КОАЛИЦИЈА СИТЕ ЗА ПРАВИЧНО СУДЕЊЕ
KOALICIONI TË GJITHË PËR GJYKIME TË DREJTA
KOALICIJA SARINE BAŠO NIJAMALO KRISIPE

Efficiency of the Courts when dealing with Organized Crime cases

2005 | 2006 | 2007

Efficiency of the Courts when dealing with Organized Crime cases year 2005, 2006, 2007

Skopje, february 2008

Efficiency of the Courts while dealing with Organized Crime cases

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For the Publisher: *Petre Mrkev, president*

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Page layout and printing: *EMITER - Skopje*
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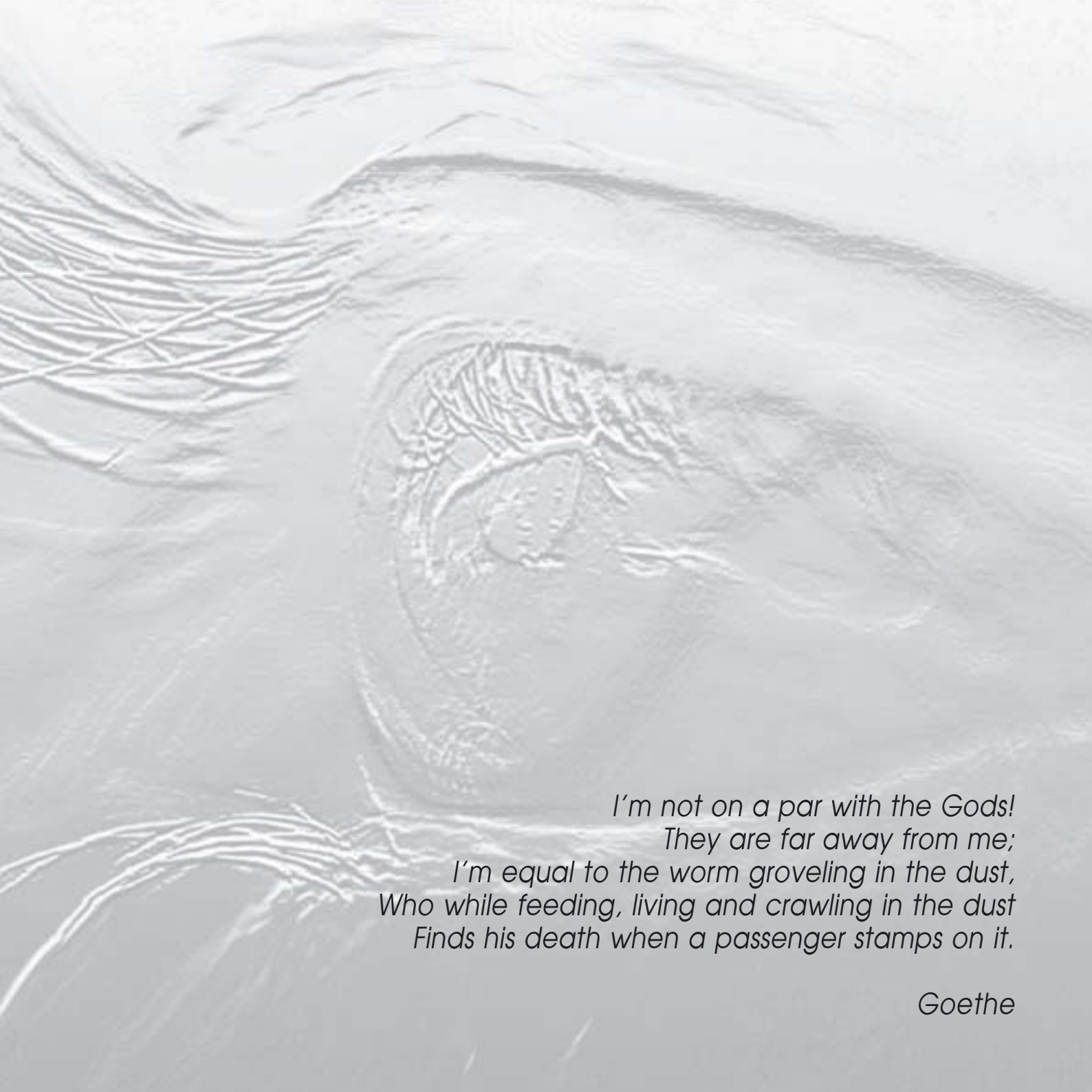
Cover: PROMODSGN
www.promo.com.mk

Supported by:

Organization for Security and Co-operation in Europe
OSCE Spillover Monitor Mission to Skopje



I'm not on a par with the Gods!
They are far away from me;
I'm equal to the worm groveling in the dust,
Who while feeding, living and crawling in the dust
Finds his death when a passenger stamps on it.

Goethe

Contents

Acknowledgments

Dear reader,

Please be advised that what you have in front of you is another report under the project of "Efficiency of the courts when dealing with organized crime cases", focused on the issues of special investigative measures, confiscation of assets and compensation of the injured parties in the proceedings, protection of the rights of the victims of Trafficking in Human Beings (THB), duration of the procedure and penal policy in the Republic of Macedonia.

The report summarizes the results of the monitoring of trials in the area of organized crime before the domestic courts during 2005, 2006 and part of 2007. The goal of the project has been achieved via the analysis of these results, including evaluation of the functioning of the existing mechanisms in the fight against organized crime and of the success in the suppression of this growing phenomenon.

The person responsible for coordination of the project activities, analysis of the obtained data and writing of the report was Ms. Violeta Velkoska, who deserves all the positive reviews without any reserve. This whole process was unselfishly assisted by the professional engagements of the Project Assistants Mr. Mihail Gotovski and Ms. Ana Boskoska, as well as by the observers who were directly involved in the monitoring of the trials without whose assistance and support this work would not have looked like this.

I wish to express special gratitude to the OSCE Mission to Skopje for their suggestions during the implementation of the project activities that made a quality contribution to the project, as well as for their financial support without which the implementation of this project would not have been possible.

Coalition
"All for fair trials" – Skopje
Aleksandar Keltanoski
Executive director

Introduction

"The freedom is an important characteristic of the human being that he cannot give up without stopping being a man", Pascal

The emergence and the growth of the trafficking in human beings as one of the most severe human rights violations in a time of great modernization, technology, science and development of the human society is a black spot in the history of humanity and above all, a test faced by the institutions of the system, organizations, and citizens around the world. Test that has to be passed if we truly want our future to be part of a developed democratic environment the basic postulation of which is the respect for the fundamental human rights and freedoms[1].

> *....The fact that slavery – in the form of trafficking in human beings – still exists in the 21st century is an embarrassment for all of us. Governments, international organizations and the civil society are making efforts to overcome this problem, but there is no sufficient data yet as to how widespread this tragedy is. It is only by appreciating its significance that we can create policies for combating it....*[2]

The enormous number of initiatives and activities as well as documents created both at international and national level, in addition to the mechanisms and models built for the purposes of prevention of this evil and mitigation of its consequences are, unfortunately, only an initial section of the road that needs to be passed. Despite the efforts made so far, trafficking in human beings is still widespread and inflicts further damage on an enormous number of victims[3]. The Republic of Macedonia has been faced with this problem for more than 10 years. Even though this phenomenon is much older, it became particularly intensive in 1998, with real explosion during the conflict/post conflict period 2001-2003. After this period, the official statistics (number of indictments filed before the courts, though not the number of cases that are active because there is large discrepancy between the time of perpetration of the offence and the time of the trial) mark a decrease. In spite of this situation of not having new cases of trafficking in human beings before the courts (or at least such cases being reduced to exceptions), there is an opinion that the phenomenon of trafficking in human beings in Macedonia marks no decrease, but a change in its forms of manifestation, which catches the law enforcement authorities unprepared in the process of identification.

A large number of legislative and institutional changes have been undertaken in line with the country's attempt to give the most adequate response to this issue. Starting with the inclusion of the new provisions on trafficking in human beings in the Criminal Code dating from 2002[4], which was an obligation of the country arising from the ratification of the Convention against the transnational organized crime and the two protocols[5]. Then followed the

[1] Trafficking in human beings is an abhorrent abuse of the human rights and a serious crime requiring a more complete and coordinated response by the States and the international community, as well as a coherent and coordinated approach between the States, more precisely the countries of origin, transit and destination. (Decision of the Vienna Ministerial Council No. 1, 2000)

[2] *Antonio Maria Costa,* Executive Director, United Nations Office on Drugs and Crimes

[3] Estimates range from 800 000 to 900 000 persons a year, Creating international consensus on Combating Trafficking in Persons, US Policy, the Role of the UN and Global responses and Challenges, Linda Smith and Mohamed Mattar

[4] Hereinafter CC, "Official Gazette of the Republic of Macedonia" No.4 of 25 January 2002.

change in 2004[6] when this offence was criminalized in the form as it is today, and the new draft amendments that are in parliamentary procedure.
Also very important are the amendments to the Law on Criminal Procedure from 2004. For example, the facilitation of the procedure for providing compensation to the victims of trafficking, the provision of additional protection to the victims-witnesses, the introduction of special investigative measures as important tools for securing evidence in the proceedings, etc.
The reorganization of the Public Prosecutor's Office in terms of the establishment of the *Unit for prosecuting perpetrators of criminal offences in the area of organized crime and corruption*, as well as of the Customs Administration, Financial Police and Ministry of Interior, and the establishment of specialized court departments responsible for trying offences in the area of organized crime in five first instance courts in Macedonia, is just one segment of the changes introduced with the view to combating trafficking in human beings more successfully.

The foundations for a more successful and more coordinated action against the trafficking in human beings were laid with the adoption of the Strategy and National Action Plan by the Government of the Republic of Macedonia and with the development of the National and the Transnational Referral mechanisms in the framework of which the stakeholders are coordinated in the process of enabling the victim to achieve her rights.

One must not forget the important contribution by the non-governmental sector, especially in terms of providing the victims of THB with assistance, as well as with regard to the process of detection of the omissions and weaknesses of the authorities responsible for combating this issue.

However, the thing that is still missing within the overall efforts of all actors in the fight against trafficking in human beings as a form of organized crime, as well as in the fight against the other forms of this societal evil, is thorough surveys.

> "*… The surveys on the manifestation forms and on the etiology of organized crime in our country are below the acceptable level of minimal serious observation that could be designated as initial phase....*"[7]

The basis for any further activity as well as for validation of the results of the steps taken in the fight against organized crime is the situation of possessing sound knowledge and information, which is possible only through a detailed analysis of all factors that are in correlation with the respective topic.

[5] The United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air were signed by the Republic of Macedonia in 2000. "United Nations Convention against Transnational Organized Crime with the Protocols (comments, annexes, clarifications and recommendations)", Ministry of Justice.
[6] Official Gazette of the Republic of Macedonia (37/96; 80/99; 4/02; 43/03) No.19/04
[7] V. Kambovski, The organized crime in the Republic of Macedonia, Organized crime, page 137, Skopje 2005

By analyzing the results achieved in the area of combating THB within the country as well as other manifestation forms of organized crime, and above all by linking all those topics into one unit, it will be possible to create a more general picture about the functioning of the mechanisms/institutions in the fight against this type of crime.

Brief summary

The continued multi-year process of observation of court cases in the area of organized crime by the Coalition "All for fair trials", primarily cases related to trafficking in human beings, mediation in prostitution and smuggling of migrants, enabled obtaining a better picture about the growth of these phenomenon and the response to it by the institutions and relevant bodies in the country. The conclusions regarding the practice of the courts from the first two years of monitoring (2005 and 2006) received another verification in 2007. There were also some new conclusions resulting from the more profound analysis.

In Macedonian case law, the registered cases in relation to the crime of *trafficking in human beings* are mainly related to trafficking for the purposes of sexual exploitation. Only female individuals appear as passive subjects. Despite the widespread belief, of the professionals responsible for combating this crime, that over the last period *trafficking in human beings* has mostly been carried out by using the services of beauty and massage parlors, the practice of the courts has failed to bring to the surface any example of a legal entity being punished. By introducing a provision on punishing everyone who uses sexual services by a person known to be a victim of trafficking in human beings, Macedonia entered the group of states that address the issue of demand as one of the important preconditions for existence and development of the phenomenon of trafficking in human beings. However, the presence of only one case in the practice with one indictment filed against such an offender[8]

One of the indicators of the degree of organization of the criminal groups in the country regarding different offences in the area of organized crime can be the number of individuals that participated in one criminal law event. Notably, in 39% of the cases among all trials, three or more individuals participated in one crime. This proportion is 29% for "Trafficking in human beings" and "Mediation in prostitution", i.e. 38% for "Smuggling of migrants".

The ethnic homogeneity of the members of the groups numbering minimum three individuals is the highest in *trafficking in human beings* (100%), whilst the highest diversity can be found in the criminal offences stipulated in Article 418b and 418v of the Criminal Code. Unlike the criminal offences "Mediation in prostitution" and "Trafficking in human beings" where the defendants are predominantly members of the Albanian ethnic community, ethnic Macedonians prevail as defendants in the cases of taking bribe" and Misuse of official position and authority before the first instance courts in Macedonia.

In the case of "Trafficking in human beings", prevailing among the defendants is the age group 31-35 (36%), whereas for the crime stipulated in Article 191 of the Criminal Code the highest proportion (28%) of defendants belongs to the age group 36-40. Migrant smugglers are often young people, where besides the age group 36-40, the category

[8] Which the Public Prosecutor waived during the repetition of the procedure following the return thereof by the second instance body. cannot answer the question if the prescribed sanction has had any impact in terms of changes in the behavior of the users (especially men) of services based on sexual exploitation.

26-30 is represented with equivalent 20%. On the other hand, in the case of "Abuse of official position and authority", the majority of offenders are over 46 (as many as 67%).

Nearly one fourth of the defendants accused of offences in the area of organized crime were previously convicted of another crime. Recidivism is most represented in "Trafficking in human beings" with 54% of the total number of defendants being recidivists, followed by "Mediation in prostitution" with 48%.

Although included in the Law on Criminal Procedure almost three years ago, the special investigative measures have not yet found their proper place and use in the domestic practice in respect of the topic of trafficking in human beings. The majority of them were ordered in relation to the offence of *smuggling of migrants*. The most common measure used was: Secret surveillance, monitoring and visual and audio recording of persons and objects by technical means.

With regard to the application of the two special ways of examination of the witness, i.e. the possibility for the witness to be examined only in the presence of a judge and public prosecutor, at a location that guarantees protection of the identity, or by using telephone or videoconferencing links, our country is still in an experimental stage.

Despite the legal possibility for coverage of the compensation claim filed in the criminal procedure from the offender's confiscated assets provided that action is initiated within 6 months from the day when the decision referring the respective person i.e. the victim to litigation became final, the implementation of this procedure is unfortunately not possible unless there is more common practice of confiscating traffickers' assets. Namely, the provisions on confiscation of assets/proceeds of crime, as well as the provisions on the temporary freezing/seizure/retention of the assets associated with the respective crime are very rarely applied in THB related cases. Confiscation of assets was ordered against only 6 of the total number of convicted individuals. They were convicted for the criminal offences "Abuse of official position and authority" and "Money laundering" by the Basic court in Skopje.

The modest number of compensations for non-material damage awarded to THB victims (only 3) points to the conclusion that our country cannot boast of having a good practice of compensating the victim.

The proportion of cases postponed for a period of time over 60 days, (the main hearing needs to start from the beginning) amounts to 26% of the total number of postponements in the first instance court in Gostivar, only 4% in the first instance court in Bitola, 37% in the first instance court in Ohrid, 14% in the first instance court in Tetovo and 1% in the first instance court in Skopje.

The absence of the participants in the proceedings, whose presence is esential for the main hearing to take place, appears as the most common reason for postponement (47%) of the procedure. In this respect, the highest proportion (18%) lies with the defendant and his attorney (13%).

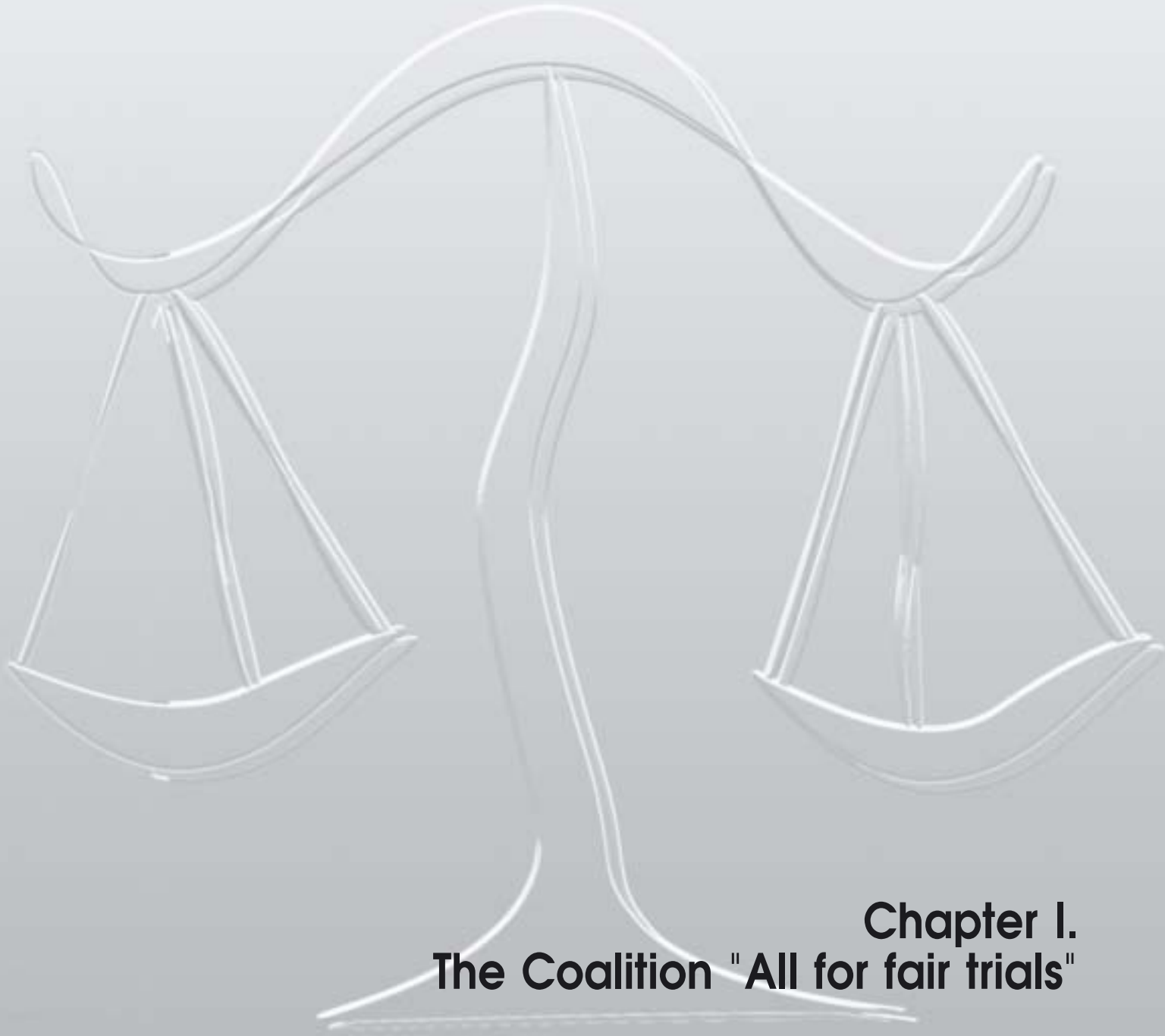
Securing the presence of the principal participants in the procedure is the main problem in the first instance court in Tetovo with highest 75%, while this poses the smallest of problems in the first instance court in Skopje (15%).

