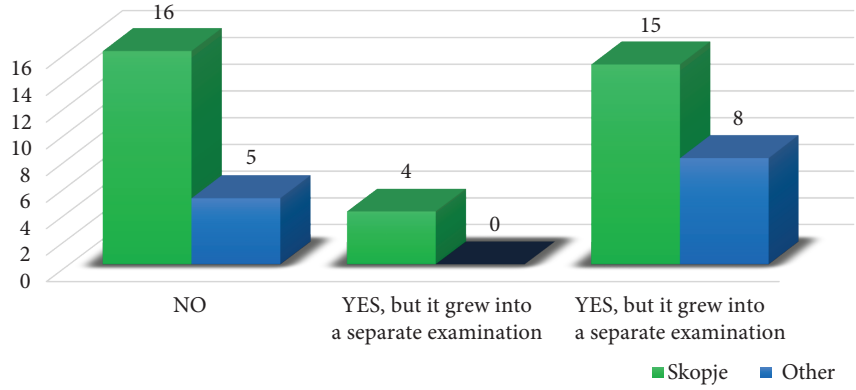
Graph no 28



Graph no 29

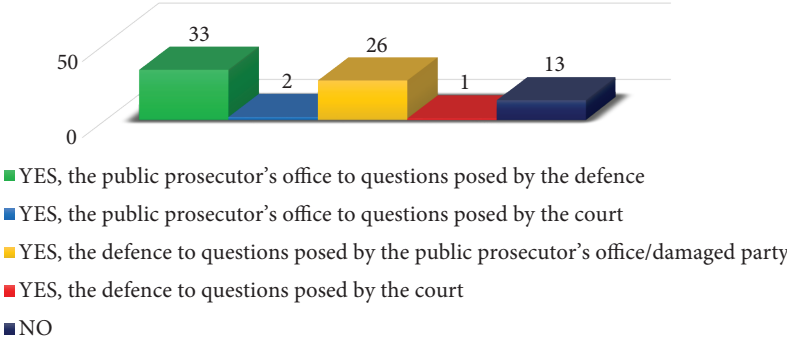
(Did the court use its right of paragraph 5 of Article 383 entitling it to pose questions to the witness/expert)

After a detailed analysis of the state of affairs per individual court, it can be seen that, in comparison with other courts, the Basic Criminal Court Skopje statistically has a "negative lead" in the practice of using the opportunity to get involved to a certain extent in the process of examining witnesses (graph no.30). This backs the conclusion that the quantitative approach applied with respect to collecting and processing case data mostly and dominantly comprises the Basic Criminal Court in Skopje.



Graph no. 30

An interesting novelty noted by our monitors is the fact that the application of raising objections takes on a slightly different dimension than usual. Namely, there were cases where the public prosecutor's office or the defence reacted or objected to questions posed by the court to witnesses or experts summoned at the main hearing (graph no. 31).



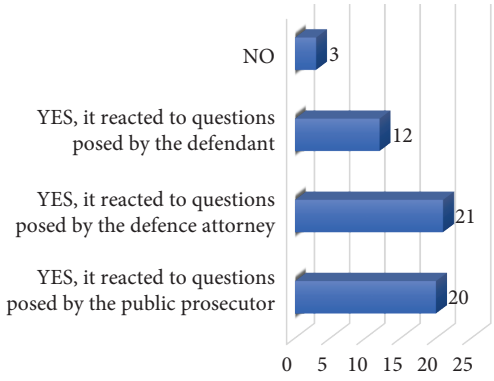
Graph no. 31

(Did the parties raise objections to the way the questions were posed during the examination)

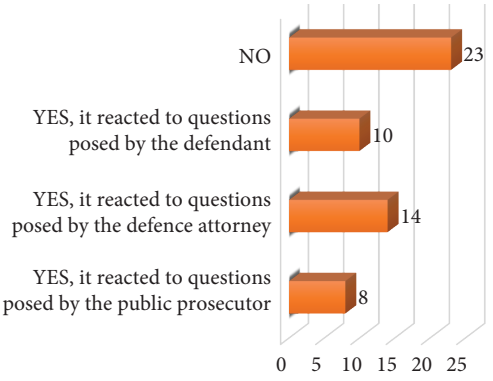
However, whether objections were raised by one or the other party to questions posed by the opposing party or to questions posed by the court, it is observed that the court, in a large percentage of 15%, failed to enter all of the objections in the record.

What is interesting, on the other hand, is how the court reacted, or decided to allow or disallow certain questions. The law envisages that in case the parties fail to raise an objection to a certain question, the presiding judge or the individual judge can react and prevent the posing of an irrelevant or inadmissible question. However, they are **obligatorily** bound to react upon parties' objections to certain

questions posed in direct and cross-examination[28]. According to available data, in all cases in which the parties failed to raise objections, the court had fewer reactions to the questions posed; even when the court reacted in conditions in which no objection had previously been raised, it did so more towards questions posed by the defence (defendant and defence attorney) than to questions posed by the public prosecutor (a comparative display in graphs 32 and 33).