The presence of the witnesses in the proceedings is most difficult to be secured in the cases associated with the crime of "Mediation in prostitution".

The analysis of the period of time that elapsed from the moment of reception of the indictment in the court (i.e. deciding upon an objection) until the scheduling of the first hearing, which should be 30 days at the most, demonstrates that in only 4 cases (12%) this advised timeline was observed. The average duration of this period in the practice of the domestic courts was at least three times longer than the legally determined one.

In the cases associated with the offence of "Mediation in prostitution" the average duration of the procedure is 630 days, whereas in the cases associated with the offence of "Trafficking in human beings" - 386. The trials for the "Smuggling of migrants" offences last for 188 days (average). The cases associated with the offences of "Misuse of official position and authority and Taking bribe end significantly sooner.

In 26% of the total number of imprisonment sentences pronounced for offences in the area of organized crime, the institution of "mitigated sentence" was used. The majority of them were pronounced in the cases related to the crime of "Smuggling of migrants". From all monitored cases, 82% ended with a condemning verdict and 12% with an acquittal. In this respect, the majority of the acquittals are related to the offences: *Mediation in prostitution*" *and* "*Trafficking in human beings*.
All the above-mentioned conclusions, that are in more detail explained in the report, are aimed to assist in the identification of the problems found in the practice, which at the same moment present an obstacle in the process of combating the phenomenon of THB i.e. organized crime. The report is an additional tool that can help the different institutions and authorities to better fulfill their mission in the fight against this crime.



Chapter I.
The Coalition "All for fair trials"

1. Mission, goals and activities

The Coalition of citizen associations "All for Fair Trials" - Skopje represents an organization with 17 non-governmental organizations from all over the Republic of Macedonia as its members:

"MOST"-Skopje, "Youth Educational Forum"-Skopje, "SPPMD"-Kavadarci, "CDR"-Tetovo, "ARKA"-Kumanovo, "FEMINA"-Kumanovo, "ADI"-Gostivar, "Association for the Rights of Roma ARRP"-Shtip, "Helsinki Committee for Human Rights"-Skopje, "Association for Protection of the Rights of the Child"-Skopje, "MEGJASHI"-Skopje, "PHURT"-Delchevo, "GIC Spektar"-Shtip, "Temis"-Skopje, "Mesechina"-Gostivar, "Citizen association"-Bitola, "Association of Tikves Roma"

Vision

Powerful and stable organization, moving force and partner of the institutions of the system in the efforts to make the Republic of Macedonia a country with a full respect for human rights and freedoms, with a special emphasis on the standards for fair trial as elementary condition for integration into the European Union.

Mission

Monitoring the level of respect for the human rights and freedoms, especially of the international fair trial standards through various forms of action aimed at raising the level of implementation thereof, initiating institutional and legal reforms, and restoring the confidence of the citizens in the judiciary and in the other institutions of the system.

Goals of the Coalition

Increasing the respect for human rights and fundamental freedoms, especially in the area of international fair trial standards;
Strengthening the confidence of the citizens in the institutions of the system;
Identifying the problems faced by the institutions of the system and finding ways to overcome them;

Raising the awareness of the citizens about their rights guaranteed by the Constitution, the laws, and the international documents.

Activities of the Coalition

The Coalition "All for fair trials", aspiring to assist the implementation of the National Programme of the Government of the Republic of Macedonia for combating trafficking in human beings and illegal migration, started with the implementation of the project "Observation of trafficking in human beings related cases in the Republic of Macedonia" in November 2004.

In doing so, the emphasis has been placed on cases related to the following criminal offenses: "Trafficking in human beings" (Article 418-a of the Criminal Code[9]), "Smuggling of migrants" (Article 418-b of the CC), Organizing a group and instigation of the perpetration of the offenses "Trafficking in human beings" and "Smuggling of migrants" (Article 418-v), "Establishing a slavery relation and transport of persons in slavery relation" (Article 418), as well as "Mediation in prostitution" (Article 191 of the CC).

The analysis and the conclusions in the Report[10] "Combating trafficking in human beings through the practice of domestic courts" have been prepared on the basis of the data obtained by observing cases throughout 2005.

In 2006, the Coalition continued with the observation of cases related to trafficking in human beings, but this time as part of the project "Criminal justice responses to organized crime". In addition, in order to assist the identification of the initial types of organized crime in the Republic of Macedonia and to raise the awareness about the existent mechanisms established by various competent entities and their appropriateness in dealing with this phenomenon, in April 2006 the Coalition spread out the domain of observation to other types of criminal offenses. In doing so, the Coalition still has the "Trafficking in human beings" and "Smuggling of migrants" in its focus of attention as some of the forms of organized crime.

The report "Criminal justice responses to organized crime" was prepared as a result of the analysis of the processed data in 2005 and 2006. For the purpose of continuous monitoring of the organized crime phenomenon and obtaining data of a better quality (and above all, getting an idea about the developments and occurrences related to this phenomenon), the Coalition continued its monitoring during 2007.

Throughout these three years, the observation process was conducted by experienced and trained observers, who submitted the trials data to the national office by filling in the case monitoring questionnaires related to organized crime. This data is then entered into the specially prepared database (SPSS program), which provides for further cross-referencing and systematization. The results from the latest analysis for the period January 2005 – October 2007 are contained in this report.

2. Observed cases before the first instance courts in Macedonia as part of the project "Efficiency of the courts when dealing with organized crime cases"

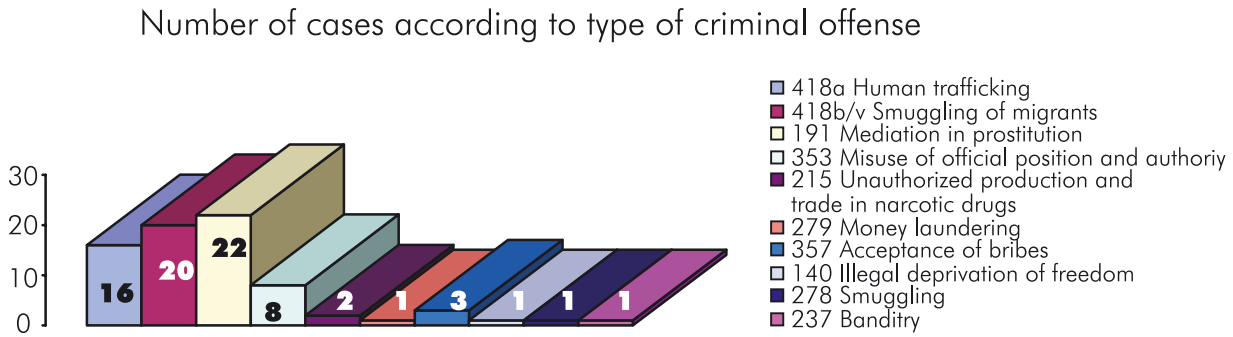
During 2005, within the framework of the one-year project "Observing cases related to trafficking in human beings", the Coalition observed 35 cases and 143 court hearings related to the criminal offense of "Trafficking in human beings", "Mediation in prostitution" and "Smuggling of migrants". The monitoring of trials, which continued throughout 2006,

[9] Official Gazette of Republic of Macedonia 37/96; 80/99; 4/02; 43/03; 19/04, hereinafter CC
[10] www.all4fairtrials.org.mk

besides the fore mentioned criminal offenses, was also extended to other types of organized crime. In doing so, a total of 61 cases and 334 court hearings against 178 indicted persons were observed during the period from January 2005 till December 2006.

For the purpose of obtaining more qualitative conclusions regarding certain developments in the area of organized crime, and most of all, bearing in mind the very limited number of surveys conducted in our country in relation to this phenomenon and the lack of data necessary to create a better understanding of it, in 2007 the Coalition expanded its scope of monitoring. Namely, it turned its attention to cases which have been labeled as cases within the framework of organized crime by the Public Prosecution Office i.e. the Department for prosecution of perpetrators of criminal offenses in the area of organized crime and corruption.

The monitoring process that lasted for almost three years resulted in an analysis of a total number of 75 cases[11] and 466 court hearings, related to 278 defendants.

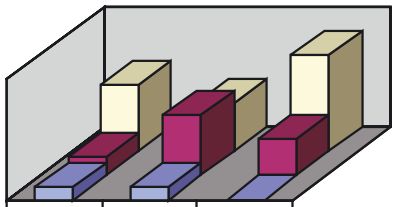


It is noticeable that the largest number of cases pertains to offenses stipulated in Articles 418a, 418b and 418v, as well as Article 191 of the CC of the Republic of Macedonia[12].

[11] In four of the cases related to the criminal offense of "Smuggling of migrants", some of the defendants are also being accused pursuant to Article 418b of the CC of Republic of Macedonia, but in relation to "Smuggling of migrants" (and not "Trafficking in human beings"). Additionally, one can find indictments for two different criminal offenses in some other cases, however, the cases are registered depending and according to the predominant offense by the majority of the defendants in a particular case.

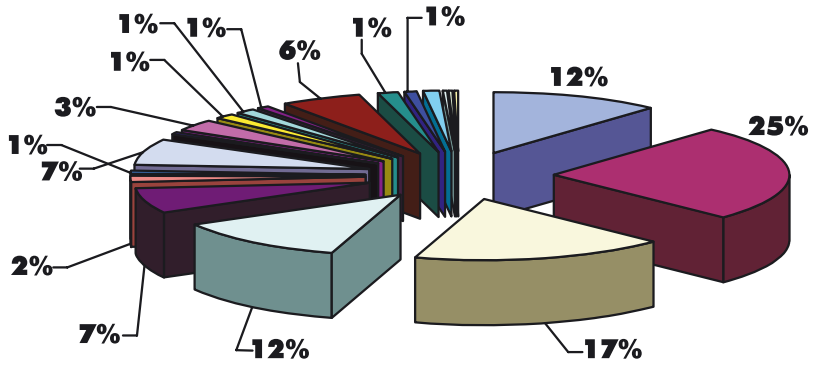
[12] The difference in relation to the number of cases data according to different types of criminal offenses for 2006, shown in the Coalition's report titled as "Punitive and legal response to organized crime", page 22, arises from the change in the indictments related to the criminal offense for which people are incriminated.

Review of the number of new cases per year



	418a	418b/v	191
2007	2	2	0
2006	3	10	6
2005	11	8	16

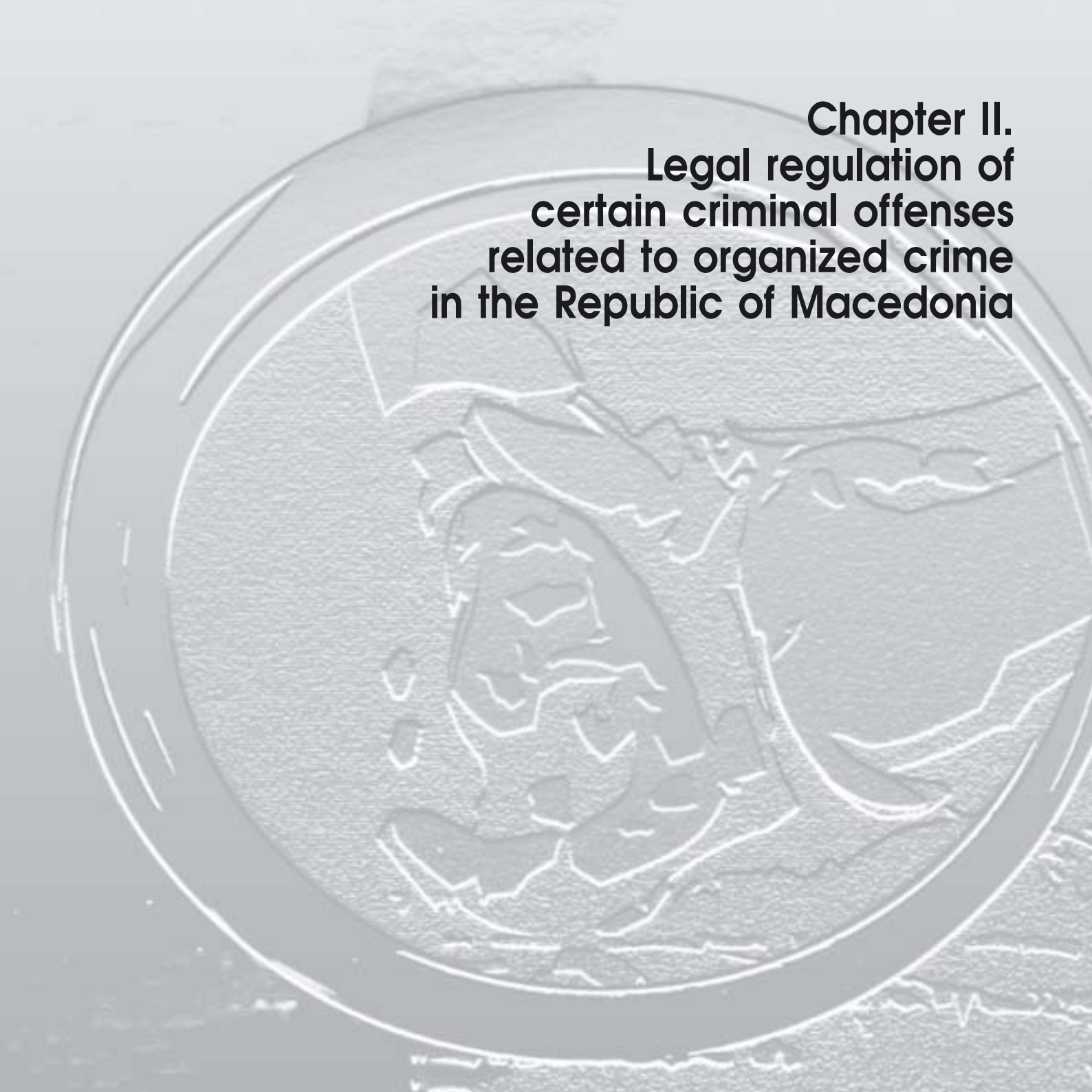
Number of accused individuals according to criminal offense



- 418a Human trafficking
- 418b Smuggling of migrants
- 418v Organized type
- 191 Mediation in prostitution
- 353 Misuse of official position and authority
- 215 Illegal production and trade in narcotic drugs
- 279 Money laundering
- 357 Accepting bribes
- 140 Illegal deprivation of freedom
- 278 Smuggling
- 237 Banditry
- 394 Felony
- 396 Illegal production and trade in arms and explosives
- 273 Tax evasion
- 378 Forgery of documents
- 247 Fraud
- 361 Forgery of official documents
- 280 Forgery of business records
- 382 Obstruction of performance of duties by an official person
- 141 Kidnapping

Out of the total number of indicted persons, the largest portion (25%) pertains to individuals accused of criminal offense according to Article 418b ("Smuggling of migrants") of the CC. The number of individuals accused of offenses according to Article 418v of the CC (17%), "Mediation in prostitution" (12%) and "Trafficking in human beings" (12%) is a lesser one.

Chapter II.
Legal regulation of certain criminal offenses related to organized crime in the Republic of Macedonia



3. Criminal offense Trafficking in human beings according to the Criminal Code of the Republic of Macedonia

"No citizen should be either so rich as to be able to buy another person, or so poor so that he or she has to sell himself or herself",
Rousseau

Following the ratification of the UN Convention against transnational organized crime and its two protocols, and in order to harmonize the domestic legislation with it by means of the amendments to the Criminal Code in 2002, the Republic of Macedonia introduced the new Article 418-a titled "Trafficking in human beings". Very soon afterwards, with the amendments to the Criminal Code in 2004, this Article was subjected to changes. A new bill was prepared in 2007 amending and consolidating the Criminal Code, which specifically relates with several of its provisions to the criminal offense of "Trafficking in human beings".

Pursuant to the present regulations (end of 2007), the criminal offense of "Trafficking in human beings" is stipulated in Chapter 34 of the Criminal Code, as part of the offenses against humanity and international law.

The offense (the principal offense in paragraph 1) from Article 418-a is committed by anyone who uses force, serious threats, delusions or other forms of coercion, by kidnapping, deceit and abuse of his/her own position or pregnancy or the position of weakness of somebody else, or the physical or mental disability of another, or, by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person, recruits, transports, transfers, buys and sells persons, harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced fertilization, unlawful adoption, or similar relationship or illicit transplantation of human organs.

This means that "Trafficking in human beings" represents a complex criminal offense, where the **commitment act** consists of recruitment[13], transport, transfer, buying, selling, harboring or accepting persons.

Despite the fact that only female individuals[14] are noted as **passive subjects** in all registered cases of trafficking in human beings by the competent bodies, institutions and organizations in the Republic of Macedonia, our Criminal Code provides for protection of both men and women. Additionally, the age of the passive subject is the criterion

[13] Findings and indicators of possible risks of involvement of young individuals at a highschool age in trafficking in human beings schemes, "An assessment of the attitude and awareness of the teenage population regarding the phenomenon of covert prostitution and trafficking in human beings", HOPS, Skopje 2004, page 34.

[14] According to the report of the Coalition "All for fair trials", all 75 victims registered in THB-related cases observed before the first instance courts were female ("Criminal justice response to organized crime", February 2007, Skopje, Violeta Velkoska). The IOM report of 2004 (Trafficking in Men for Sexual Exploitation, Changing Pattern and trends of Trafficking in Persons in the Balkan Region, page 81) indicates only one case of reported THB offence where the victims were two male citizens of Moldova. In their attempt to leave for Greece they were sold by a Macedonian woman and were exploited in a way that they would provide sexual services at night and work in construction during daytime. Upon their return to their country of origin they reported the offence, but were not part of the procedure before our courts.

used for the determination of the duration of the prescribed prison sentence. Namely, when the victim is an adult, the perpetrator of the criminal offense is facing a prison sentence of at least four years, whereas if the victim is a person below the age of 18, it would provide for the necessary ground for a more severe punishment (regulated in Paragraph 2 and Paragraph 5 of the Article with a minimum prison sentence of 8 years).

One of the remarks by the international community regarding the discrepancy between our legislation and the UN Convention against transnational organized crime i.e. the protocol on prevention, repression and punishment of trafficking in human beings, especially women and children, pertains precisely to the lack of harmonization of the notion of a "child", which according to the Convention, refers to any person younger than 18 years[15], whereas, according to the domestic law, that would be any person up to the age of 14. The period from 14 to 18 years of age is encompassed by the term juvenile[16].