Graph no. 32

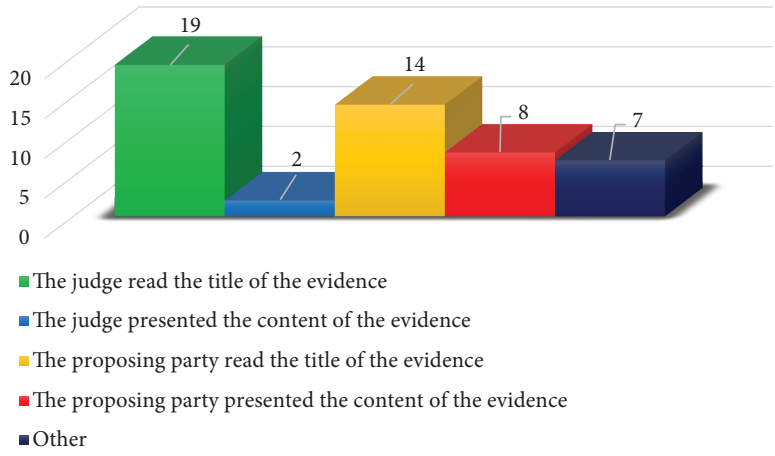


Graph no. 33

The court safeguarded the admissibility of questions and the fair examination:
AFTER the opposing party had raised an objection / WIOTHOUT objection raised by the opposing party

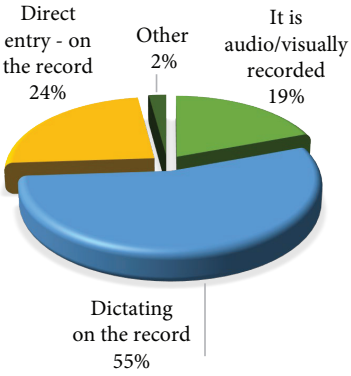
When it comes to the manner of presenting evidence in the proceedings, although the law envisages that the proposing party shall present the evidence in the order it has chosen to, to prove their theory of case and support their case management strategy, very often the parties did not present their evidence, but rather read, often only the title of the evidence indicating the type of evidence. Graph no.34 reflects this practice adopted by the court and the parties. Thus, instead of a transparent and direct presentation of evidence by the parties briefly presenting their content in order for both the parties and the public to be acquainted with a specific evidence in the proceedings, it has been noted that in a dominant part of cases, the judge was the one who read out the title of the evidence, meaning that the parties did not present any evidence. And even when the court does not read out the title of the evidence, the parties, identically to the court, do so. In a very small part of proceedings, the parties themselves presented the evidence by acquainting the court, the opposing party and the public with its contents. This is a practice that needs to be promoted and improved, in direction of practicing the principle of direct presentation of evidence in public proceedings. Regardless of the fact that the law promotes equality of arms and publicity, if these principles are not applied during all phases of the proceedings, including this one - the part in which evidence is presented, we could conclude that it might become as dangerous as a closed trial in which the presentation of evidence, and the procedure itself, is done behind "closed doors".

28 Commentary to LCP , Gordan Kaladjiev, PhD et al.

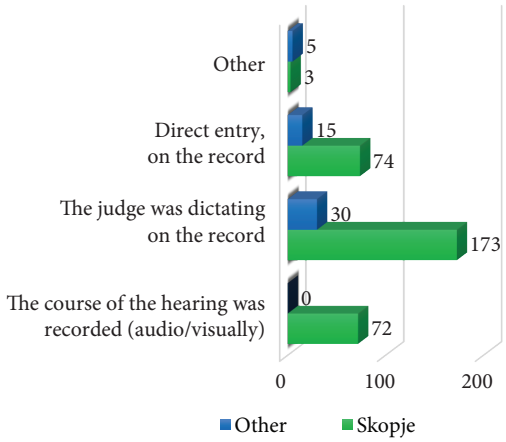


Graph no. 34
(How was written and material evidence presented)

Article 374 of the Law on the Criminal Procedure regulates the recording of the main hearing. It is envisaged that the main hearing shall be audio or audio-video recorded, and that at the beginning of the hearing the Presiding judge shall inform the present parties and the other participants in the proceedings that the hearing is being audio or audio/video recorded and that such records are considered audio or audio/video records of the hearing. As to this issue, an identical situation is observed each year, whether in adult related criminal cases or cases (this year) in the field of organized crime and corruption. The court has failed to make enough efforts to correct its practice of dictating word for word what has been presented at the main hearing, on the record. Moreover, it fails to audio or visually record the hearings. Last year, though the thematic area of interest was not identical to the one of this year, 2018 was observed to be the year with highest number of audio/video recorded hearings. However, in 2018, one of the detected state of affairs, that we are informed of, was the need to record hearings, because in that period none of the hearings were recorded. However, this year, according to graph no. 35, a (relatively) high percentage (19%) of hearings were audio/video recorded, but still, the high percentage of keeping records through dictation by the court instead of having the content being directly entered by the parties to the proceedings is clearly dominant. This further leads to a worryingly large number of hearings that are recorded in a way in which the president of the trial chamber dictates on the record.



Graph no. 35



Graph no. 36

(How were the course and the presentation of evidence recorded at the main hearing)

When it comes to the comparative approach analysing the situation comprising the Basic Criminal Court Skopje and the other courts in the country, within the activities they undertake as to this issue, it is clear that only in this court (graph no.36) there are necessary means for audio-visual recording of hearings, which is practiced to some extent. But it is obviously necessary to provide such appropriate technical equipment to other courts so that they could perform audio-visual recordings of their hearings. In any case, in the other courts, the dominant approach to recording hearings is through court's dictation, on the record.

RIGHT TO FAIR TRIAL

The right to a fair trial is envisaged and protected by the European Convention on Human Rights. Identically, it is a subject to protection in the domestic regulation, both in the highest legislative act in the country: the Constitution, and in the procedural laws.

The Law on the Criminal Procedure envisages provisions that are closely correlated and apply to protection of the fair trial standards. Specifically, Article 5 of this law envisages and guarantees the right to a public and fair trial before an independent and impartial court in a contradictory procedure, in which the defendant can challenge the facts and evidence, i.e. the indictment filed against them, as well as to actively participate in the process of building their defence by presenting and proposing evidence. Article 6 of the LCP elaborates the temporal concept of the duration of the proceedings, so it envisages that any person should be brought before a court within a reasonable time, and that they should be tried without unjustified delays in the procedure.

EQUALITY OF ARMS

The equality of arms principle implies that during the trial and the decision-making period, the circumstances, i.e. the conditions have to be equal for all parties to the proceedings. The proper balance

between the parties to the proceedings implies that each of them should have the opportunity to present their case and that neither party should be in a privileged position over the other. This principle is inherent to the fair trial principle, being in correlation with the principle of equality before the court.

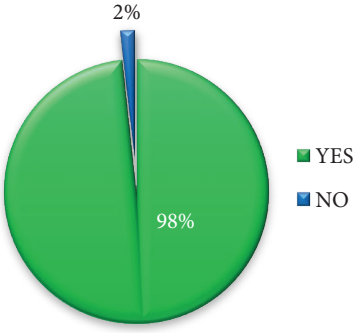
In other words, through the equality of arms principle, the court guarantees the right of both parties to have equal and sufficient time, opportunity and means to present their case to an independent arbitrator. In addition, according to the equality of arms principle, the defendant should be provided with sufficient time and means to be able to present their case theory, i.e. to be guaranteed sufficient means and time for preparation so that they could effectively challenge the prosecutor's case theory.

The Human Rights Commission has described this principle as a necessity for each party to be afforded the same procedural rights in the proceedings, aimed at preventing any substantial inconvenience to them, except if, of course, the differences are envisaged by law and justified. The European Commission of Human Rights, in the context of criminal proceedings, defines this principle as a procedural equality between the defendant and the prosecutor.

In order to determine the state of compliance with this key principle of the criminal procedure within the conducted field research, the questionnaire filled out by the monitors contained some questions that, in themselves, were indicators of applicability of this principle.

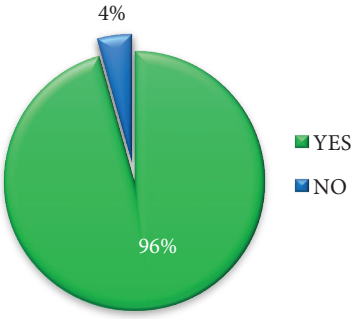
Thus, some key questions in the questionnaire used by the monitors and which answers suggest improvement is needed, revolve around the parties' opportunities to propose evidence, as well as their treatment by the court in relation to the objections.

According to the data collected, as to opportunities presented to defence to propose evidence, our monitors registered a situation similar to last year's data collected from hearings dealing with adult related crimes[29]. We have a situation that has neither improved nor deteriorated for years, which is a concern to some extent, given the importance of this principle and the practitioners' lack of will to improve.



Graph no. 37

Did the defence have the same opportunities as the public prosecutor's office to propose evidence



Graph no. 38

Were the defence and the prosecutor treated equally by the judge in relation to objections

29 Analysis of data obtained from court proceedings monitored in 2018, doc. Boban Misoski, Darko Avramovski, Natali Petrovska

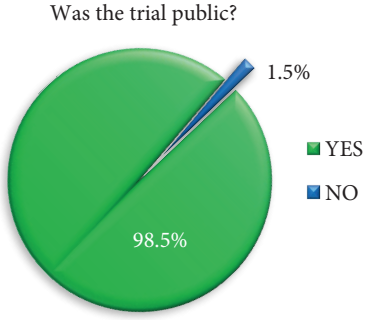
When it comes to the equal treatment of the parties in relation to objections, we can note an identical practice as in the past years. We have a minimal, but still significant percentage of 4% that points at unequal treatment (graph no. 38). This goes hand in hand with the situation noted above, in which courts treat the parties fairly unequally in terms of objections when they are raised in evidentiary proceedings. Specifically, this is a situation in which, although there are no objections raised, the court reacts more to questions posed by the defence than to those posed by the prosecution.