Notwithstanding this obvious difference in the terminology, one should not forget that the Criminal Code provision provides for a more severe sanction of human traffickers, when the victim is "a child or a juvenile" i.e. provides for additional protection of any individual under 18 years of age.

The new bill amending and consolidating the CC enables the resolution of the terminology problem, thus treating every person under the age of 18 as a child.

Another interesting issue is the treatment of the consent of the passive subject to be exposed to exploitation. Namely, in a situation when some of the constitutional elements of the offense exist (described bellow) i.e. when the victim is coerced, threatened, elicited or under control of another person, it is very difficult to speak of a relevant and valid consent, bearing in mind the condition of the victim. This is especially true in a situation where the victim is a child (younger than 18 years of age). According to certain authors[17], in a large number of cases of the judicial practice, the victim's consent is treated as an exculpatory circumstance, which results in exemption or reduction of the responsibility of perpetrators of the criminal offense of trafficking in human beings. Namely, it seems that the issue of previous knowledge by the victims of their involvement in the provision of sexual services, unfortunately, still has a major influence in determining whether the person will be treated as a victim or not. Precisely this generally accepted attitude that these persons knew or could have guessed that they would be engaged in the provision of such services, thus giving their own consent to the acts, especially on the part of the personnel in charge of victim identification, was and still is

[15] Article 3, item e, of the Protocol

[16] Children around the world are being trafficked for reasons of prostitution, pornography, forced labor, panhandling, adoption etc. Children abuse for the purpose of panhandling in the Republic of Macedonia has been an issue of concern for a long period of time. Unfortunately, not a single official research has been carried out in order to evaluate the situation, although the Roma population is considered as a vulnerable category in particular.

[17] Macedonian law enforcement bodies recognize victim statements (consent) as evidence of primary importance. Guidebook for public prosecutors for criminal prosecution of trafficking in human beings, page 27, Vladimir Danailov, Sterjo Zikov, IOM Skopje.

an obstacle for ensuring proper treatment of victims, and above all, for their proper identification as such. This is automatically and directly related to their possibility to exercise their rights.

Our Criminal Code does not address this issue. Rectification is provided in the new bill amending and consolidating the CC, which precisely stipulates that the victim's consent bears no importance for the recognition of the existence of the criminal offense.

The legal existence and recognition of the crime is determined by two important circumstances as follows: the method and manner in which the offense was committed and the intent with which it was committed.

The possible methods of committing the offense include: coercion i.e. use of force or serious threats, abduction, deceit, abuse of one's own situation or the situation of pregnancy, disability or physical or mental inability of another person, or giving or accepting money or other benefits in order to obtain the consent of a person who has control over the trafficked person. Unlike deceit and coercion, which most often are to be seen within the territory of the Republic of Macedonia as a constitutional element of the offense of trafficking in human beings, abduction and the acceptance of money are encountered more as an exception than a rule.

> *According to the statement provided by the victim recorded before an investigative judge in a case observed before the first instance court in Tetovo (Tet 002) in January 2002, she was approached by two persons while waiting for a bus in Temishvar and they squirted some spray in her eyes. Then they put her in a vehicle and drove her from Romania to a tavern in Macedonia.*

We should point out the fact that this Article, besides the use of force, threats, deceit or misuse of situation, encompasses those methods of perpetration which would mean taking advantage of the vulnerability of the victim: pregnancy conditions, disability or physical or mental inability of another person...

In two of the cases observed before the first instance courts, the victims were mildly retarded.

> *In one case observed before the first instance court in Gostivar (Gos 012) during March 2004, a married couple brought the victim in their family house by deceit, and later on forced her to provide sexual services to several individuals in one of the rooms. The forensic examination has shown that the victim was slightly psychologically and physically deranged. This condition of hers was abused by the defendants who promised that they would find her a job in Gostivar, but then took her to their own house with the intention to abuse her sexually. As a result of the type of services that she had to provide, the victim became pregnant, and therefore forced to have an abortion.*

The intent of the perpetrator, which has to exist in parallel with one or several of the above mentioned commitment methods, in certain cases determines the possible distinction between this criminal offense and the offense of "Smuggling

of migrants". Namely, the premeditation of the trafficker implies an awareness that the person is being trafficked for the purpose of prostitution or other types of sexual exploitation, pornography, forced labor or servility, slavery, forced marriage, forced fertilization, illegal adoption or a similar relationship or illegal transplantation of parts of human body (thereat, the condition of slavery, forced labor, illegal adoption etc. does not need to exist). In offenses related to smuggling of migrants, the premeditation of the perpetrator extends only to the activity of illegal crossing of the state border[18].

The registered THB cases in the Republic of Macedonia, mostly relate to trafficking for the purpose of sexual exploitation.

It would be quite realistic to expect for forced marriages to be registered more often i.e. as one type of trafficking in human beings, especially if we take into account the historical and cultural factors that are influential especially in some of the less developed parts of Macedonia.

Unfortunately, these types of cases are not registered at all in the proceedings before the competent authorities. The illegal transplantation of parts of the human body, which is a separate offense in the Criminal Code (Article 210), although it was in the center of the attention of the professional public for quite some time, is not properly reflected in the formal proceedings after all. Namely, no person has been sanctioned so far for trafficking in human beings on these grounds. The same is true for forced labor or servility i.e. slavery, forced fertilization and illegal adoptions.

Article 418-a, Paragraph 3, provides for sanctions for the person who will bereave or destroy an identity card, passport or any other identification document in order to commit the crime.

Sanctioning of clients

The deliberations of the modern society are moving towards the establishment and development of mechanisms to eliminate the demand for sexual services provided by exploited women and girls. Namely, pursuant to the CTOC Protocol (Article 9, Paragraph 5), the member states are obliged to adopt i.e. strengthen the legislative and other measures (and these might be educational, social or cultural measures), thus influencing the reduction in demand, which usually drives all types of exploitation, especially the one of women and children[19]. In parallel, the Council of Europe Convention for action against trafficking in human beings, talks about the need to define the use of services

[18] Although there is a lot of overlapping between these two criminal offenses, as well as practical problems in differentiating between them, still, the difference between the two can be seen in several basic elements:
1. Trafficking in human beings is an offense against an individual, whilst smuggling is an offense against the state.
2. Trafficking in human beings can be internal or external, whilst smuggling requires crossing of state borders.
3. The consent by the trafficking in human beings victim is irrelevant, whilst the migrant generally agrees to enter the country illegally.
http://www.unodc.org

[19] Prostitution on Demand, Legalizing the Byers as sexual consumers, Janice G. Raymond, Coalition Against Trafficking in Women, http://www.prostitutionresearch.com/

by trafficking in human beings victims as a criminal offense. This also requires an awareness of the fact that the person whose services are being used is actually a trafficking victim.

The Republic of Macedonia is one of the rare countries that foresee (Article 418-a, Paragraph 4) punishment of any person who uses sexual services from another person, knowing that this person is a victim of trafficking[20]. The exceptional sanctioning (if any) on these grounds can not confirm the existence of any relationship between a reduced number of cases in the area of trafficking in human beings and influences i.e. changes in the behavior of the users (especially men) of sexual exploitation services.

Only in one case, out of a total of 16 observed cases in relation to "Trafficking in human beings" offenses, an indictment has been raised pursuant to Article 418-a, Paragraph 4.

> *In a case observed before the first instance court in Tetovo (Tet 006), a verdict has been reached according to which the charges pursuant to Article 418-b, Paragraph 2 (committed act: harboring of migrants) against a couple of individuals have been dropped, whilst one of them has been convicted for the criminal offense of "Trafficking in human beings" pursuant to Article 418-a, paragraph 5[21], and sentenced to one year in prison (because he transported the victim illegally across the border and provided her with refuge at several locations in Tetovo, although he knew that she was a trafficking in human beings victim). The offense (an offence in continuity) commenced in April 2002 and its illegal situation lasted until November 2004. Bearing in mind Article 30 of the CC, according to which the offense was committed during the time when the perpetrator was acting or was obliged to act, regardless of the time of the consequence, as well as Article 3 of the CC, according to which the perpetrator will be tried pursuant to the applicable law at the time when the offense was committed, and if the law has been changed then the more favorable law for the perpetrator should be applicable, it was the court's opinion, considering that the criminalization of the offense of smuggling of migrants has been done with the legislative changes in April 2004 (which means that at the time when the offense was committed, it did not exist as such), that the accused could not be held responsible for this offense. Following the decision of the Appellate court, the case was referred back with an annotation that regarding activities in 2002, one can apply the law that was applicable at that time. The first instance court did not agree with the position of the Appellate court in Skopje and dropped the charges against the two defendants again. As far as the person who was sentenced to prison pursuant to Article 418-a, Paragraph 4 of the CC (changes in 2004) is concerned, after the case was reconsidered, the charges were dropped, because the public prosecutor waved his right to pursue the case any further.*

[20] The Swedish Criminal Code also provides for a fee or prison sentence up to 6 months, for any person who uses or is trying to use sexual services in return for a pecuniary compensation. Punishment - six months of community service and a fine (or imprisonment of one year and a fine) is foreseen pursuant to the Anti Trafficking in Persons Act in the Philippines. The Greek legislation is stricter and it provides for a prison sentence of at least 6 months. "Comprehensive Legal Approaches to Combating Trafficking in Persons: An international and Comparative Perspective", Mohamed Mattar, page 51 (http://www.protectionproject.org)

[21] Article 418-a, Paragraph 5, following the amendments to the CC in 2002 (Official Gazette of Republic of Macedonia, number 4/02 of 25.01.2002) now corresponds to Article 418-a, Paragraph 4 of the CC, pursuant to the Law on amendments to the CC from 2004.

The arguments of those who are in favor of sanctioning the users of sexual services provided by victims of trafficking are basically supporting the opinion that punishment of consumers will raise the awareness of this particular group about this harmful phenomenon and their own responsibility in the process of creating the necessary market demand. Bearing in mind the basic economic rule that says that *increased demand means an increase in the product price*, and bearing in mind the basic motive of the traffickers i.e. profits, the correlation between the demand and the development of this phenomenon is quite obvious.

On the other hand, there is also an opinion that by sanctioning the users the State loses the opportunity for these users to assist the identification of trafficking offenses by reporting such cases to the competent authorities. Their willingness to testify before the court against the traffickers is also reduced considering that by doing so there is a threat that they also might be subjected to criminal prosecution. One also has to mention the provision in Article 223, Paragraph 2 of the Criminal Procedure Law according to which the witness has the right to refuse to answer certain questions, if it is likely that by doing so he might expose himself or a relative to severe defamation, material losses or "criminal prosecution".

If we take into account the small number of reports coming from the users of such services[22], as well as the nearly nonexistent situations where the users have acted as witnesses before the court, then we can ask ourselves if the possible argument that by sanctioning the users the state only loses the potential witnesses i.e. informants is justified or not[23].

It is interesting to mention that the Criminal Code of Macedonia, in its Article 364, Paragraph 2, also provides for punishment of any person who advisedly neglects to report (amongst others) the criminal offense of Trafficking in human beings.

Individuals and legal entities might appear as perpetrators. The Criminal Code of Macedonia provides for a fine if the offense was committed by a legal entity. Unfortunately, the case law still has not registered a single punishment of this type notwithstanding the widespread belief of the professional public that nowadays, most often, the criminal offense of trafficking in human beings is being committed by utilizing the services of beauty and massage parlors.

Decriminalizing victims of trafficking

Besides the enormous number of initiatives and activities by international and domestic organizations, as well as the huge number of documents and established standards, in certain destination countries it still happens that victims of trafficking are being criminally prosecuted because of the illegal status i.e. migration, or because of use of forged

[22] In the majority of these cases, the offense was detected during raids of nightclubs and bars in the western part of the Republic of Macedonia.
[23] According to the IOM report (Regarding the Guidebook for public prosecutors on criminal prosecution of trafficking in human beings, page 27, Vladimir Danailov, Sterjo Zikov, IOM Skopje) in 7% of all situations, the victims were actually saved by their clients.

documents. Also, sanctioning of victims for provision of sexual services is not excluded in those countries where such activities are against the law.[24]
This kind of policy precludes the victims from contacting police officials and reporting the offense because of the fear of possible criminal prosecution. Therefore, the victim does not have the possibility to enjoy the basic rights and the State loses the opportunity for successful prosecution of the perpetrators of these offenses, since she loses the opportunity to obtain information and witnesses in the proceedings before the courts.

During the last two or three years there have been several exceptional examples in the practice in Macedonia of cases where the victims of trafficking in human beings have been punished for misdemeanor offenses. However, the small number of such cases can be explained both by raising the awareness of the main actors in the process of victims (non) punishment, and the rapidly decreasing number of foreign female citizens – victims in the Republic of Macedonia i.e. the reduced number of registered cases of trafficking in human beings.

Sanctioning of organizing a group and instigation of trafficking in human beings

One of the changes in 2004, in relation to criminalization of the act trafficking in human beings, pertains to the sanctioning of anyone who organizes the perpetration of the basic form of the offense (both when the victim is an adult and when it is a child or a juvenile). Namely, the former paragraph three is deleted from Article 418-a of the Criminal Code and specified separately with the introduction of Article 418-v of the CC.

At present, anyone who organizes a group, gang or any other type of association to commit the act of trafficking in human beings (besides the offense in Article 418-b) will be sentenced to prison of at least eight years. Additionally, the mere participation in a criminal group, as well as providing assistance to such groups is a punishable offense. Article 418-v also provides for sanctioning of the act of instigation and preservation of this criminal offense.

It would be interesting to mention the provision that provides for relief from punishment of any member of the group who is willing to expose it, before he or she commits a criminal offense as its member. This legal option, as it is the case with the punishment according to Article 418-c in relation to the criminal offense of trafficking in human beings, is still not being used in practice[25].

3. Criminal offense: Mediation in prostitution and trafficking in human beings

For quite some time, the issue of legalization of prostitution has caused strong reactions and permanent fight by the ones who approve of it, and consider it as a part of the labor sector, all the way to the ones who condemn it, because it means annulment of the generally accepted moral and social norms, even violation of the basic human rights.

[24] Reference Guide for Anti-Trafficking Legislative Review, Ludwig Boltzmann Institute of Human Rights, Vienna, A. Kartusch, September 2001. Protection and assistance.
[25] Unlike the offense of trafficking in human beings, the organization of a group to commit the criminal offense of smuggling of migrants was sanctioned before the court on numerous occasions, during the last two and a half years.

The dichotomy of the understanding of this phenomenon by various legislations also reflects in the criminal policies they implement, and therefore in the provisions that regulate the issue of trafficking in human beings, prostitution and mediation in prostitution.

Namely, in the countries that have legalized prostitution the exploitation of women in the sex industry is considered as an "incidental phenomenon, which is generally associated with incidental bad behavior by certain intermediaries or customers".[26]

One can notice the tendency in these countries, where the term trafficking in human beings encompasses only trafficking for the purpose of servility or forced labor.

The strongest argument of the countries that are of the opposite opinion is the fact that the countries that have legalized prostitution have the highest rate of illegal trafficking in human beings. Namely, around 80% of the women in the brothels in the Netherlands, where prostitution is treated like any other job i.e. like a part of the economy sector, are objects of trafficking in human beings. They also believe that the claims that "legalized and regulated prostitution reduces violence in the sex industry still remain to be properly scrutinized and proven".[27]

The problem of making the distinction between exploitation of women in the sex industry and exploitation of women who have been trafficked for prostitution wriggles its way both through the international legal framework, but also in the national legislations.

Prostitution[28] in the Republic of Macedonia is not considered as a criminal offense, but a misdemeanor offense against the public order and peace[29].

Article 191 of the CC incriminates the mediation in prostitution, i.e. sanctions (the basic form of the offense) anyone who recruits, induces, instigates or entices persons to prostitution or in any other manner participates in the delivery of a person to another.

What causes attention and initiates discussion is the last part of the provision... or in any other manner participates in the delivery of a person to another.

Namely, it raises the issue of the possible distinction between trafficking in human beings and mediation in prostitution.

[26] Janice G. Raymond, Guide to the new UN Trafficking Protocol
http://action.web.ca/home/catw/readingroom.shtml?x=33647&AA_EX_Session=4941eee3ee433bbfdfdc70b579706034
[27] Ibid.
[28] "Sexual intercourse or other sexual relations with an unspecified number of people of the same or other gender." - V. Kambovski, "Kazneno pravo-poseben del"
[29] There are around 2,500 to 3,000 sexual workers in the Republic of Macedonia, Open Skopje Scene, report Skopje 2005, HOPS Healthy Life Options, page 12.

If one follows the opinion of some domestic authors, that the participation in the act of procuring a person to another for the purpose of prostitution is just of type of trafficking in human beings[30], then it seems that the border line between these two criminal offenses fades away. However, the difference between the two becomes very important if one considers the huge difference in punishment of the perpetrators.

Having in mind that until the enactment of Article 418-a of the CC, this provision was the only one (not taking into consideration the establishment of slavery relationship and transport of persons) which regulated trafficking in human beings for the purpose of prostitution, there was a need of an extensive interpretation of this part of paragraph 1 of Article 191 of the CC, in order to provide for any kind of protection in a situation where a fundamental and elaborated legislation is missing. The situation has been changed with the incrimination of the criminal offense of trafficking in human beings.

Paragraph three of Article 191 of the CC goes even further. Namely, the offense is committed by the "one who, for making profit, by force or serious threats of using force, will coerce or induce another person by deceit into providing sexual services".

Although in the first paragraph, the wording "by any method" could have been, but not "have to" be interpreted as one of the methods covered in the trafficking in human beings offense[31], in Article 191, paragraph 3, the wording "by force or serious threats of using force, will coerce or induce another person by deceit", can be easily additionally summarized under those. "Induces another person into provision of sexual services", could be interpreted as recruitment for the purpose of exploitation through prostitution.

This means that in a situation of use of coercion as a method for recruitment of a person to be exploited by prostitution, which is the most common form of trafficking in human beings on the territory of the Republic of Macedonia, it means that the conditions have been met for the existence of both the criminal offense from Article 418-a, paragraph 1 (act of commitment: recruits) and the offense from Article 191, paragraph 3.

This type of legislative setup creates problems for the work of the public prosecutors and judges, which is confirmed by the examples of enormous variety of cases, with respect to the classification of the activities under a certain criminal legal norm.

Namely, similar commitment acts in certain situations have been sub-classified under the offense of Trafficking in human beings or Mediation in prostitution. One can look for the reasons for this in several different directions. Most of all, because of the existence of the following:

[30] Dr. Vlado Kambovski, Criminal law, special part, page 218.
[31] …by force, serious threat or other methods of coercion, abduction, deceit, by abuse of his/her own position or pregnancy, the position of weakness of somebody else, or the physical or mental disability of another, or, by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person…

- problems that arise in relation to the time period of validity of the laws[32] i.e. the huge time difference between the actual perpetration of the offense and the time of the trial;
- the problem of ensuring appropriate evidence by the law enforcement bodies;
- not that rare situations where cases before the courts, include migrants, that is girls, who have been found in nightclubs and bars as a result of raids;
- or situations when migrants, who have been trafficked by an organized network, have been intercepted in Macedonia, halfway between their initial and final destination, without having enough information, nor being able to prove that the illegal transport is a separate goal on its own, and not just a beginning of a further exploitation.

In the judicial practice there are three cases, where the accusation in the indictment is changed from Article 418 into an offence pursuant to Article 191 of the CC (however, not vice versa).

In a case that was initiated before the basic court in Tetovo under the accusation of trafficking in human beings against a group of 10 defendants, after a minimum of 14 hearings, during the last hearing, that is during the final words, the public prosecution (after dropping the charges in a written form against four of the defendants) also dropped the charges against the remaining four persons. The indictment act for the remaining two individuals, whose presence was not provided during the main trial, was modified from Article 418-a, into an offense pursuant to Article 191 of the CC.

Paragraphs 4 and 5 of this article provide for a stricter sanction when the offense is committed with a juvenile or a child. These two paragraphs are taken out from the new proposed law on changes and amendments of the Criminal Code. Namely, it seems that the intention of the creators of the new legal text was, for all situations where the victims engaged (forced into) in prostitutions is a child, to be classified under the criminal offense of trafficking in human beings.

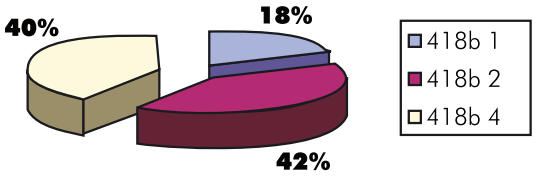
5. Criminal offense: Smuggling of migrants

According to the article 418-b of the Criminal Code the offense smuggling of migrants is committed by anyone who uses force or serious threats of attack to life or body, abduction, deceit, out of self-interest, abuses the official position or disability of another person, in order to transport migrants across the state border illegally, as well as anyone who produces, obtains or possesses false travel documents for that purpose.

Article 418-b, paragraph 2 of the CC on the other hand, provides for punishment of anyone who recruits, transports, transfers, buys, sells, harbors or accepts migrants[33].

[32] For more details see page 21 of the report of the Coalition "All for Fair Trials" titled as "Combating trafficking in human beings through the practice of the domestic courts", Skopje, November 2005, Violeta Velkoska
[33] For more details see page 69, Punitive and legal response to organized crime, Skopje, February 2007

Number of defendants according to paragraphs



Out of the total number (20) of observed cases related to the criminal offense smuggling of migrants, the least number of cases are initiated pursuant to Article 418-b, paragraph 1. In the remaining situations, persons have been charged pursuant to paragraph 2 i.e. paragraph 4 of this article. Namely, 42% of the total number of defendants has been actually accused of smuggling of migrants pursuant to paragraph 2.

The CC prescribes a more severe punishment in paragraphs 3 and 4, if the life or health of the migrant is put in a grave danger, or if he or she is treated in a particularly humiliating or cruel manner, or if the person is prevented from enjoying the rights that he or she has according to international law, as well as if the offense was committed with a juvenile. As part of the monitored cases, the case law has shown that in 6 cases (against 29 defendants) the offense was committed against juveniles i.e. pursuant to paragraph 4, in relation to paragraphs 1 and 2.

6. Criminal offense: Misuse of official position and authorization

Pursuant to the Criminal Code, the criminal offense prescribed in Article 353 is committed by an official person who provides some benefit for himself or herself or for somebody else, or causes harm or loss to someone else by:

1) abusing his or her official position or authority;
2) exceeding his or her limits of official authority; or
3) not performing his or her official duties.

The basic form of the offense entails a prison sentence of six months to three years.

If the perpetrator obtains a larger property value or causes a larger damage to property or seriously violates the rights of another person, he or she will receive a more severe prison sentence, i.e. from six months to five years. If the perpetrator obtains a significant property value or causes significant damage, then he or she will be sentenced to one to ten years of imprisonment.

Apart from the basic form and two more serious forms of this offense, Article 353 also contains certain provisions for punishment of an official person if the act was committed as part of the exercise of their special authorization or duty,

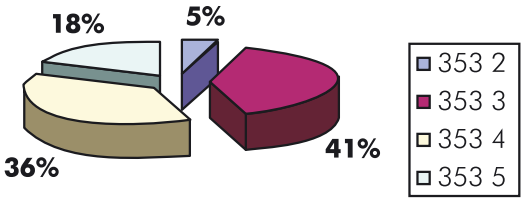
as well as if the act was committed in the process of public procurement and to the detriment of the funds of the State Budget of the Republic of Macedonia, public funds or other government resources.

Within the monitored cases, paragraph 3 has been applied on 41% of the defendants[34]. In a lesser number of cases (36%) the indictments related to paragraph 4, whereas paragraph 2 (larger property value obtained) accounts for 5% and paragraph 5 for 18%. None of the defendants was accused for the basic form of the criminal offense.

Having in mind the fact that the act in Article 353 is a general and subsidiary offense, one can exclude the possibility of conjunction between this criminal offense and other separate offenses that represent abuse and lead to effectuating profits or inflicting any kind of damage to others[35].

In 32% of the cases, the accused for the offense stipulated in Article 353 were also accused on another ground (most often for money laundering and other proceeds from a criminal offense, and less often for fraud or forgery) simultaneously.

Number of defendants according to paragraphs



7. Criminal offense: Taking bribe

Closely related to the criminal offense *Abuse of official duties* is the offense *Taking bribe*. Both criminal offenses involve commitment of acts, which should not have been committed within the limits of the official authorization, as well as obtaining some kind of gain or proceed for doing so. Namely, the passive offense of taking bribe (the basic form) is committed by an official person who will ask for or receive a gift or another benefit, or accept a promise of a gift or another benefit, in order to commit an act, as part of his or hers official authorization, which should not have been committed, or not to commit an official act, which otherwise he or she should have committed. Paragraph one related to this offense entails a prison sentence of one to ten years. According to paragraph two of this article, there is a lesser sentence (six months to five years imprisonment) foreseen for any official who gains any sort of benefit for committing an act, as part of his or hers official authorization, which should have been committed, or not committing an official act, which should not have been committed.

[34] If the perpetrator of the crime acquires a significant property gain or causes a significant damage
[35] Kambovski Vlado, Criminal law, special part, Prosvetno Delo, Skopje, 1997, page 498

The act of asking for or accepting a gift or other benefit, following the commitment or non-commitment of the official act mentioned in the previous two paragraphs, entails a sentence from three months to three years imprisonment.

A punishment is also foreseen for the responsible persons and persons performing acts of public interest, if the offence was committed in relation to acquiring, enjoying or bereaving rights prescribed by law or in order to acquire certain benefit or cause damage to others, for the responsible persons in foreign legal entities, as well as foreign officials, who will commit such an act to the detriment of the Republic of Macedonia, its citizens or legal entities.

All of the accused (25), in all cases observed, were accused for the criminal offense under paragraph1[36]. In general, these are authorized officials, Macedonians, at an age between 30 and 40 in more than half of the cases, and most often with completed secondary education.

Conclusions:

- There is no compatibility between the domestic legislation and the UN Convention against transnational organized crime i.e. the Protocol on prevention, suppression and punishment of trafficking in human beings, especially of women and children regarding the term "child", which according to the Convention refers to any person younger then 18 years. According to the domestic law, that would be any person under 14.

- The Macedonian legislation does not contain any provision that might address the issue of irrelevance of the victim's consent in relation to the recognition of the existence of the criminal offense, in case when that consent was extorted by deceit, coercion, threat or use of force.

- The registered cases in the judicial practice in the Republic of Macedonia are mainly related to trafficking in human beings for the purpose of sexual exploitation.

- There is not a single case in the domestic case law, in which a legal entity was found guilty of the crime trafficking in human beings. This is despite the widespread belief by the professionals in charge of dealing with this type of crime, that nowadays, most often, the criminal offense of trafficking in human beings is being committed by utilizing the services of beauty and massage parlors.

- The Republic of Macedonia is one of the rare countries, which criminalizes the use of sexual services from another person, if there is knowledge that that person is a victim of trafficking in human beings. In doing so, the country joins the group of states, which address the issue of demand as one of the major preconditions for the existence and expansion of trafficking in human beings. However, an indictment against such a perpetrator has been raised

[36] An official person who requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of his own official authorization which he should not perform, or not to perform an official act which he otherwise must do, shall be punished with imprisonment of one to ten years.

in one case only, and later on it was revoked by the public prosecutor, when the case was referred back for adjudication by the higher court.

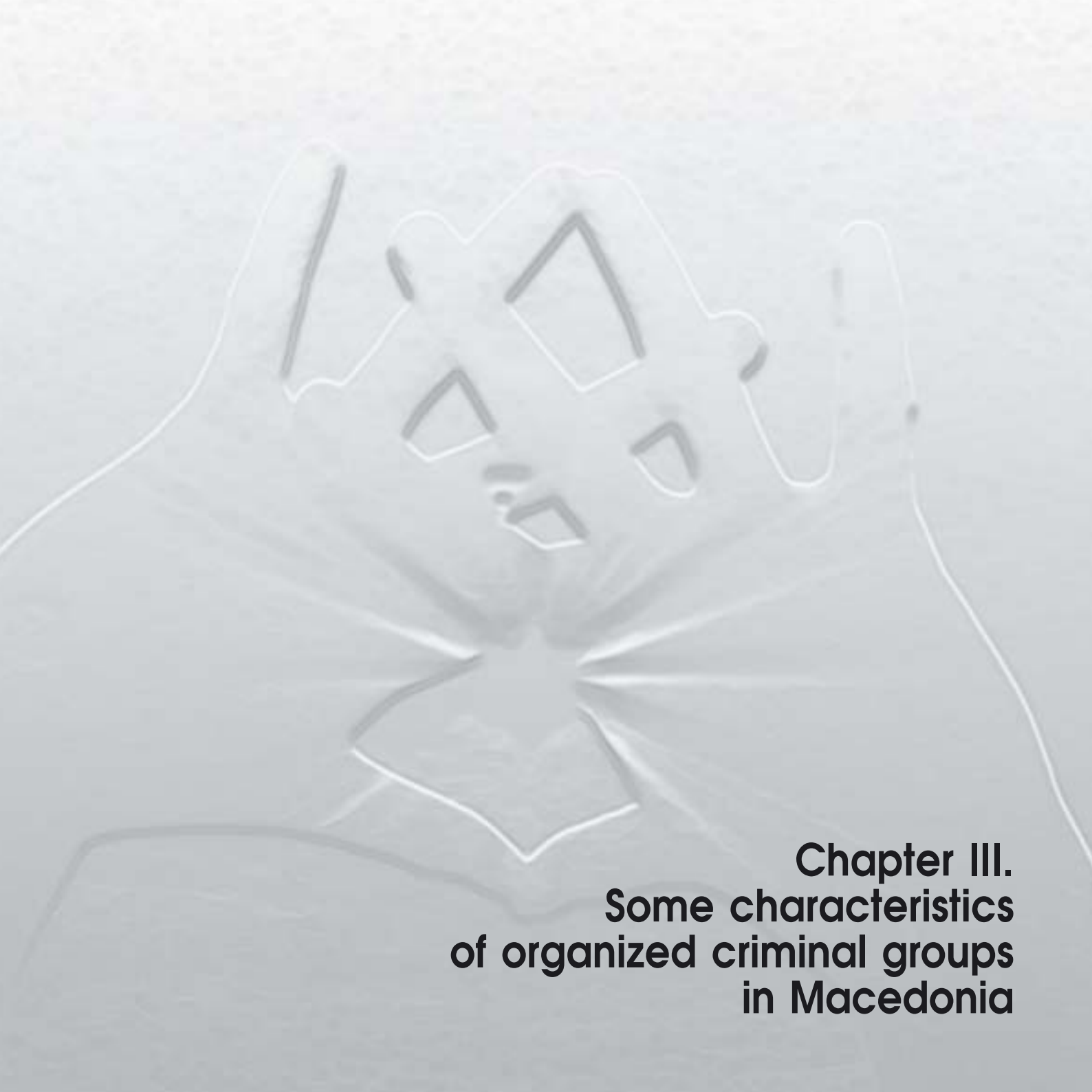
- The generally accepted opinion that victims knew or could have guessed that they will be engaged in the provision of sexual services, thus giving their own consent for the acts, especially among the actors responsible for victim identification, is an obstacle for ensuring proper treatment of victims, and above all, for their proper identification as such.

- Only female individuals have been noted as passive subjects in all registered cases of trafficking in human beings by the judicial bodies in the Republic of Macedonia.

The punishment pursuant to Article 418-c i.e. for the criminal offense of "Organizing a group and instigating the commitment of acts of trafficking in human beings and smuggling of migrants", in relation to the criminal offense of trafficking in human beings, still has not been pronounced in any case in the judicial practice.

Recommendations:

- Although the domestic legislation provides for additional protection of every person below the age of 18 with the introduction of more severe punishment for the perpetrators of trafficking in children, still there is need for further , harmonization with the international standards (provided in the UN Convention against transnational organized crime and its Protocols) concerning the term "child". According to the Convention, child is any person younger than **18 years**, and according to the domestic legislation every person below 14.



Chapter III.
Some characteristics of organized criminal groups in Macedonia

8. Degree of organization of perpetrators of offenses in the area of organized crime in the Republic of Macedonia

Ravens are being forgiven
and pigeons are put through hell

In a lack of empirical data i.e. research, publications or analysis conducted by the competent bodies for dealing with these issues, regarding the degree of organization of criminal groups active on the territory of the Republic of Macedonia, we are [2]obliged[2] to comment on the few modest analysis made during the last four to five years by various (mainly foreign) organizations.

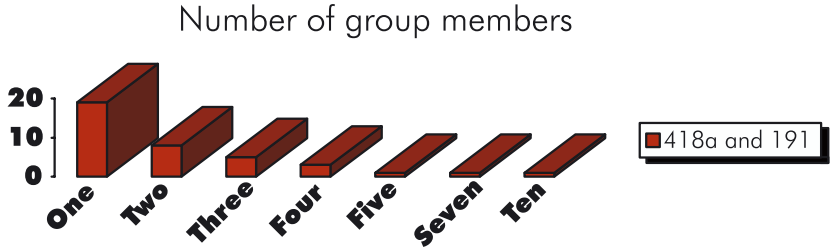
Namely, according to the report by Transcrime for 2004[37], on the topic of trafficking in human beings, there have been one to ten operational criminal groups with an average number of 10 members within a single group. The groups are heterogeneous with respect to national qualification and well connected amongst themselves. On the other hand, according to the report by International Organization on Migrations[38] from the same year, there are 250 criminal groups in Macedonia, which are mainly comprised of individuals from the Albanian ethnic community, which have quite good cooperation with the Albanians in Kosovo. The 2004 report[39] by UNICEF, UNOHCHR and ODIHR, speaks about 42 complex cases of trafficking in human beings, which have been resolved by the police, with a total number of 78 identified suspects. The ratio between the number of cases and the number of identified suspects is quite noticeable. Namely, if a single case involves one or two suspects only, then the questions is whether one can really speak of organized crime at all. In 2004, according to the same report, this number is 11 cases and 33 suspects[40], for the first nine months of the year.

According to the report by the Coalition All for a fair trial, in relation to 2005 and 2006, in 46% of the cases of trafficking in human beings (i.e. in 25% of the cases of mediation in prostitution) that have been observed before the basic courts, within one criminal case there have been three or more defendants. A couple of interesting issues are being raised by the report. Namely, is it true that in situations when in a single criminal and legal incident, the participation of a minimum of three persons was not confirmed, one should not discuss trafficking as a form of organized crime at all, because one of the basic elements that makes this offense organized is missing, and is it true that considering the fact that for any violation of trafficking to exist, there has to be at minimum one seller, one participant in the transport and one buyer, this kind of situation is not speaking of the insufficient success of the police and the public prosecution office in identifying all the participants in such events?

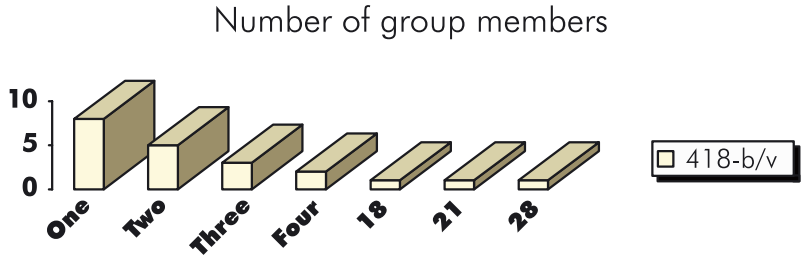
[37] The contribution of data exchange systems to the fight against organized crime in the SEE countries, Final report, Transcrime for the Office of the Special Coordinator of the Stability Pact for SEE, November 2004
[38] Changing patterns and trends of trafficking in persons in the Balkan region, IOM Report 2004,page 84
[39] Trafficking in Human Beings in South Eastern Europe, 2004
[40] Although the report speaks of the perpetrators of the criminal offenses, they are just suspects, bearing in mind that the report discusses the activities by the police. It is interesting to mention that according to the data from the State Statistics Bureau in 2004, only 45 individuals have been reported for the offense under Article 418-a, an indictment has been raised against 29 individuals and 9 PERPETRATORS of this criminal offense have been convicted.

In the first case, one has to bear in mind that only 58% of the defendants were also convicted for the same crime, which means that the fore mentioned percentage for at least three people involved in the incident (46%; 25%) will decrease additionally by the end of the criminal proceedings.

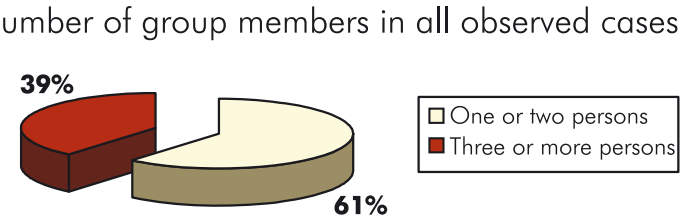
If one adds to the analysis the limited information related to cases in 2007, with respect to the criminal offenses of trafficking in human beings and mediation in prostitution, as one might expect, things would remain almost the same.



The same pertains to the criminal offense of smuggling of migrants. Namely, the analysis made for 2005 and 2006 have brought the conclusion that in 35% of the total number of cases, there are more than three accused persons in relation to each and every criminal offense. If one adds the numbers for 2007 (up to October) to the previous two years, this percentage increases by 3 (38%). Out of the total of 21 cases related to offenses under Article 418-b and 418-v (smuggling of migrants), eight cases actually involve three or more defendants.



After summarizing the data, the final result is that in 39% of the monitored cases the number of the perpetrators was three or more individuals.