In general, it could be concluded that the impression of parties being equally treated by the court has improved. Only in a minimal 1% of the monitored trials our monitors noted that the judge was biased in the proceedings. Regarding the issue of ex parte communication between the court and the prosecution, although in a small percentage, it still persists.

RIGHT TO PUBLIC TRIAL

The right to public trial is based on the idea of openness and transparency of the work of judicial organs and is a kind of protective supervision of the interests of citizens and society, in general. This right allows the public to be present during court proceedings and it is a principle from which judicial monitors derive their legitimacy for the realization of their role to monitor court proceedings. Holding public hearings increases the degree of transparency, ensures integrity in the process of conducting court proceedings, but also provides protection against potential abuse of the proceedings. The exception to this rule applies to the exclusion of the public from the trial process in exceptional situations for reasons of morality, public order, national security and the interest to protect the privacy of a party to the proceedings. However, in accordance with paragraph 2 of Article 355 of the law, expert public can be present in proceedings from which the ordinary public has been excluded. Given the fact that the Coalition "All for Fair Trials" is recognized by the courts in the country as the only national organization that has been monitoring court proceedings for more than a decade, its representatives are often allowed to monitor court proceedings when the ordinary public is excluded. Through the prism of these several indicators, in the continuation of the text of this analysis, we will present our monitors' impressions of the open court principle.

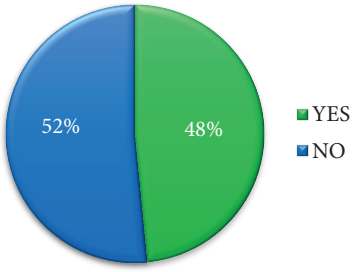
Of the total number of hearings monitored in 2019, only 1.5% were not public. Given the fact that the cases belong to a specific thematic area, often characterized with high security, classified information and protection of circumstances of the personal/private life of defendants who are usually current or former functionaries in the country, the court has a practice to exclude the public when necessary. However, taking into account the above, unlike the criminal proceedings that were subject to monitoring over the past 4-5 years, and in which a higher degree of excluded public was recorded (~ 2%), in these proceedings this percentage is lower (graph no.39). In 25% of cases in which the public was excluded, representatives of the Coalition were allowed to attend the hearings and follow them in the capacity of expert public.

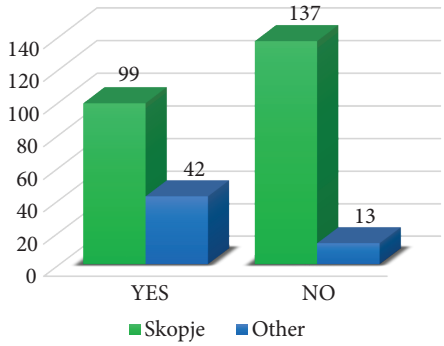


Графикон бр.39

As for the intimidation of representatives of the public by the court, two isolated cases were registered in the Basic Court Prilep and the Basic Criminal Court Skopje.

With regards to the public announcement of the time and the courtroom in which trials are to be conducted, being an important element of the open court principle, we consider that not only there are no improvements as compared to last year but, on the contrary, the situation has deteriorated. Namely, the public announcement is largely important for increasing the public's confidence in the judiciary, as well as for the general impression of the functioning of the judiciary. The analyses that have been conducted so far show a trend of increase of courts' non-transparency, whereby this year's data have reached the highest "peak" ever. Namely, if the 2017 data indicated 21% of unannounced times and locations of trials, in 2018 these data increased to 36%, and in 2019, according to the monitored proceedings comprising cases of organized crime and corruption, these data amounted to 52% of cases in which the time and place of the trial were not publicly announced on a board outside the courtroom (graph no.40)





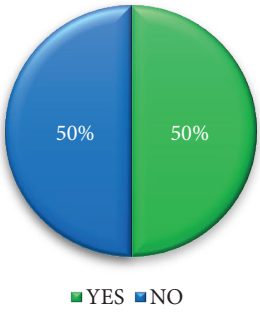
Graph no. 40

Graph no. 41

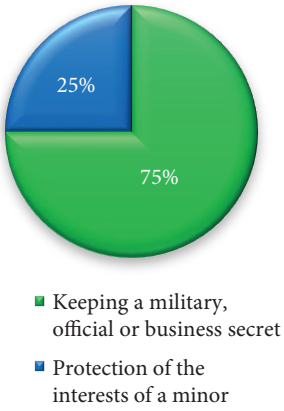
(Were the place and time of trial made public on the board outside the courtroom)

If we review these data by cities, i.e. if we draw a parallel between the Basic Criminal Court Skopje and the other courts that were subject to monitoring, we could see that the other courts in the country were more attentive to publicly announce their hearings on the boards outside the courtrooms. The Basic Criminal Court Skopje announced less such information, while in 75% of monitored cases in other courts such data were announced (graph no. 41).