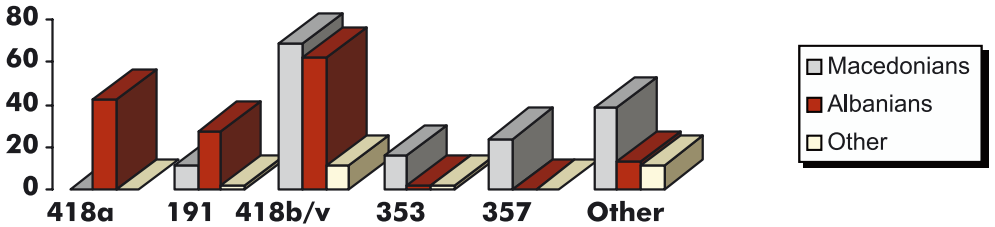


Ethnic origin of the accused persons

As far as the ethnic origin of the accused persons is concerned, the situation established in 2005 and 2006, with the analysis that confirms the 100% participation of members of the Albanian ethnic community in the criminal offenses of trafficking in human beings, continues in 2007. In relation to the offense mediation in prostitution, the percentage also remains the same

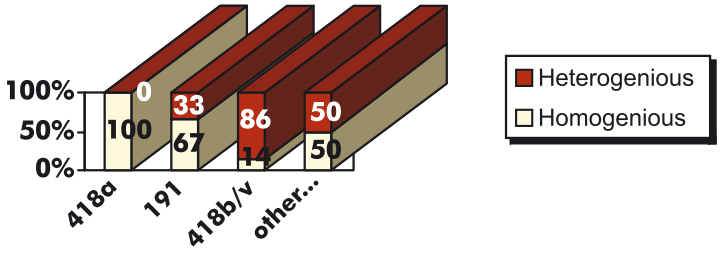
If we make a comparison with the other observed criminal offenses (taking into account just the ones that were to be found in more than three cases), we can draw the conclusion that unlike the criminal offenses of mediation in prostitution and trafficking in human beings, in the cases of bribery and abuse of official position and authorization, the Macedonians prevail as defendants.

Nacionality structure by criminal act



As far as the ethnic homogeneity of the members of groups with at least three persons is concerned, the biggest homogeneity is to be noted in trafficking in human beings offenses, whilst the largest variety is present in cases related to the criminal offenses listed under Articles 418-b and 418-v of the CC. For all other criminal offenses, the ratio between the homogeneous and heterogeneous structure is the same.

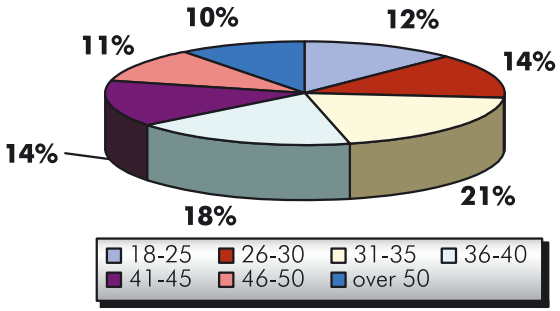
At least three defendants



Age of the accused

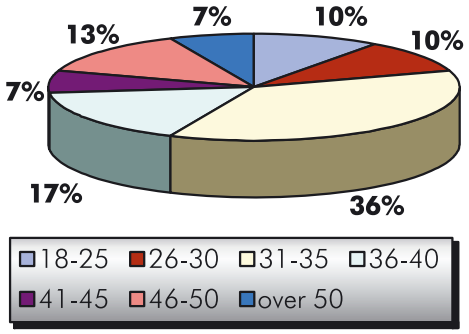
The analysis of the age of the 278 accused persons for offenses related to organized crime, shows that the age group of individuals from 31 to 35 is the prevailing one.

Age structure of all cases

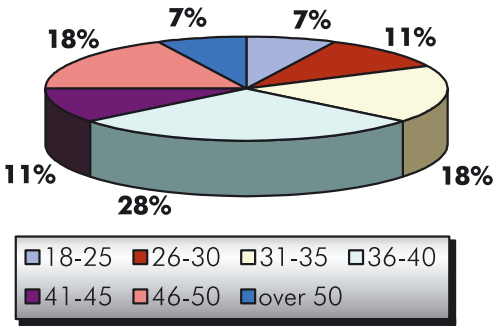


However, if one focuses on individual criminal offenses, one will notice a great variety in the age of the perpetrators (possible perpetrators, since these are accused and not convicted persons). Namely, the 31-35 age group prevails in the case of trafficking in human beings (with 36%) which, together with the 36-40 age group accounts for more than half of the total number of accused persons. Contrary to one's expectations (due to intertwining between mediation in prostitution and trafficking in human beings), for the criminal offense under Article 191 of the CC, the 36-40 age group accounts for the largest percentage.

418a Trafficking in human beings

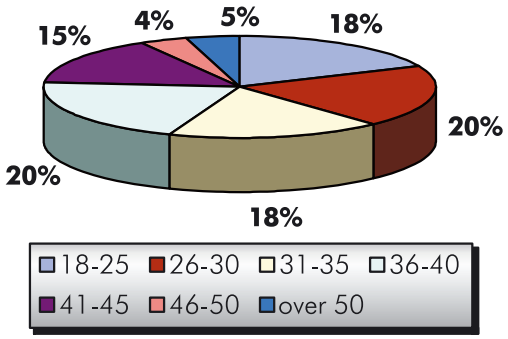


191 Mediation in prostitution



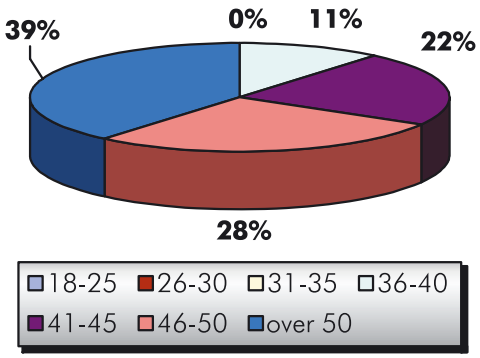
It seems that most often, perpetrators of the criminal offense of smuggling of migrants are somewhat younger individuals, that is, the prevailing category is the 26-30 age group, along with the 36-40 age group (20% each).

418b/v Smuggling of migrants and organized form

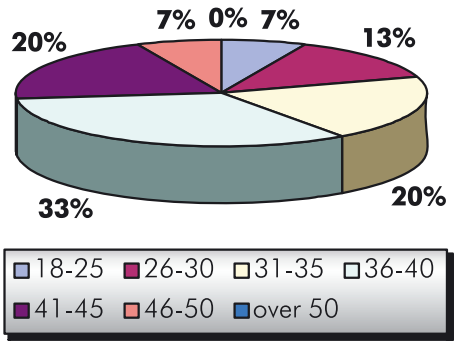


On the other hand, in the case of the criminal offense abuse of official position and authorization (whereby it stands apart from the rest of the organized crime offenses), the majority of the perpetrators are at the age of 46 and over (even 67%).

353 Abuse of official position and authority



357 Taking bribe

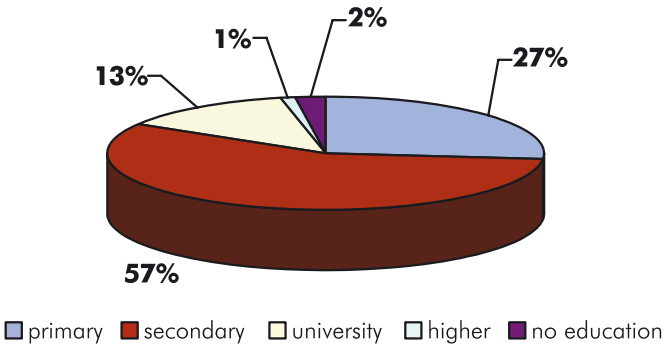


Educational background of the accused

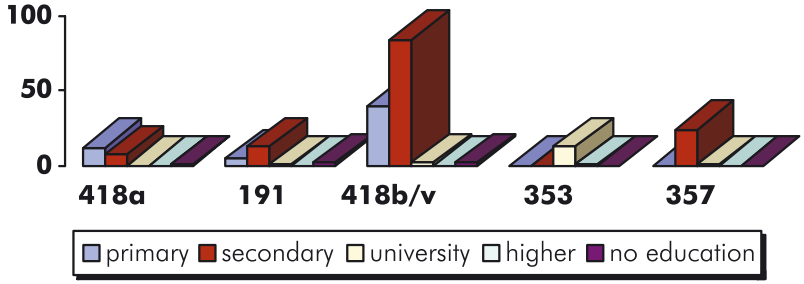
Regarding the educational level of the accused in the monitored organized crime offenses, the conclusion is that in the majority of the cases (more then half) they have medium educational qualifications. This category prevails for the following offenses: smuggling of migrants, mediation in prostitution and accepting bribes.

Whilst the largest percentage of defendants accused of trafficking in human beings are individuals with primary education only, persons with higher education and university degrees prevail in the case of the offense of abuse of official position and authorization (93%).

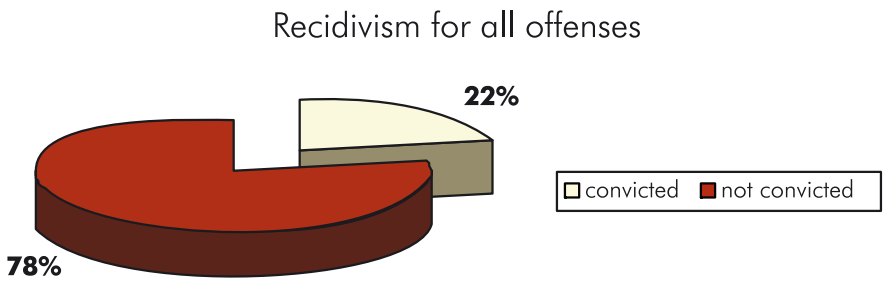
Degree of education in relation to all offenses



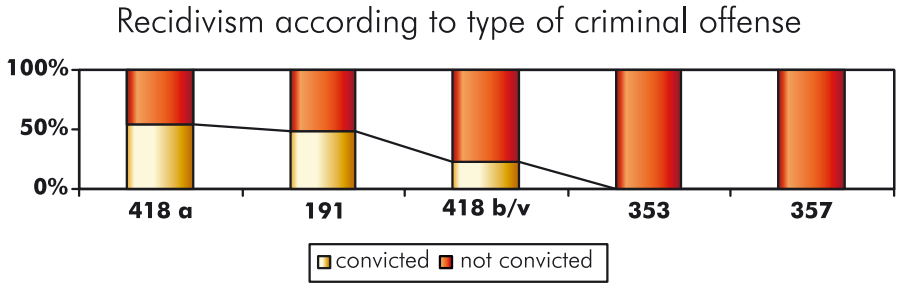
Educational structure according to type of offense



Recidivism

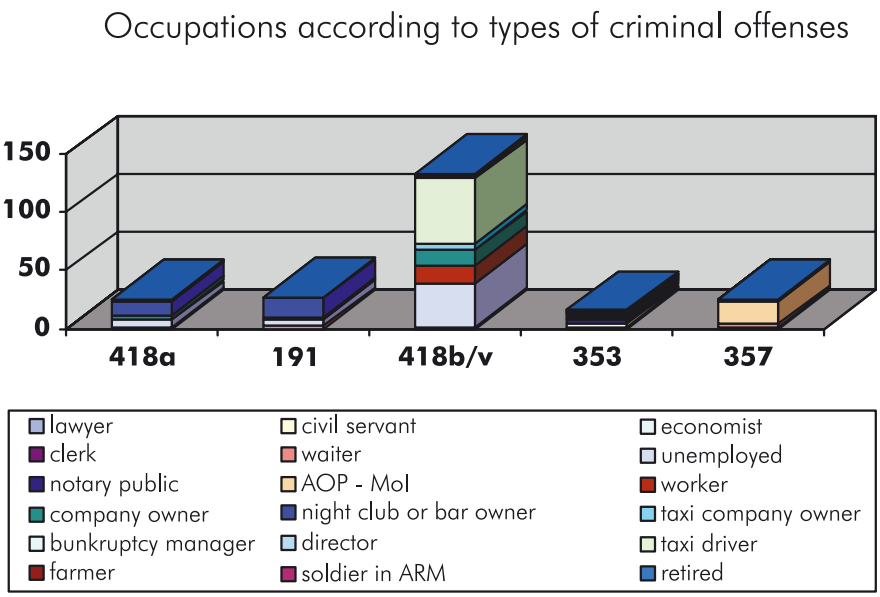


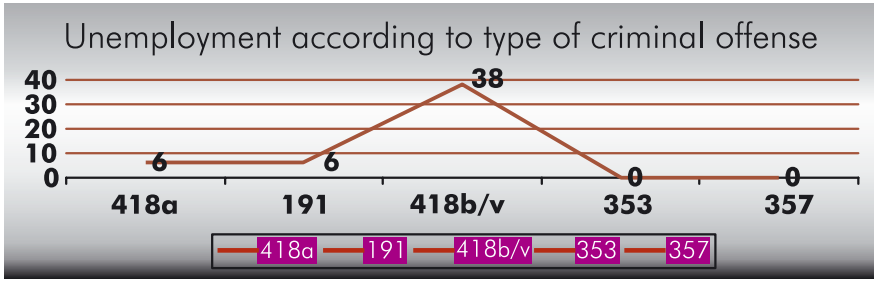
Almost one quarter of the accused persons for crimes in the area of organized crime were previously convicted for another criminal offense. Recidivism prevails in the case of the criminal offenses of trafficking in human beings with 54% of the total number of individuals accused for this crime and mediation in prostitution with 48%. In the majority of the cases those were identical crimes (multiple crimes in a sequence), which speaks of the perseverance of perpetrators and their activity in this area.



Occupation of the accused

Although the diversity of the criminal offenses and thereby the profile of the perpetrators of those offenses, makes the classification of their occupation more difficult, still, one characteristic is specific to certain crimes. Namely, 52% of the total number of defendants are owners of nightclubs and bars in the cases of mediation in prostitution and trafficking in human beings altogether. If one adds to the same group the owners of companies that prevail immediately after the afore mentioned category, then this percentage increases to 63%. As one can expect, when talking about smuggling of migrants, as well as about organizing a group and instigating smuggling of migrants, the majority of the accused persons are taxi drivers. In the majority of the cases of accepting bribes, the defendants are authorized officials from the Ministry of interior.





The major portion with respect to criminal offenses under Articles 418-b and 418-v of the CC pertains to unemployed perpetrators, but their number is significantly lower in the case of prostitution and trafficking in human beings.

9. Activities of organized groups, preventing the successful combat against trafficking in human beings

According to the Europol's OCTA Report from 2006[41], the activities of the organized crime groups in the European Union, with respect to the prevention of the combat against organized crime, is taking place on three different fronts.

[41] Organized Crime Threat Assesment 2006, EUROPOL

The first one are the measures that prevent the monitoring of the activities of the criminal groups, which would include all activities of (counter) monitoring the work of the law enforcement agencies, infiltration of their people within, providing false information etc.

The second front is represented by the measures, undertaken in order to prevent the identification of the group members, such as forgery of documents, false representation, use of nicknames and aliases, internal slang.

The third one is an attempt to preclude the prosecution and sanctioning of perpetrators of organized crime offenses. This would include a large number of various activities. Anything from intimidation to extreme forms of violence, both against people involved in the procedure ex officio i.e. policemen, public prosecutors and judges and against any other person that might act to their detriment by providing a statement i.e. witnesses.

Intimidation of witnesses[42] can be direct, when somebody undertakes specific actions against a witness with a precisely defined goal, as well as indirect (abstract) when there are real expectations for certain consequences to arise, depending on the severity of the act or offense. The latter is accompanied with an atmosphere of fear and general distrust in the institutions of the system and therefore unwillingness of the witness for cooperation.[43]
Sometimes, witnesses feel threatened, when even objectively, there is no reason for them to feel that way.
Owing to the lack of data and researches, one can only guess to what extent such a model could be really applied as part of the activities of organized groups in Macedonia, and to what extent one can truly speak about planned and systematic actions by their members for the purpose of obstructing justice. However, certain indicators can suggest what can be expected in the future.

Namely, during 2002, 2003 and 2004, in the western part of Macedonia, the cognition of the existence and functioning of the nightclubs and bars, especially in the Tetovo and Gostivar region (more rarely in other parts of Macedonia), where trafficked victims provided sexual services to their clients, was raised at a level of a notorious fact. The creation and stimulation of the demand for the services provided by these girls was related to the promotion and advertising of the market. In such conditions, it would be realistic to expect for the services in charge of dealing with this type of crime to have enough information and evidence to put an end to these activities.

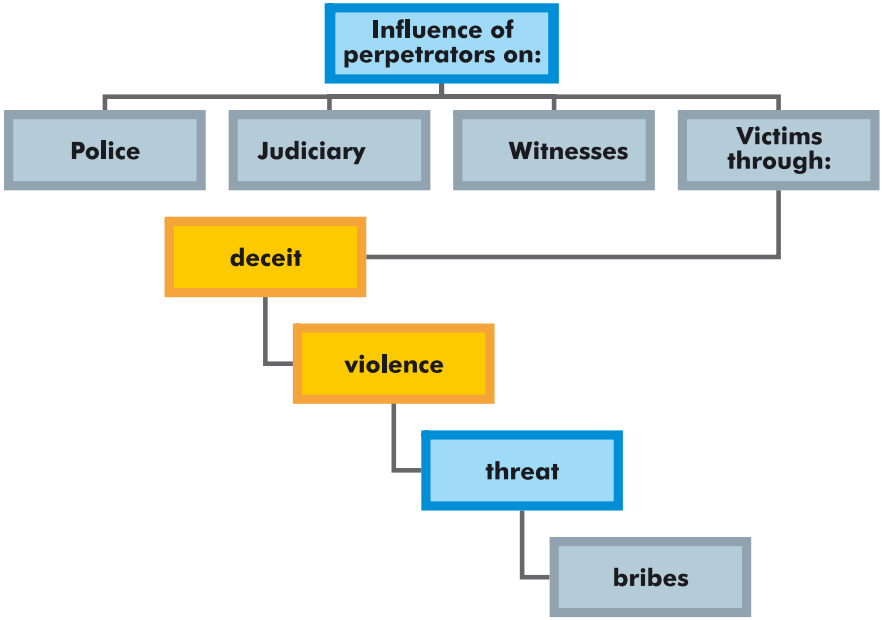
The assumption about the possible involvement of the police in trafficking in human beings, even if only by abuse in the performance of the official duties, that is, by informing the bar owners about the scheduled raids, can not be

[42] Preventing Gang and Drug-Related Witness Intimidation .S. Department of Justice, Office of Justice Programs, National Institute of Justice, Issues and Practices (www.ncjrs.org)
[43] Ibid. page 8; In cases of trafficking in human beings, there is a very high expectation and probability for the witness to be exposed to intimidation, as a result of the influence of several factors (listed in the report). Namely:
· The original criminal offense is accompanied by violence.
· The defendant had a personal relationship with the witness/victim.
· The defendant used to live quite close to the witness/victim.
· The witness/victim is extremely vulnerable.

confirmed and verified by the overall number of convicted policemen. Namely, a few isolated cases in practice[44], are not sufficient to confirm the cooperation of these groups with the police, and therefore, one might either speak about the non-existence of such a link or the inability or lack of willingness of internal control bodies to deal with the existing problems amongst themselves[45].

Several scandals have shocked the Macedonian public in relation to the trials of some of the perpetrators of the criminal offense of trafficking in human beings[46]. Although the percentage of acquittals is at a very high level in trafficking in human beings cases, and although certain judges in the basic courts, who work on this particular issue, have a large number of verdicts that have been annulled and returned back for adjudication by the second instance courts, still, not a single verdict so far (for instance, for accepting bribes or any other ways to influence a judicial verdict) can really confirm the involvement of the judiciary or any type of relationship between the judiciary and traffickers in human beings.

Ways and types of influence by perpetrators
of trafficking in human beings on the victims,
in order to avoid identification, prosecution and sanctioning



[44] Criminal justice responses to organized crime, February 2007, Skopje, Violeta Velkoska
[45] 5.7. Sanctioning of AOPs in the registered cases of ill-treatment by the police, Project for support of human rights, Legal analysis 2006, Skopje, November 2006, Petar Jordanoski, page 35
[46] The trial of the notorious owner of nightclubs who was convicted on several occasions (court trials) and sentenced to prison for a total time of 4 years, was followed by dismissal of the trial judge because of the unnecessary prolongation of the proceedings.

Without underestimating the importance of the influence that criminal group in general (or individuals only) have on witnesses in the proceedings, it is interesting to comment the influence that traffickers have on the victims, who appear in the proceedings before the court, as most significant figures. Namely, according to the report by the Coalition ²All for a fair trial[47], the pressure and influence on the victim is being exercised through deceit, violence, threats and bribery.

Victims of trafficking are mainly kept under pressure and constant fear, since they are being told that they will be punished (imprisoned) if they report the crime to the police, because of their illegal stay in the country, as well as that policemen are corrupt and that any contact with the police would be unavailing and useless.

Besides the threats of physical violence[48], as well as frequent use of physical force, the victims are also blackmailed with the possibility of hurting their close relatives and friends in the country of origin. Also, there are many cases of victims, when the victim is no longer under the authority and command of the trafficker, who have been offered a certain amount of money, in order for them to change their statements before the court.

All previously mentioned activities pertain to the prevention of criminal prosecution of traffickers in human beings and their sanctioning. Although the use of nicknames amongst traffickers is quite frequent, especially in front of victims, and although in general, victims do not witness the act of exchange of money for the sexual services, which plays an important role before the court for the purpose of establishing the identity or guilt of the accused person, there are still no indicators of the existence of a more complex measures that might have been undertaken in order to hide the activity or the perpetrators, at least during the period when the majority of these criminal offenses were committed (from 2002 to 2004).

Conclusions

The attempts of the domestic legislation to provide the best definition of organized crime, so that it is not too narrow i.e. to be able to cover all possible forms of this crime, created another extreme situation – inclusion of too broad and extensive competencies of the prosecution bodies. This creates difficulties in the proper response to this crime from the responsible bodies.

Trying to respond appropriately to the growing expansion of organized crime and at the same time to adhere to international initiatives and assumed obligations, during the last few years, the Republic of Macedonia has implemented a huge number of normative and institutional changes. They all provide for sufficient grounds for successful combat with this phenomenon if there is enough willingness to do so[49].

[47] Criminal justice response to organized crime, February 2007, Skopje, Violeta Velkoska.
[48] According to the data in the IOM Report (Changing patterns and trends of trafficking in persons in the Balkan region, IOM, 2004), regarding any physical abuse of victims that were sheltered in the Transit centre in Skopje, one can conclude that the use of force on human trafficking victims varies from 31% of the total number of victims that were physically molested in 2001, 57% in 2002, up to 67% in 2003.
[49] Some of the conclusions and recommendations are also contained in the report titled as Criminal Justice Responses to organized crime by the Coalition All for a fair trial.

According to the analysis made for 2005 and 2006 in 35% of the total number of monitored cases of smuggling of migrants, there are more than three accused persons in relation to each and every criminal offense. If we add to this 2005, 2006 the period JanuaryOctober 2007 this percentage increases by 3 points (38%). The same number expressed in percentages, in relation to trafficking in human beings and mediation in prostitution is 29%.
From the total observed cases in 39% three or more individuals participated as perpetrators.

Unlike the cases related to the criminal offenses of mediation in prostitution and trafficking in human beings, where the accused persons are mainly members of the Albanian ethnic community, in the cases of bribery and abuse of official position and authorization, the Macedonians prevail as defendants before the basic courts in Macedonia.

The greatest ethnic homogeneity of the members of groups with at least three persons is to be noted in cases of trafficking in human beings. The largest variety is present in cases related to the criminal offenses listed under Articles 418-b and 418-v of the CC. For all other criminal offenses, the ratio between the homogeneous and heterogeneous structure is almost the same.

The 31-35 age group prevails in the case of trafficking in human beings (with 36%), whereas for the criminal offense under Article 191 of the CC, the 36-40 age group accounts for the largest percentage (28%). Quite often, the smugglers of migrants are younger individuals, and besides the 36-40 age group, the category of persons at the age of 26-30 is also represented with an equal share of 20%. On the other hand, in the case of the criminal offense of abuse of official position and authorization, the majority of the perpetrators are at the age of 46 and over (even 67%). The analysis of the age of all 278 accused persons for offenses related to organized crime, shows that the age group of individuals between 31 and 35 is the prevailing one.

In the majority of the cases, considering all accused persons (more then half), the defendants are individuals with secondary education qualifications. This category prevails for the following offenses: smuggling of migrants, mediation in prostitution and accepting bribes. On the other hand, the largest percentage of defendants accused of trafficking in human beings are individuals with primary education only, and persons with higher education and university degrees prevail in the case of the offense of abuse of official position and authorization.

Almost one quarter of the accused persons for crimes in the area of organized crime were previously convicted for another criminal offense. Recidivism prevails in the case of the criminal offenses of trafficking in human beings with 54% of the total number of individuals accused of this crime and mediation in prostitution with 48%.

52% of the total numbers of defendants are owners of nightclubs and bars in the cases of mediation in prostitution and trafficking in human beings altogether. With respect to the offense of smuggling of migrants, as well as organizing a group and instigating smuggling of migrants, the majority of the accused persons are taxi drivers. In the majority of the cases of accepting bribes, the defendants are authorized official persons from the Ministry of interior.

The discrepancy in the findings of the few modest reports regarding the degree of organization of criminal groups active on the territory of the Republic of Macedonia in the field of trafficking in human beings, does not enable a comparison with the data obtained from the research conducted by the Coalition, regarding their structure, mode of operation, dynamics, degree of influence, money laundering methods etc.

The fact that the majority of the activities of the organized groups (or individuals), as far as trafficking in human beings is concerned, are directed towards obstructing their criminal prosecution or bringing to trial, and not towards hiding their identity or criminal activities, speaks of the high degree of impertinence and arrogance in the commitment of these acts.

If one establishes the link between individual stories about events related to trafficking in human beings, and creates the broader picture, one can obtain a better understanding of the quite steady and strong collaboration between various night clubs with respect to handling of victims, regardless if that means buying and selling or just exchanging one victim for another.

Violence is used both for intimidating the victim and keeping her obedient and for demonstrating power. Violence is often an accompanying element of the act of trafficking in human beings.

A few isolated cases in practice of involvement of authorized official persons in trafficking in human beings, are not sufficient to confirm the cooperation of these organized groups with the police officials, and therefore, we might either speak about the non-existence of such a link or the inability or lack of willingness of internal control bodies to deal with the existing problems amongst themselves.

Traffickers in human beings exercise their pressure and influence on the victims, who appear in the proceedings before the court, as most significant figures (witnesses), through deceit, violence, threats and bribery.

Recommendations

There is a need for more precise definition of the competencies of the Department for prosecution of perpetrators of criminal offenses in the area of organized crime. Also, there is a need for harmonization between Article 29 of the Law on the Public Prosecution Office and Article 2 of the Bylaw on the organization and composition of the Department - the competencies provided for in the By-law, should not exceed the limitations established by the Law on the Public Prosecution Office.

There is a great need for additional research into the phenomenology of trafficking in human beings, as one of the forms of organized crime in the Republic of Macedonia i.e. to establish the required critical mass of information and findings that would be used as an appropriate foundation to support the (non) functioning of the established mechanisms to combat this crime.

Chapter IV. Anti-trafficking response mechanisms in the country

10. National Strategy and Action Plan to combat trafficking in human beings and illegal migration

No act can be comprehended,
if it is not associated to an idea.

In order to provide adequate and effective response to trafficking in human beings and illegal migration, Republic of Macedonia has adopted the "National programme to combat against trafficking in human beings and illegal migration"[50] in 2002. The programme covers all necessary activities necessary to discover the factors, which influence trafficking in human beings, both on local and regional level, the perpetrators of the criminal activities and the methods they are using, as well as all measures that have to be undertaken in order to provide appropriate prevention and to improve criminal prosecution and sanctioning of the perpetrators. Special attention is being given to the victims and the provision of their protection.

The Government of the Republic of Macedonia adopted a decision to establish a National Commission to combat trafficking in human beings and illegal migration in 2001[51]. Main task of the Commission is to monitor the situation regarding these crimes and to coordinate the activities of the competent institutions, domestic and international organizations active in this area. A national coordinator and the members of the National Committee have been appointed immediately afterwards. A Secretariat and a Subgroup to combat trafficking in children have been established within the framework of the Commission.

The two basic documents i.e. the National Action Plan and the Strategy to combat trafficking in human beings went through several stages of development, and finally, their latest versions were adopted in March 2006.

Whilst the Strategy defines the priorities and directions of development of the fight against this type of crime, the National Action Plan thoroughly defines all the activities that are being implemented or have to be implemented in order to implement the specific goals and tasks, that is, to implement the strategic goals. The Action Plan also defines the competencies in each field of activity, as well as the time frame. The criteria for monitoring and evaluation are also established, and they have to provide the answer to the question related to the success of the implementation and achievement of the defined goals.

The plan consists of four basic parts:
- Supportive framework
- Prevention
- Support and protection of victims and witnesses
- Investigation and prosecution of trafficking in human beings

[50] Official Gazette of Republic of Macedonia, number 10/02
[51] Official Gazette of Republic of Macedonia, number 18/01

The first part covers a detailed discussion of the activities that should provide for a better communication and coordination within the established structure of different actors, important in the field of combat against trafficking in human beings. Above all, this means magnitude of meetings, providing information by preparation of reports, establishment of directories of governmental, non-governmental and international organizations etc. Additionally, in order to achieve a higher degree of harmonization between the international and domestic standards and regulations, the plan provides for changes in the legislative framework. Some of those have been already implemented, like the enactment of the Law on Surveillance of Communications, the adoption of the Law on Aliens and the change of the regulations regarding the status of foreign nationals.

The plan envisages a greater success in the combat against trafficking in human beings, through constant activities aimed towards building of the capacities of state and non-state agent i.e. through establishment of programs for education and training of personnel.

This document also addresses the issue which maybe represents the bottleneck of the process of discern of the phenomenology of this crime and the success rate in dealing with it, and that is the problem of information management and the lack of research. Namely, the plan provides for implementation of various research activities and analysis and establishment of a proper exchange of information. It also foresees a creation of software that will sublimate various data coming from all key participants in the process, who work on any type of analysis. The latter, although it has been a topic of discussion of the professional public for quite some time, is not activated yet.

Prevention, which to a major part represents an area of activity for the non-governmental organizations, has an important role in the action plan. Namely, the plan envisages organization of various campaigns and distribution of appropriate promotional material, which should help raise the awareness of various groups of potential users of sexual services under risk and inform of the existence of competent organizations that deal with it on a daily basis.

The part of the action plan that refers to the support and protection of victims and witnesses, addresses several problems, like the identification of the victim, providing the victim with sufficient reflecting period, provision of social support and protection, legal assistance during the court proceedings, as well as the problem of reintegration of the victims.

The systematization of the procedures for voluntary repatriation of the victims, as well as the establishment of reintegration programs, represent one of the segments that should provide for more successful protection of victims and above all, prevention of their re-victimization.

The last part of the plan, which as it seems remained insufficiently developed, at least not to the same level like the other parts, and which has an essential importance for any future work in the field of trafficking in human beings, is the part that relates to the investigation and criminal prosecution of trafficking in human beings.

Namely, it refers to the special investigative measures as an efficient tool for detection of the perpetrators of these criminal offenses, establishment of an operational database, implementation of joint regional activities, etc.

The National Action Plan represents a solid ground for getting a better idea about all segments that are important in the overall response to trafficking in human beings in the country. It represents, above all, a great foundation for a coordinated action by all stakeholders, which are competent to face this type of crime. However, one should not forget that it is a live and ever changing matter, which requires regular modification and re-investigation.

11. National and transnational referral mechanisms

The past of various countries is filled with a large number of problems and mistakes, made in the process of identification of victims, all the way to providing an access to their rights. Namely, not that rarely, during the initial contact of the competent authorities for implementation of the law, because of the lack of expertise i.e. sensitiveness and most of all because of insufficient data regarding the actual situation, the victims are not being treated with sufficient attention. This causes bad treatment and continuation of the victim's agony. Sometimes, in situations of conflict, between the attempt to protect the victim from further suffering, that is interrogation, by leaving the victim enough time to gather him/herself, and the attempt to collect as many good quality information as possible, for the purpose of the investigation, one chooses the best interest of the proceedings over the best interest and protection of the victim. At the same time, the violation of the provisions for residence permit by the victims and the feeling of responsibility by the officials to act in accordance with the existent legal provisions, without any information about the broader situation, sometimes result in the deportation of the victims or misdemeanor sanctions. In many countries, non-government organizations are the first entities that have the initial contact with the victims immediately after they have been discovered, but sometimes they have a lack of resources or expertise.
All these problems attack the concept of human rights protection i.e. they slow down the process of provision of adequate assistance to trafficked victims. As a result of the findings related to the weaknesses of the present process, the need for a more sophisticated and more efficient framework for cooperation between the stakeholders in the fight against this type of organized crime has been detected, that is, to establish a system, a mechanism that will enable a more efficient referral of trafficking in human beings victims to services they are entitled to. There are all sorts of various referral models created by the countries and they address various aspects of the process of ensuring protection of the rights of the victims.[52]

The Office of the National Referral Mechanism started to operate in September 2005 in the Republic of Macedonia, within the Ministry of Labor and Social policy, in order "to strengthen the capacity of the state in providing appropriate identification, referral and assistance to all victims of trafficking, and especially to juveniles". The Centers for social welfare i.e. social workers are the main participants in the process of initial identification of victims and their referral. A large number of training events have been organized in order to train the personnel to treat the victims appropriately.

[52] National Refferal Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, a Practical Handbook, OSCE (ODIHR)

A database was established for all considered cases. The office is also working on the establishment of strong relations with the other stakeholders in the country, who are in charge of dealing with trafficking victims[53].

For quite some time now, the issue of the establishment and strengthening of the so-called transnational referral mechanism has been in the focus of the attention of the professional public. It represents a result of the intend, and above all the need of the countries (especially bordering countries) for cooperation, in order to develop strategies for safe movement of victims from a destination country to the country of origin, provision of the required services and protection of their rights. As a result of the initial meeting of the professionals in this field (for the specific topic) from the South-East European countries, which took place in Bulgaria in 2007[54], discussions started regarding the possibility of implementation of the Transnational referral mechanism at a national level.

Republic of Macedonia is in the final stage of the preparation of a document that contains the standard operational procedures for treatment of trafficking in human beings victims, both domestic and foreign nationals.

12. Special investigative measures as additional tools in the fight against trafficking in human beings and other forms of organized crime

With the changes to the LCP in 2004 and for the purpose of ..improving the efficiency of the combat against crime, by providing the law enforcement bodies with special means and methods – special investigative measures that enable collection of data and evidence, necessary for a successful procedure, with detailed regulation of the conditions and manner of their application[55]..", 8 (new) special investigative measures were introduced:

- Monitoring of communications and entry in residences and other premises or transport vehicles in order to establish conditions for monitoring of communications, under conditions and procedure as prescribed by the law;

- Access and lookup in computer systems, seizure of computer systems or their parts, or databases for storing computer data;

- Secret surveillance, monitoring and visual and audio recording of persons and object by technical means;

- Simulated buy outs as well as simulated giving or taking bribe;

- Controlled delivery and transport of persons and objects;

[53] For more details see the National Referral Mechanism, MLSP, Department for promotion of gender equality, Skopje 2005-2006
[54] Organized by ICMPD and USAID
[55] Nikola Matovski, III Goals that are to be achieved by the Law, Novelties in the Law on criminal procedure in the Republic of Macedonia from 2004, Faculty of Law – Skopje, 2005

- Use of undercover agents to monitor and collect information or data;

- Setting up false banking accounts that can be used for depositing funds that are proceeds from a criminal offense;

- Registration of false legal entities/companies or use of existing companies for the purpose of data collection.

According to the law, the special investigative measures can be only applied in exceptional situations and only if certain criteria are met. Namely, their use is possible if the data and evidence, obtained by their utilization, is indispensable for a successful criminal procedure and they cannot be obtained in any other manner (or when their collection would be especially difficult). They can be used only for criminal offenses that entail a minimum sentence of 4 years imprisonment, or an offense that entails a prison sentence of up to 5 years, but in such a case, it has to be committed by an organized group, gang or other criminal enterprise. Having in mind these conditions, there are enough possibilities for the special investigative measures to be applied also to offenses, which fall outside of the area of organized crime (the existence of a serious criminal offense would be sufficient).

The Law contains detailed provisions with respect to the competencies of every individual body, depending of the stage of the procedure.

Namely, in the pre-investigative procedure, the special investigative measures can be ordered by the public prosecutor or the investigative judge. In doing so, the investigative judge decides with a written rationale and order on the use of special investigative measures (for all, with the exception of the measure of monitoring of communications and entry in residences and other premises), on the basis of a written and explained proposal from the public prosecutor. Upon receiving a written and explained proposal from the Ministry of Interior, the public prosecutor brings a decision regarding the use of all special investigative measures, with the exception of "Monitoring of communications and access and lookup in computer systems", but only in cases when the identify of the perpetrator of the criminal offense is unknown.

One of the reasons that are being used by the defense councils of the accused in cases where special investigative measures have been used, in order to ask for inadmissibility of evidence (collected by the use of such measures) in the proceedings, is precisely the issuance of the order for the use of special investigative measures by an incompetent body. Namely, having in mind that the identity of the defendants in the specific case was already previously established, the order for the application of these measures should be issued by the investigative judge, and not by the public prosecution office.

This practical situation, points out the importance that has to be given to the actual moment of establishment of the identity of the defendant and obtaining the required order by the investigative judge on time. Otherwise, any evidence collected in this manner, will become useless in the criminal proceedings.

During the investigation stage, special investigative measures can be utilized only upon order by the investigative judge[56].

The application of the special investigative measures can last for four month at most, but in exceptional cases, if properly justified, it can be extended for another three months at maximum, according to the law. The use of the measures should be terminated as soon as the reasons for their application cease to exist.