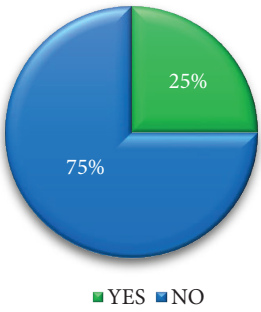
Following the statistics of the past years, this year we applied a more in-depth approach in relation to the circumstances when the public was excluded from trials. So, in 2019 we analyzed the courts' decisions to exclude the public in correlation to the provisions of LCP that oblige the court to adopt a formal decision when excluding the public. According to the data processed, it was concluded that in 50% of cases when the public was excluded (graph no.42), the court failed to adopt a decision on that. In addition, the representatives of the Coalition were present in the capacity of expert public when the court decided to exclude the public and noted that the court failed to give any kind of explanation as to the reasons for excluding the public from the proceedings.



Graph no. 42
Was a decision on exclusion adopted



Graph no. 42
Reasons for exclusion of the public



Graph no. 42
Presence of expert public in accordance with Art.355 par.2 of LCP

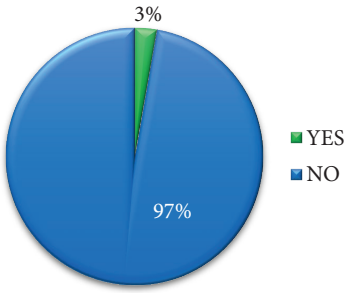
The most common reason for excluding the public from the proceedings was "Keeping a state, military, official or business secret" in 75% of monitored cases and "Protection of the interests of a minor" in 25% of cases (graph no. 43). The issue of granting presence to the expert public, which was mentioned above, is recorded in 25% of cases (graph no.44).

PRESUMPTION OF INNOCENCE

The presumption of innocence represents a fundamental principle in the protection of human rights and its practical application implies that: the court must not predetermine the outcome of the proceedings; the public prosecutor's office has to prove guilt beyond reasonable doubt; the manner in which the defendant is treated must not indicate that they are guilty; the media should be careful not to undermine the "presumption of innocence" and state officials should refrain from making statements that would have such an effect. Each person has the right to be treated as innocent, from the moment he/she becomes a suspect, and further when the indictment is filed, until a criminal verdict is reached. This is a mandatory principle for all stages of the procedure. Consequently, the European Court of Justice in *Matijašević v Serbia and Garycki v Poland*[30] states that although it was established that the applicant was guilty, that did not waive his fundamental right to presumption of innocence, for as long as he had not been found guilty in accordance with the law.

30 *Matijašević v Serbia* [2006] ECHR 1161, paragraph 49; Garycki v Poland [2007] ECHR 112, paragraph 72.

According to the abovementioned, we can conclude that the court has to refrain from forming an opinion as to the defendant and their eventual guilt in the proceedings, at all stages of the proceedings. Moreover, even the defendant's option to defend by remaining silent should not be an indication of guilt for the court. In the process of collecting data about this issue, we came across the following data: in 93% of cases it did not seem that the trial chamber had already formed an opinion that might affect the decision-making process (graph no.45).



Graph no.45

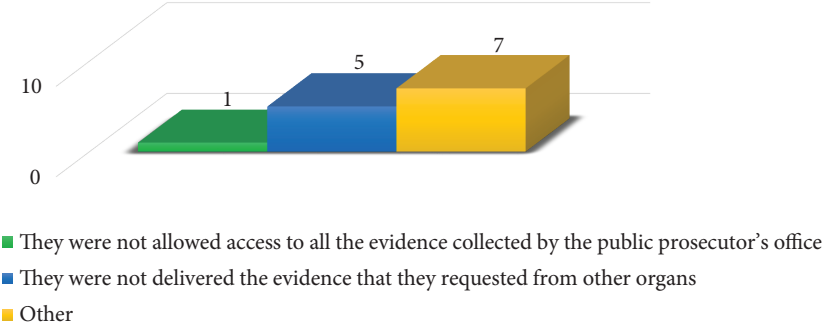
(Did it seem that the judge or the trial chamber members had already formed an opinion that might affect the decision-making process)

RIGHTS OF THE DEFENCE

The defendants' rights are part of the fair trial principle. The European Convention on Human Rights and Freedoms envisages and guarantees the following minimum rights and freedoms to the defendant: the person should be immediately informed in detail about the nature and grounds of the indictment in a language he understands; he should have sufficient time and adequate conditions for the preparation of his defence; he should have the right to defend himself alone or by a defence attorney of his choice or, if he does not have the means to hire a defence attorney, he should be provided with a defence attorney ex officio; he should be allowed to hear the witnesses; and he should be provided with an interpreter if he does not understand or speak the official language of the court.