Following the expiry of the period of application of the measures, the implementation bodies have to prepare a separate report[57], which has to contain the following as a minimum: information on the start time of the application of the measures and the time when they were terminated, quantity and description of the works performed by the officials, the type and number of technical means that have been used, the number and identity of the individuals that have been the subject of the use of the special investigative measures, the type of criminal offense, as well as a description of the extent to which the use of special investigative measures has contributed towards meeting the goals, for which the court order has been issued[58].

Use of special investigative measures in the practice

Notwithstanding the enormous importance that these measures might have for the process of detection and prosecution of perpetrators of the criminal offense of trafficking in human beings, unfortunately, they have not been really used (or insignificantly used) in our practice so far. One can seek an explanation in the reduced number of new criminal offenses of trafficking in human beings after 2004, when these measures have been incorporated in the Macedonian legislation, and basically the non-existent need to utilize them. If one adds the general inertness of the implementation of the novelties in the law in our country on top of that, as well as the sensitiveness of the issue of the use of these measures, having in mind that they directly interfere with the fundamental rights of citizens, possibly, it seems that this kind of situation could have been expected.

However, the situation in the area of smuggling of migrants, with respect to the practical implementation of the investigative measures is a bit different. Special investigative measures were used in detecting the participants in two smuggling cases, which drew the attention of the public back in 2006.

According to the data from the Public Prosecution Office, during 2006, the Unit for prosecution of perpetrators of criminal offenses in the area of organized crime and corruption, issued 14 orders for the use of special investigative

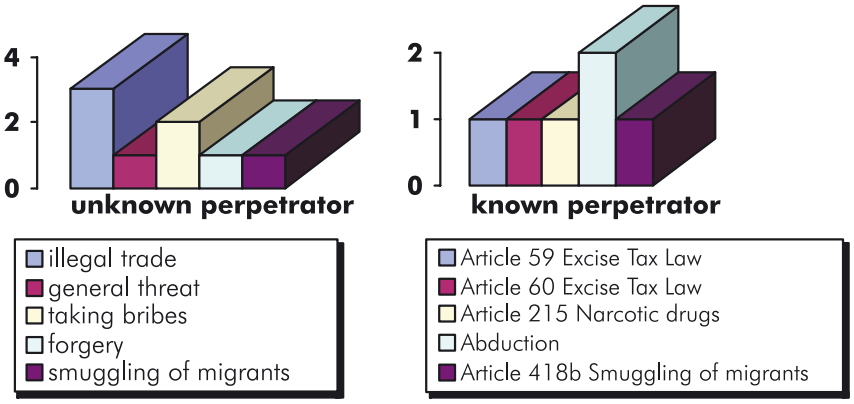
[56] The order, that has to contain data about the person who is the subject of the special investigative measures (when the perpetrator is known), the grounds of suspicion for the existence of the criminal offense, the facts that corroborate the use of special investigative measures, as well as the method, scope and duration of those measures, is executed by the Ministry of the Interior, the Customs Administration of the Republic of Macedonia and the Financial Police.

[57] The initial objections regarding the manner of preparation of these reports in practice (by defense councils) usually refer to the lack of compatibility of the dates specified in the report with the dates of the photos that have been provided as evidence and to the inaccuracy and tendentiousness" of the manner in which they have been drafted.

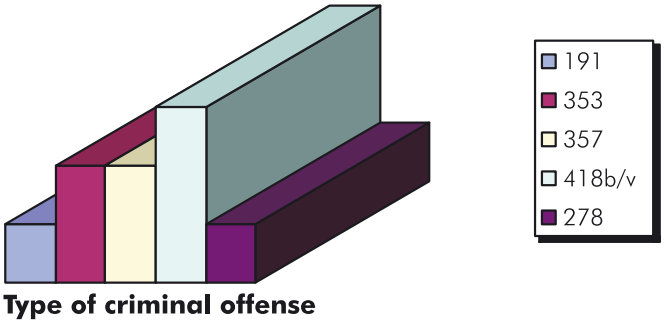
[58] Article 150, paragraph 3 of the LCP.

measures, out of which, 8 relate to cases where the identity of the persons remained unknown and 6 were ordered against 20 known individuals[59].

Issued orders according to type of criminal offense



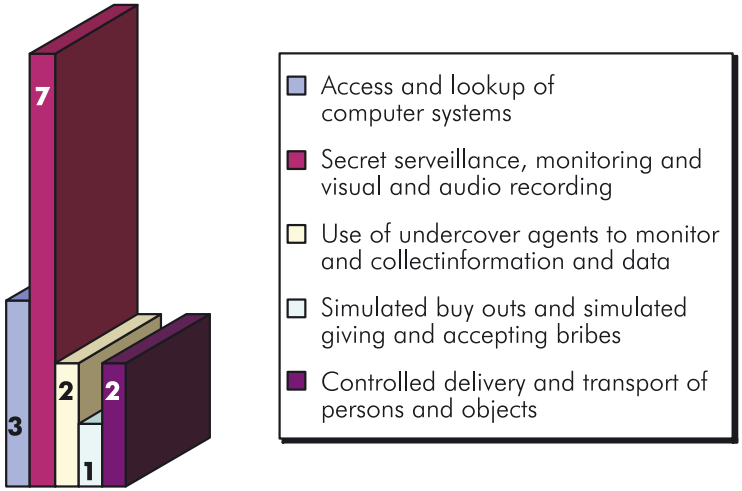
According to the data obtained from the monitoring process by the Coalition, special investigative measures have been ordered and implemented in 9, out of a total number of 75 cases.



In the majority of those cases, the orders relate to the measure of "Secret surveillance, monitoring and visual and audio recording of persons and objects by technical means".

[59] There have been 19 orders in 2005, with only one case for a known perpetrator.

Number of ordered measures within observed cases



Weaknesses in the application of the special investigative measures

The practice has already shown the initial problems related to the use of special investigative measures. Most of all, these are related to the technical readiness for presentation of the results of the secret surveillance, monitoring and visual and audio recording of persons and objects by technical means. Many court hearings have been postponed due to the lack of necessary conditions for presentation of the video materials, obtained with the use of a special investigative measure.

In several instances, the defense counsel asked for a record to be made in the transcript of the fact that there are interruptions in the presented recordings, so that this can be used as a reason for their inadmissibility as evidence. In making its decision, the court rejected the request, explaining that it is undeniable that there are interruptions in the recordings, but that was because those were the original recordings, and they have been admitted in evidence. It would be interesting to mention that out country does not have special laboratories for forensic examination of these types of video recordings, whereas such an examination abroad would incur extremely high costs. If, on top of all this, one adds the fact that the judge is not obliged to adhere to the proposal by the parties for a forensic examination in the proceedings, and even if the party provides the necessary funds for such an examination, there are no guarantees that the results will be accepted into evidence during the main trial, then it seems realistic to expect for the evidence obtained by this measure to be inviolable..."classified as evidence with a high degree of persuasiveness and ordinarily, if they are presented during the criminal proceeding, it will end with a verdict, based on that evidence"[60]. The recordings

[60] The effect of special investigative measures on criminal proceedings, Technical means for surveillance and recording of communications between people, as an investigative measure for prevention and control of crime, a master degree thesis by Jovchevski Jovan, Skopje, 2003

have been stopped in several instances, in order to make a note in the transcript, that two different dates and two different time indications are visible on the actual recordings.

Quite often, there are also objections that it is impossible from the materials to recognize the faces of people, but only silhouettes, because the recording was illuminated i.e. that one couldn't even recognize car registration numbers. Some of the recordings show unidentified and unknown buildings, vehicles and people, who, according to the defense councils have nothing to do with the charges.

Notable is also the issue of protection of the identity of the other individuals, not target of the special investigative measures, and whose identity was exposed during the "public" trial.

The use of video recordings with "no sound" attracted the largest attention in relation to this specific investigative measure, although the Law (LCP) is discussing the issue of "video and audio recording".

Namely, according to certain sources..."*regarding the use of video and audio recording of persons, there are indications of violation, because of the fact that besides the legal provision for cumulative use of this measure, still, in this specific instance, from the recorded material against this person, one can only see a visual recording, without an audio record, whereas the proof of the conversations has been provided by interviewing of the undercover agent, which is contrary to the legal provision*..."[61]

It seems that a slightest inobservance on the part of the legislator, might challenge and question the probative value of all materials obtained by partial video recording, but without an audio recording.

The special investigative measures have always been and will continue to be an issue that causes a clash of the interest to prosecute organized crime from one side and the interests of the individual and his or hers rights. This is especially true, considering the fact that such measures mean most sensitive interference with those rights. Therefore, their use requires the highest possible attention by all stakeholders that are directly in charge of their application in accordance with the law.

13. Protection of a victim-witness

No person is either so weak, as not to be able to raise fears with his neighbors, or so strong, as to be immune of fears coming from them.

The huge progress achieved in the process of obtaining and analysis of the material evidence by the competent bodies and authorities around different countries in the world cannot undermine the key importance that a witness has in the

[61] http://www.mhc.org.mk/mkd/analizi/istrazni_merki.htm

proceedings. The witness still represents one of the basic instruments in the fight against organized crime and trafficking in human beings, as one of its forms.

Aware of the health risks, life and personal integrity risks of the witnesses who participate in the procedure against the perpetrators, especially of rather serious crimes, and in order to provide for a good quality statement during the proceedings before the court, and to ensure the physical protection of the person giving the statement, states undertake an enormous number of protection measures.

The types of measures and the competencies of the bodies for their implementation are regulated by the provisions in the Law on Criminal Procedure or in special laws or acts. It is rather specific for continental law countries, that the provisions, which relate to the protection of the identity and anonymity during the investigation and the main trial, in criminal proceedings, to be found in the Law on Criminal Procedure[62], whereas the conditions for inclusion of the witness in special protection programs are part of special Laws on Witness Protection. However, the versatility of legal solutions in various countries and practices established by law enforcement agencies and sanctioning, precludes the establishment of a uniform model.

The wide choice of measures[63] that have been implemented by various states in order to ensure the most appropriate protection of witnesses, includes the following:

- Audio and video recording of the statement;
- Video conference
- Temporary or permanent change of residence or domicile of the witness;
- Legal protection of the victim;
- Exclusion of defendants from the courtroom while the witness provides his or hers statement;
- No access to the courtroom for the media;

[62] Pursuant to the Law on Criminal Procedure of **Montenegro**, there are protection measures that are undertaken within the criminal procedure and others, which are undertaken according to the provisions of the Law on Witness Protection.
Protective measures, available during the judicial proceedings include: questioning a witness using a pseudonym, questioning a witness with the assistance of technical means (protective walls, means of distortion of appearance and sound i.e. voice distortion equipment), non-disclosure of personal data of the witness, providing testimony from another room.
The Law on Criminal Procedure of Monte Negro was enacted in October 2004 and it provides for the following protective measures:
o Provision of physical protection of persons and property
o Dislocation
o Maintaining the secrecy of the identity
o Change of identity
The Law on Witness Protection in **Romania** (2002), apart from the measures previously mentioned in the Law on Witness Protection of Monte Negro, also prescribes the following measures as a competency of the National office or witness protection within the Ministry of Interior of Romania:
o Better protection of the witness at the place of his or hers residence and protection during the transport from and to the court.
o Testimony of protected witnesses before the court under an identity that is different from the real one, or by utilizing equipment for distortion of picture and sound.

[63] Most of them listed in document of the working group metting on victim witness protection, Stability pact for SEE, March 2003

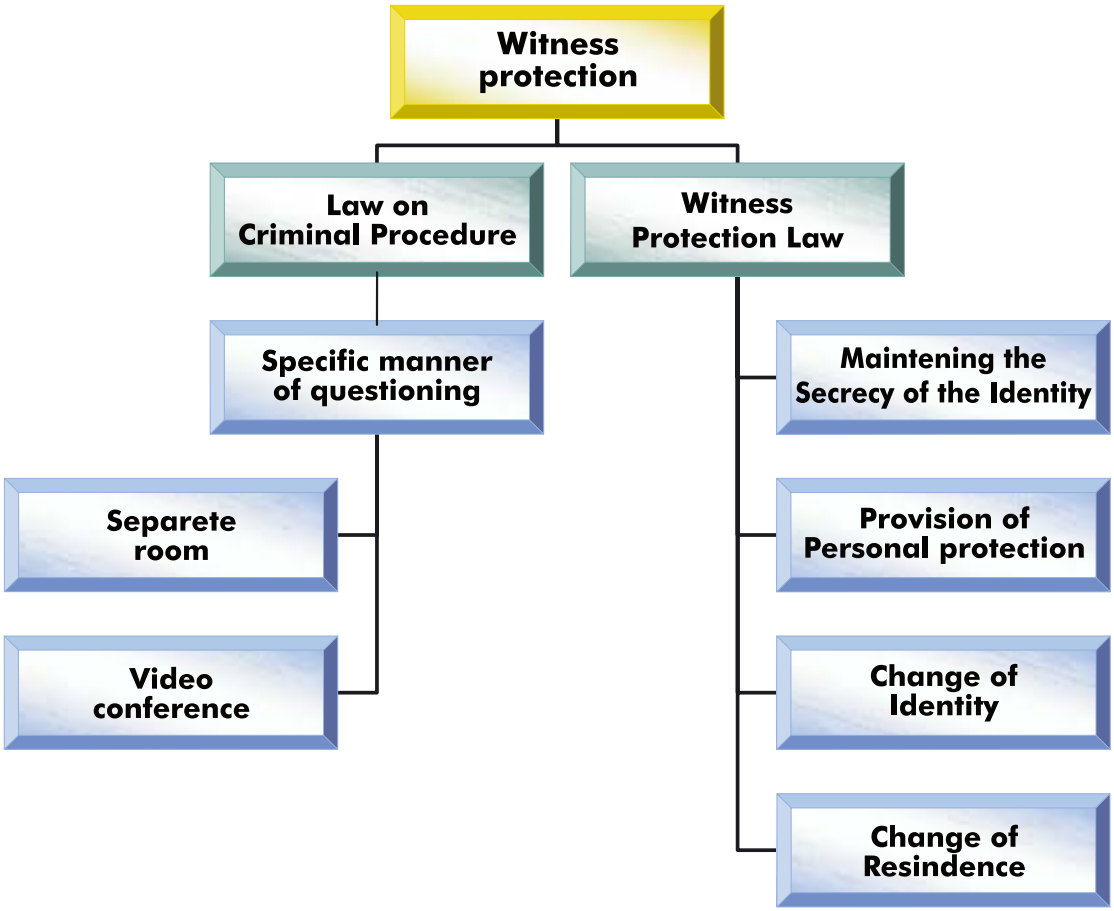
- Protection of victim's identity (use of pseudonym, non-provision of personal data during inquiry before the court or providing data that is different from the genuine);
- Appropriate intervention by the judge, that is not to allow any kind of threats in the courtroom;
- A separate room under surveillance by the police, transport paid by the state;
- Change of identity of the witness.

In making the assessment of the appropriateness of a particular measure, which should ensure the most appropriate protection for the witness, and especially during the analysis of the adequacy and possibility for the witness to be included in a witness protection program, one has to take into consideration several criteria. Namely, the degree of endangerment i.e. risk to the life or well-being of the witness, determines the severity and type of measure that will be implemented. Certain programs, establish a link between the inclusion of the witness and the type of the criminal offense in the case where a testimony is required. In doing so, the participation in the proceedings always has to be on a voluntary basis.

The analysis of the necessity of the testimony and the capability of the witness to provide a valid statement during the proceedings before the court has to reduce the risk of exposure to large unnecessary expenses, which usually accompany witness protection programs[64]

In the Republic of Macedonia, the assurance of the protection of the witness in the proceedings is provided by the application of the provisions contained in the Law on Criminal Procedure and the provisions of the Witness Protection Law[65].

[64] It is interesting to mention the provision from the Law on protection of witnesses under threats and vulnerable witnesses from **Bosnia and Herzegovina**, enacted in March 2003, according to which, the court or the public prosecutor, ex officio, is obliged to inform the witness under threat about the measures that are at his disposal, for the purpose of his protection during the procedure. Some of the measures being mentioned are as follows:
o Provision of professional psychological assistance for vulnerable witnesses.
o Change of the order of the proceedings of the main trial.
o The judge is obliged to undertake measures for protection of the witness from any additional molestation or confusion, and has the right to ask the witness direct questions, instead of that being done by the parties in the proceedings i.e. the defense council for the defendant.
o Testimony with the use of technical means for picture and sound distortion.
o Exclusion of the defendant from the hearing.
o Partial or fully limited access of the defendant and the defense counsel to information from the case file related to the identity of the witness.
o Additional protection measures for the witness (testimony provided from behind a screen, secrecy of the documentation related to the identity of the witness for a period of 30 years.).
The legal act that regulates these matters in **Victoria (Australia)** was enacted in 1991, and then changed and amended twice, in 1994 and 1996. The envisaged required and reasonable measures for protection of witnesses are as follows:
· Application for an indispensable document (permission for new identity for the witness and his or hers family).
· Change of the place of residence of the witness.
· Transfer of ownership and property of the witness.
· Other measures deemed as necessary by the Chief of police (accommodation of the witness, financial support, permission to use false names during the proceedings).
"Law commission of India-Consultation Paper on Witness identity protection and Witness Protection Programmes", August 2004, page 234
[65] Official Gazette of Republic of Macedonia, number 38/05



The Witness Protection Law, which regulates the procedure and conditions for provision of protection and assistance to witnesses, provides for four protective measures. None of those measures have been implemented so far in the practical work related to trafficking in human beings. In all other observed cases, only in one situation the witness became part of the witness protection program, and that was an undercover agent, engaged by the MoI to record the defendants in a case related to the offense from Article 357 of the CC (taking bribe).

The Law on Criminal Procedure regulates the two special ways of examination of the witness. Namely, the witness can be examined only in the presence of a judge and public prosecutor, at a location that guarantees protection of the identity, or by using telephone or videoconferencing links.

The first possibility represents a measure that has not been properly implemented in the judicial practice around the courts in Macedonia yet. The second possibility has been utilized only in exceptional cases, which confirms that our country is still in an experimental stage as far as the use of these measures is concerned.

One can look for an explanation for the lack of use (disuse) of the first measure in several different directions. Above all, in the existence of a danger that the rights of the defendants in the proceedings might be abused, especially in a situation of insufficient legal elaboration of the manner in which examination should be carried out, reluctance on the part of the judges to use this instrument in the witness protection process or non-existence of a danger of such an intensity, thus justifying the use of these provisions. The latter can be questionable, if one takes into account the severity of the offense that is being discussed here, as well as the degree of intimidation and violence, which is especially practiced on victims of trafficking in human beings, who are also key witnesses in the proceedings before the court.

Apart from the afore mentioned resistance by judges towards this special way of examination, the reasons for not using the video-link as an instrument for safe provision of victims testimonies as witnesses in the proceedings, can be also found in the incapability to provide adequate equipment for the establishment of the video-link[66]. In these conditions of insufficient use of protective mechanisms for obtaining statements from the witnesses, one can raise the issue of readiness of witnesses to appear in the proceedings before the courts. The only research[67], conducted on this particular topic in the Republic of Macedonia by a non-governmental organization i.e. the Coalition "All for a fair trial", shows that in 44% of the total number of cases, the presence of the victims-witnesses in the proceedings has been provided for, but only after they have been previously returned to their country of origin. Bearing in mind that the participation of witnesses in such a situation is a reflection of their free will and is not specifically provided for by law, as the case would be if they were still present on the territory of the Republic of Macedonia, one can conclude that our country can be praised for the relatively successful implemented policy of ensuring the presence of witnesses in the proceedings, especially in relation to perpetrators of the criminal offense of trafficking in human beings.