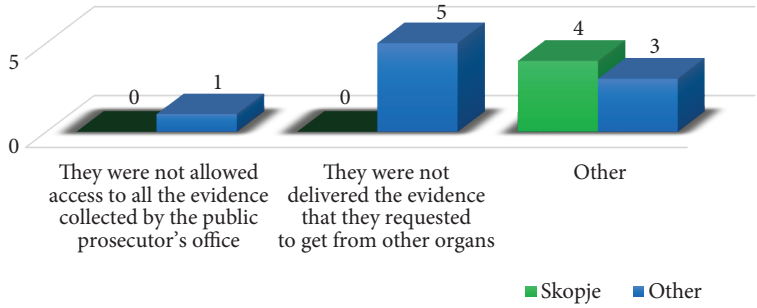
We have already reviewed some of these procedural guarantees in the part of the analysis that refers to the rights of defendants before and during the initiation of the procedure. In this part we will cover only the access to evidence and the time interval that the defence attorney had for the preparation of the defence.

The most common reason for the defence's reaction was the inability to access the evidence collected and proposed by the public prosecutor's office, but also the failure of other state organs to deliver requested evidence (graph no. 46).



Graph no.46

The comparative approach analysing this situation between the Basic Criminal Court Skopje and other courts in the country, as shown through graph no. 47, indicates that in none of the other courts did the defence raise any objections to the availability of evidence.



Graph no. 47

With regards to time that would be sufficient for the defence to be able to prepare its strategy in order to properly represent the defendant, as well as the possible existence of any restrictions in the communication, especially if the defendant was in detention, the statistics show that a reaction was noted in only 2% of the cases. The reactions pertained to the time needed for preparation, i.e. the defence attorney who was appointed (ex officio) to the specific case, was appointed one day prior to the hearing.

VERDICT

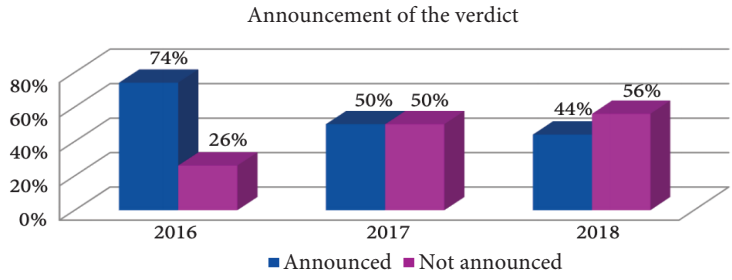
The law envisages that the verdict shall be publicly announced as soon as it has been passed. When the court, for objective reasons, is not able to pass the verdict the same day after the completion of the main hearing, it can postpone the announcement of the verdict for a maximum of three days, whereby it shall determine the time and place of announcement of the verdict. It is envisaged that the dispositive part of the verdict shall be publicly read by the presiding judge in the presence of the parties, their legal representatives, proxies and defence attorney. It is court's obligation to briefly state the reasons for passing such verdict, and advise the defendant on their right to appeal the verdict and the appellate procedure.

Although this is one of the most common recommendation from the past period (present in almost every analysis of criminal cases), we have now made the most progress in this specific thematic area. More precisely, in the past years it was noted that the court rarely applied the mandatory legal provisions related to the announcement of the verdict (graph no.48). If the percentage of publicly announced verdicts was at its highest "peak" in 2016[31] this percentage decreased in 2017[32], and in 2018[33] it was the lowest percentage ever registered.

31 Petrovska N., Misoski B., Analysis of data obtained from court proceedings monitored in 2016, OSCE Mission to Skopje, 2016.

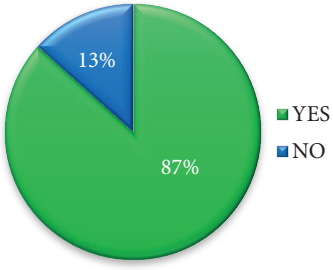
32 Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2017, OSCE Mission to Skopje, 2017.

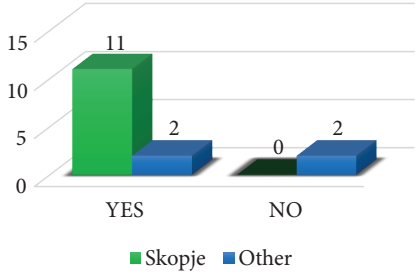
33 Misoski B., Avramovski D., Petrovska N., Analysis of data obtained from court proceedings monitored in 2018, OSCE Mission to Skopje, 2018.



Graph no. 48

This year, as to cases in the field of organized crime and corruption, a high percentage (87%) of publicly announced verdicts (graph no. 49) has been registered; the Basic Criminal Court Skopje, i.e. the Department for Organized Crime and Corruption is directly responsible for this increased percentage and the abandonment of the practice of "conducting closed" trials, even when the matter in question is the announcement of verdicts (graph no. 50). Other cities in the country have statistics of 50% of publicly announced verdicts. These alarming data indicate that the situation in these courts has to improve by following the positive practice of the Basic Criminal Court Skopje.



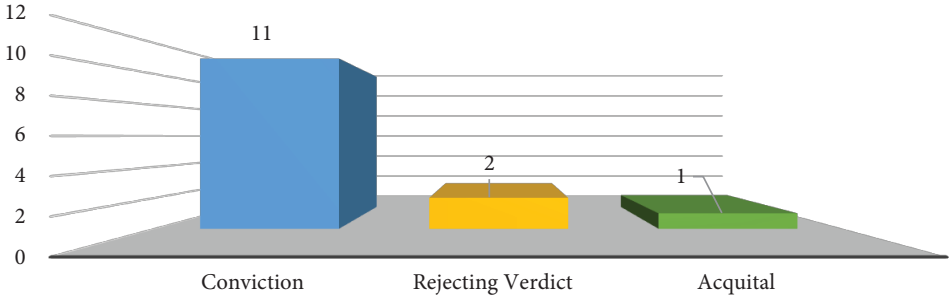


Graph no.49

Graph no.50

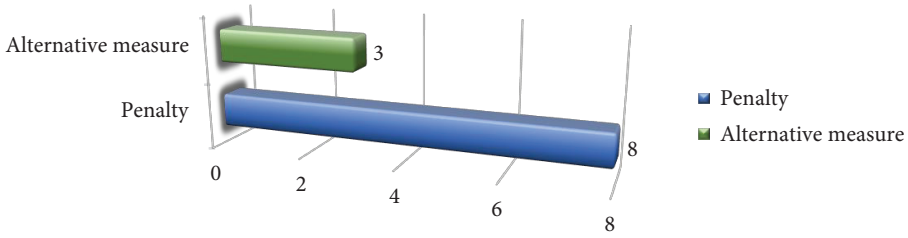
Publicly passed and announced verdict / Comparative presentation by cities

When it comes to the types of verdicts passed over the past year, which were subject to monitoring, statistically seen, the data point to a high percentage of convictions, followed by a certain number of rejecting verdicts and acquittals as well (graph no.51).



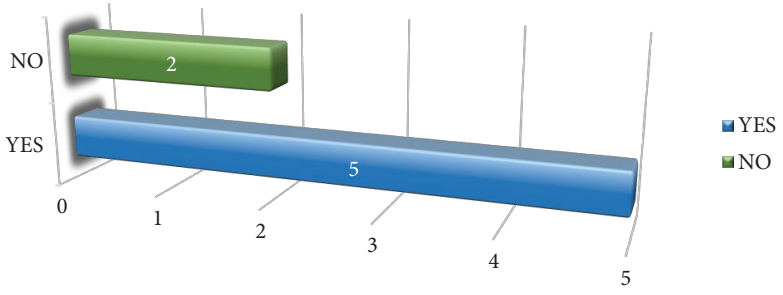
Graph no.51
(Types of verdicts)

With regards to the type of sanction, the data indicate that almost ¾ of the announced verdicts contain sanctions, while ¼ of them contain alternative sanctions (graph no.52). Unfortunately, the fact that the monitored cases were in relation to organized crime and corruption, with elements of financial crimes where crime proceeds have been gained by defendants, in the cases that were subject to monitoring the court did not make a single decision to order confiscation of property and crime proceeds.



Graph no. 52
(Types of sanctions)

As per the advice to the defendant on their right to appeal the court's decision and the conditions thereof, our monitors registered only 2 cases (graph no.53) in which the court failed to advise the defendant on this right. Judges usually assume that defendants, especially those in criminal cases, have their own defence attorneys who will have the opportunity to explain this right to them, being, in any case, a deviation from the rule envisaged by LCP.



Graph no. 53
(Did the court explain the appeal conditions to the defendant)

CONCLUSIONS AND RECOMMENDATIONS

- A high level of postponed hearings has been noted as a result of absence of several persons whose presence is mandatory. The absence of defence attorneys and public prosecutors is generally one of the key reasons for postponements, but more and more often the cause is the incomplete composition of the trial chamber.

RECOMMENDATION:

- ✓ It is necessary for the court to make more efforts in coordinating the scheduling of court hearings, especially in the part concerning the time management and the appointment of judges to trial chambers - in order for them to be able to improve their work with respect to this issue.
- ✓ It is necessary that the ACCMIS system be coordinated and harmonized with the activity schedules of all entities in the proceedings.
- ✓ The increased absenteeism rate of judges and prosecutors may be an indicator of insufficient human resources in courts and public prosecutors' offices, so it is necessary to conduct studies regarding the number of judges and prosecutors, as well as their professional services.
- ✓ As to the Department for Organized Crime and Corruption within the Basic Criminal Court Skopje, we have noted a trend of improvement in relation to the number of postponements of court hearings. Last year, in this Department our monitors recorded 12% fewer cases of postponed hearings as compared to the average percentage of cases postponed in other courts in the country.

- The court increasingly applies the detention measure instead of lighter measures for securing the presence of the defendant.

RECOMMENDATION:

- ✓ Detention is still the most commonly used measure to secure the presence of defendants, although the law allows for application of lighter measures. The public prosecutor's office is encouraged to seek the application of other envisaged measures to ensure the presence of the defendant, and the detention measure should be the last option.
- ✓ There is still practice in which the court fails to give appropriate explanations concerning the reasons for the detention imposed and fails to objectively assess and record the factors in the decisions ordering and continuing the detention measure.
- ✓ There is a need for a reform of the LCP and the Law on Probation to give the probation services the competence to control and monitor the effective application of the lighter presence securing measures.

- It is necessary that the court is more diligent when advising defendants and witnesses on their rights, this being especially the case in courts outside Skopje.

RECOMMENDATION:

- ✓ Consistent application of the LCP by judges in relation to the rights of the defendant during their examination, with complete and detailed advice on their rights as envisaged by the LCP.
- ✓ It is necessary to change the practice of interpreting the provisions of the LCP and implement them in practice in order to provide a guarantee for the fairness and objectivity of court proceedings.

- The open court principle is largely present, and when it comes to hearings that are closed to the public, the position of the Basic Criminal Court in Skopje to enable the presence of the expert public, as envisaged in paragraph 2 of Article 355 of LCP, is encouraging. However, given that some courts across the country are not yet fully open to the public, we consider that it is necessary to improve the court's action in relation to this issue.

RECOMMENDATION:

✓ The positive practice implemented by the Basic Criminal Court Skopje to enable the presence of the expert public at trials should be followed by other courts, to the extent of their full openness.

- It is necessary to change the practice of presenting evidence by the courts. The court should abandon the system of presenting evidence by reading titles, at the expense of their content. Also, the order of presenting evidence should be respected.

RECOMMENDATION:

✓ It is necessary to harmonize the practice of judges when and to what extent they can change the legally envisaged order of presenting evidence due to various grounds. It is necessary that the court explains in detail its decisions to change the order of presenting evidence, in order to ensure that there is equality of arms and that the burden of proof is not transferred to the defence.

- There is a practice in which judges have active role in the course of the main hearing, giving public impression that they are biased judges.

RECOMMENDATION:

✓ Consistent application of LCP provisions with respect to the court's role in the course of the main hearing.

- Progress has been made with respect to the audio-visual recording of hearings, exclusively in the Basic Criminal Court in Skopje, but the practice of keeping records through dictating by judges still prevails.

RECOMMENDATION:

✓ It is necessary to immediately stop the practice of dictating, i.e. paraphrasing questions and statements by the judge. In this regard, it is necessary to allocate appropriate funds and resources to enable audio-visual recording of all hearings in order to strengthen the objectivity, reliability and fairness of the proceedings.

- The trend of violating the procedural rights of the defence by restricting or improperly applying the provisions of LCP regarding their access to the evidence available to the public prosecutor continues.

RECOMMENDATION:

✓ Consistent application of LCP provisions envisaging the defence's right to access and insight into the files of public prosecutors, and provision of timely access to all files, in other words evidence that is connected with the case.

- Promotion of the equality of arms principle in cases within organised crime and corruption.

RECOMMENDATION:

✓ The equal treatment of all parties to the proceedings is a key factor to the general impression of meeting the conditions for a fair and just trial, and that is most visible through the prism of this equality of arms institute. Hence, it is essential that the court safeguards the equal treatment of the parties to the proceedings in order to avoid negative public impression.

- Decrease in the level of transparency of the proceedings, especially in courts in the inner part of the country, due to several factors:

- Lack of functional electronic equipment for announcing the time and place of court hearings;
- The volume and quality of published data on the websites of the courts related to current cases has been reduced, especially with regard to the part concerning the "calendar" of trials, after the integration of the individual websites of the courts into the common integrated portal: sud.mk.

RECOMMENDATION:

✓ Allocating sufficient funds for technical maintenance of the electronic system for announcing the time and place of hearings, as well as improving the electronic system in which trial data are published.

☐ The confiscation measure has not been applied at all. The absence of the confiscation measure has been recorded both in its basic form and in the form of an extended confiscation.

RECOMMENDATION:

✓ It is necessary that the public prosecutor's office use the legal provisions that allow the confiscation measure be requested and ordered, especially since this type of cases in the field of organized crime and corruption are largely cases that render this measure applicable.

☐ It has been noticed that there is a decreased transparency in the announcement of verdicts, as well as an increased trend of failing to announce them in the courts in other cities in the country, as well as a practice of failing to explain the appeal conditions to the defendant. An exemption and a good example in relation to this issue is the Basic Criminal Court in Skopj.

RECOMMENDATION:

✓ Consistent compliance with the LCP provisions regarding the public announcement and passing of verdicts, as well as application of the well-established positive practice of the Basic Criminal Court in Skopje.

☐ This year in the same way as last year, our monitors did not note any use of discriminatory language and, in general, any discrimination on the basis of race or gender by the court, which could be noted as being a positive practice.

☐ We welcome the practice of judges to refrain themselves from generating a negative conclusion with respect to defendants who defends themselves in the proceedings by remaining silent.