However, the insufficient use of the legally prescribed measures for protection, the lack of sufficient spatial capacities of the courts for provision of a separate room for safeguarding the witness (including trafficked victims), in order to avoid the danger of confrontation between the witness and the defendant, the occasional use of the legal provision for exclusion of the defendant if the witness refuses to testify in his/hers presence[68] (also in order to avoid confrontation between the witness and the defendant, because of the specific mental state of the witness), non-existent system that would inform the victim about the moment when the defendant is getting out of prison, are just some of the problems that have to be worked on and resolved.

[66] This can be considered partially true, especially in relation to cases in 2007, because such equipment has now been provided in couple of institutions (the court and the PPO).
[67] The research relates to a two-years period and covers 75 victims-witnesses in total, "Criminal justice responses to organized crime", page 42, Skopje, February 2007, Violeta Velkoska
[68] Utilized in just one case out of a 334 court appearances, "Criminal justice responses to organized crime", page 47, Skopje, February 2007, Violeta Velkoska

Conclusions

There is a National Action Plan and Strategy to combat trafficking in human beings in the country. The documents are of great value and represent a sublimate of all-important segments in the combat against trafficking in human beings. It covers all the institutions and organizations competent to deal with this phenomenon, and the activities they have to implement in a coordinated manner and with joined forces.

Although introduced almost three years ago in the Law on Criminal Procedure, the special investigative measures still have not be fully utilized in the process of investigation of trafficking in human beings.

In the majority of the observed cases (7 out of 75), the orders for use of special investigative measures are for the use of the measure of "Secret surveillance, monitoring and visual and audio recording of persons and objects by technical means".

The law provides special ways of witness examination such as, the possibility for the witness to be examined only in the presence of a judge and the public prosecutor, at a location that guarantees protection of the identity, the use of telephone or videoconference links, etc. The country is still in an experimental stage, as far as the use of these special ways of examination of witnesses is concerned.

Recommendations

There is a need for continuous monitoring of the evaluation indicators for the completion of the foreseen activities and goals in the National Action Plan is necessary, as well as readiness to revise it, in accordance with any changes in the overall situation.

Although professionals in practice are faced with numerous challenges and problems in relation to the use of the special investigative measures, they still have to be fully used in the prosecution and of organized crime and trafficking in human beings cases.

Special attention needs to be given to the moment of determination of the identity of the accused person and with that timely provision of an order for using special investigative measure by an investigative judge. If that is not done, any evidence obtained in this manner cannot be used during the criminal proceedings.

When drafting the reports, following the expiry of the period of implementation of the special investigative measures, the entities that are in charge of their implementation and use, have to make sure that they are clearly and precisely written, and that the dates contained within correspond to the dates of the photographs that have been obtained as evidence.

The witness should be advised about his/hers right not to disclose his personal information (first name and surname, father's name, occupation, place of residence, age and relation to the defendant), if that might mean exposing himself or any closely related person to any serious danger to life, health or physical integrity.

If the witness does not disclose such an information, but it is considered that a threat still exists, there should be a possibility to apply the provisions for the special way of examination of the witness in the proceedings, and not just the provision for his or hers inclusion in the Witness Protection Program. The assessment of the degree of endangerment and required manner of protection should be made on a case by base basis, depending on the specific situation.

The insufficient use of the legally prescribed measures for protection, the lack of sufficient capacities in the courts for provision of a separate room for safeguarding the witness, in order to avoid the danger of confrontation between the witness and the defendant, the occasional use of the legal provision for exclusion of the defendant if the witness refuses to testify in his/hers presence, the non-existent system for informing the victim about the time when the defendant is getting out of prison, are just some of the areas that need additional work and efforts in order to improve the protection of witnesses in the proceedings.

Chapter V.
The victim of trafficking in human beings

14. The situation in the country related to victims of trafficking

Who gave you that power over me you butcher Grethem
(One of the defeated in the French revolution addresses the executioner before the latter has cut off his head)

The majority of the registered victims, for the most part nationals of Romania, Moldova and the Ukraine, were brought via the northern Macedonian border to night bars and restaurants in the western part of the country especially in the post conflict period - 2002 and 2003. Namely, according to the IOM analysis of the cases of victims processed by the Republic of Macedonia, in 48% of the cases the victims were from Moldova, in 31% from Romania and in 11% from the Ukraine. These three countries also prevail as countries of origin in the analysis made by the Coalition regarding the victims that appeared in court as witnesses and/or injured parties. According to the Coalition, 28% of the cases were from Romania, 27% from Moldova and 13% from the Ukraine[69]. It is impossible not to notice the huge discrepancy between the numbers of victims provided with IOM services on the one hand, and the number of those registered in the proceedings before the first instance courts. This last issue becomes more important if its put in correlation with the issue of the dark figure of victims that were not provided with access to justice.

The majority of the victims live with their families in poverty, and most of them are not married (62%), nor have children (60%). Prior to being recruited into the human trafficking chain, the majority of them (70%) were unemployed[70].

In the majority of cases, the recruitment was done with deceit and in less by sale by people close to them/guardians, and in exceptional cases with abduction. The deceit mainly included a promise that they would be transferred to Greece or Italy where they would be provided with a job. In 37% of the cases, the recruitment was done by a stranger, whereas in 22% by a friend.

It is worth noting that contrary to the expectations or at least the widespread opinion among the practitioners dealing with human trafficking, recidivism among victims i.e. their previous appearance as a victim in the trafficking chain is only 7%[71].The Coalition's data speak of only one victim that appeared in two different cases.

In the majority of cases, the victims had their identity documents taken away as early as during the transport to the final destination.

The victims were for the most part kept in the same bars/restaurants where they provided their services to the clients, although it was not that rare for them to be taken by the traffickers to the local hotels in the Gostivar and Tetovo

[69] It is interesting to note that the data from the IOM report (Towards the Manual for public prosecutors in the criminal prosecution of human trafficking, IOM, Annex 8) relate to a total of 739 victims registered in Macedonia, whereas in the two-year period of case monitoring by the Coalition "All for fair trials" ("Criminal justice response to organized crime", February 2007, Skopje, Violeta Velkoska) only 75 victims were registered.
[70] Ibid
[71] Ibid

regions. Their freedom of movement was mainly limited to the night bar premises that were carefully watched over by the personnel working there. The rare cases of them leaving those premises were strictly controlled and always accompanied. In only 6% of the cases they were allowed to move around as they would choose to, whereas in 54% of the cases their freedom was totally limited.

Immediately upon their arrival, the victims were presented with the story of the great expenses that the traffickers had incurred in order to transfer them through the border, as well as of the victim's duty to pay back this debt through work. A woman would be very often an intermediary in the communication between the owner and the victim[72]. This person would be responsible for collecting the money from the clients for the sexual services provided. The victims either had no access at all to the money or they were rarely witnesses of a money handover situation.

The victims were kept, often over a long period of time, in inhumane conditions, i.e. in basement premises without any window. For the most part they were poorly fed, without access to a health professional and without a permission to use condoms. Any manifestation of disobedience was severely punished by the traffickers.

The victims were mistreated, beaten, raped, kept under constant fear that either them or people close to them would be injured, or that they would be handed over to other individuals who would treat them more cruelly.

Violence is a normal integral part of the perpetration of this crime as well as an efficient tool to persuade the victims to behave in the desired way.

The biggest controversy lies with the issue of existence of internal human trafficking victims (including their numbers). Namely, according to the report on the survey carried out by a domestic non-governmental organization[73], a total of 129 victims registered in Macedonia by the end of 2006 were Macedonian nationals. In the Shelter for domestic victims (managed by the NGO "Open gate"), 39 (possible, potential and "real") victims were provided with assistance since the opening in July 2005 until June 2007. If this figure is compared with the Coalition's data about the total number of registered domestic victims within the procedure before the court (amounting to 6) a disappointing conclusion can be inferred that our country failed to provide adequate protection to a huge number of victims.

Despite the decline of the number of cases before the first instance courts in Macedonia, it seems that this is not in correlation with the existence or the trends of the THB phenomenon. Namely, according to the Ministry of Interior data[74], in the first half of 2007, during the 15 raids in 40 catering facilities in the Gostivar and Tetovo regions, 110

[72] The very exceptional representation of women as defendants in the human trafficking related cases, but at the same time the very common mention of women's presence in the statements of the victims, indicates that a large number of participants in the criminal law event associated with these crimes have not been identified.
[73] NGO "Happy childhood"
[74] http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=65

women in total were detected, of whom 57 were foreign nationals (placed in the Transit Center), and 53 were Macedonian nationals.

There is almost no report or document that fails to characterize the trafficking in human beings as the most severe violation of the fundamental freedoms and rights, as well as attack on the personal integrity of the human being (primarily women and children), which inflicts large-scale damages both to the individual person and to the society as a whole.

15. The legal framework related to the status of the victims of trafficking

A great number of international documents impose the obligation for the countries around the world to pass legislation enabling temporary or permanent residence for the victims of trafficking in case they would end up illegally within the territory of a certain country. This is how a twofold benefit is generated. Namely, a victim that is not immediately deported to her country of origin (where it is usually impossible for her to obtain any assistance) is provided with protection of her rights in the destination country. At the same time, the possibility for prosecuting and punishing the traffickers in human beings is higher in cases when the victim's presence is secured in the country where the perpetrators of the human trafficking crime are tried, i.e. when there is a possibility for involvement of the victim in the trial in the capacity of a witness.

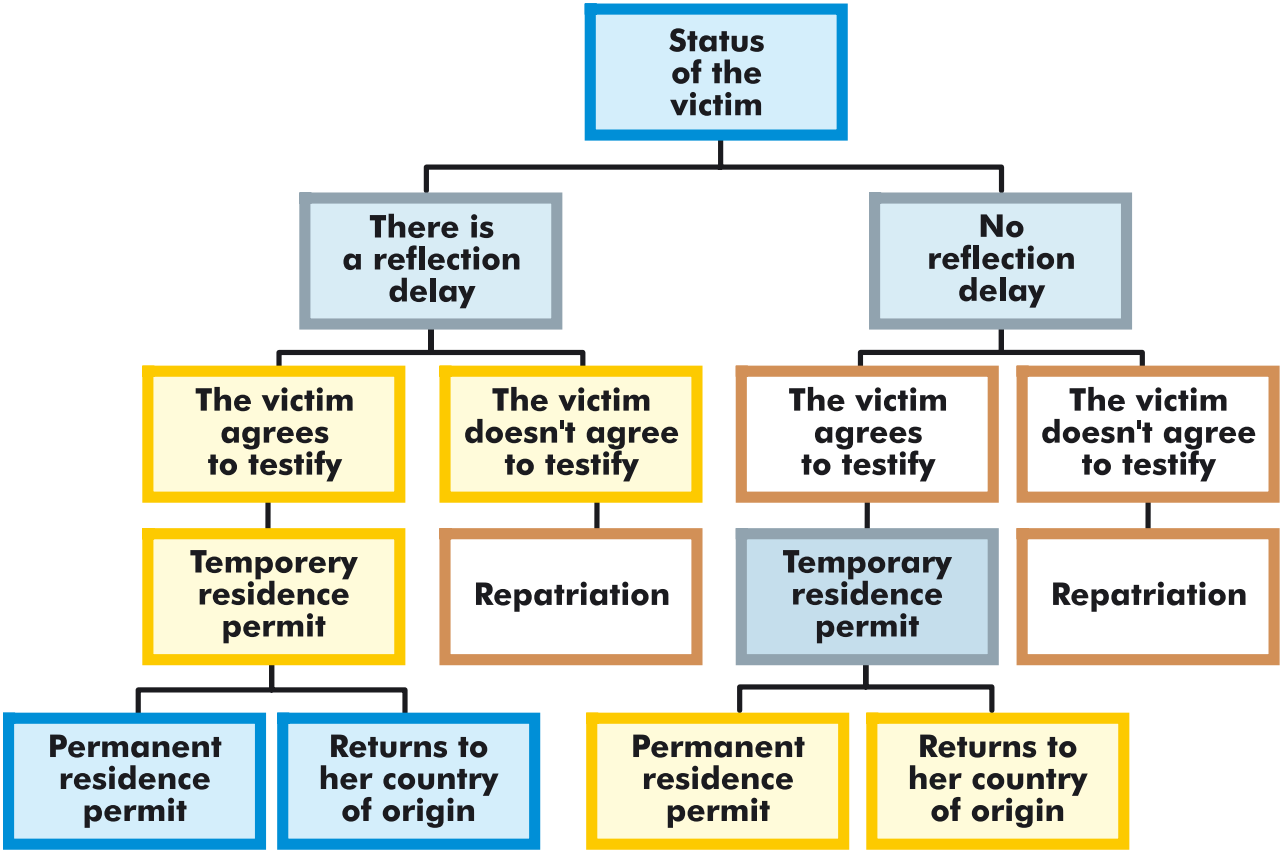
The ways in which different countries have regulated these matters are very different, ranging from models aimed at providing an adequate means in the fight against this crime, i.e. models where the victim's right to residence is conditioned by her participation in the criminal proceedings, to models that are more motivated by the principle of providing the most adequate protection to the victim irrespective of her willingness to join the prosecution of the offenders.

Notably, different country legislations can be divided into those that provide the victim with a certain period of time to decide if she wants to become involved in the court proceedings or not (reflection delay)[75], and those failing to provide for this. The starting point of the first group of legislations is that due to the psychophysical trauma suffered as a consequence of their mistreatment by the traffickers, the majority of victims are not able to consciously and willfully decide on their further involvement in the procedure in the initial period after breaking free from the nightmare and as a result of the posttraumatic stress.

Regardless of whether the victim was given a reflection delay or not, unless she agrees to testify in the proceedings against the perpetrators of this crime - usually she gets repatriated into her country of origin. There are few countries allowing the victims to stay even when they do not want to appear as witnesses in the proceedings[76]. Normally, staying in the country of destination is possible only if it is proven that the victim would otherwise be exposed to torture or to inhumane or humiliating treatment. Regretfully, these situations are very rare in country practices.

[75] The duration of the period for deciding varies strongly, ranging from one month in Germany to three months in the Netherlands. Reference Guide for Anti-Trafficking Legislative Review, Ludwig Boltzmann Institute of Human Rights, Vienna, A. Kartusch, September 2001, page 63
[76] For example Italy. Ibid

Overview of all possible modalities that are present
in countries around the world concerning the regulation of the status of the victim



Should the victim decide to help in the process against the traffickers in human beings, two scenarios are possible. The first one, which is the most common, enables the victim to stay in the destination country as long as the trial is ongoing. In this situation, it is not rare for the initially granted temporary residence permit to be renewed according to the needs of the proceedings. Victims are repatriated to their respective country of origin following the completion of the main hearing.

The second scenario, which is characteristic of a small number of countries, is that following the criminal procedure i.e. following the expiration of the temporary residence permit, the victim has the right to apply for obtaining a permanent residence permit[77].

It cannot pass unnoticed that despite the different legislations allowing the victim to make a decision regarding her status in the destination country and regarding her involvement as a witness in the court proceedings, she is however not completely free in making her choice. The victims - the vast majority of whom escaped their difficult socio-economic situation in their countries of origin and who are terrified of the additional stigmatization awaiting them upon their repatriation - are faced with a situation of choosing the lesser of two evils: either to become involved in the court procedure which at the same time means additional victimization for them or to face repatriation.

Prior to the enactment of the Law on Aliens of 23 March 2006, the application of which begins on 1 January 2008, the status of the foreign nationals (movement and residence) in the Republic of Macedonia used to be regulated by the Law on the Movement and Residence of Foreign Nationals[78], as well as by the Rules of Procedure of the Ministry of Interior[79]. Neither the Law nor the Rules included provisions explicitly related to the victims of trafficking in human beings, according which the victims would receive a different treatment than the one received by any other foreign national in the Republic of Macedonia.

Foreign nationals were allowed to enter and reside in the Republic of Macedonia provided they had a valid foreign identity document or another document as established by an international treaty, i.e. a passport issued by the Ministry of Interior or by a diplomatic-consular representation office of the Republic of Macedonia.[80]

The residence permit could be temporary or permanent, and it was issued when some specific requirements or timelines were fulfilled[81]. However, the protection of the witness/victim of human trafficking (providing her with assistance and possibilities for recovery until safe return to the country of origin is provided), i.e. securing her presence as a witness in the procedure against the traffickers in human beings, has not appeared as a reason for granting residence permit to the foreign national (victim) in the Republic of Macedonia.

Authorized MoI officials were responsible for exercising control as to whether the residence of foreign nationals within the territory of the Republic of Macedonia was regular and legal, i.e. checking the validity of the passport, permit and reason for the residence, checking whether the entry in the country was made legally at an official border crossing,

[77] For example, the victims-holders of the T visa in the USA, which is issued if the victim is willing to testify in the proceedings against the traffickers, may apply for permanent residence under defined conditions. The situation is similar in Belgium if the victim provides information of essential importance for the court proceedings. Ibid
[78] Official Gazette of the Republic of Macedonia No. 36/92 of 8 June 1992.
[79] Official Gazette of the Republic of Macedonia No. 12 of 10 March 1998.
[80] Article 4 of the Law on the Movement and Residence of Foreign Nationals
[81] Articles 20 and 23 of the Law on the Movement and Residence of Foreign Nationals list the reasons for approving of the application for temporary residence, i.e. the time period necessary for approving of a permanent residence in Macedonia.

whether the person had a visa if the latter was required, whether the residence was properly reported to the Police, whether the residence period was not exceeded and so ons[82].

According to IOM data, the proportion of trafficking victims who had no valid documents on them, thus residing illegally in Macedonia since 2000, ranged from 53% to 88%.

Failure to hold valid documentation was sanctioned as a misdemeanor according to the penal provisions of the Law on the Movement and Residence of Foreign Nationals, punishable with a fine[83].

At the same time, Article 255 of the Rules of Procedure of the Ministry of Interior stipulated that in case when it would be impossible to establish the identity of the foreign national or the reason for their residence in Macedonia based upon a valid document or otherwise as prescribed by law, and if there were no grounds for suspicion that they had committed a criminal offence or minor offence and if they had no means for survival on them, they were to be transferred to the border crossing and handed over i.e. returned to the authorities of the State where they came from (deportation).

All this leads to the conclusion that according to the abovementioned legal provisions, the victims of trafficking in human beings were (or were supposed to be) either prosecuted for a committed misdemeanor or immediately deported from the Republic of Macedonia in the majority of cases (more than 50%).

These arrangements have made it impossible to provide adequate assistance to the victim towards her physical and psychological recovery; have hindered her cooperation in the process of collecting evidence against perpetrators of criminal offences related to trafficking in human beings; have increased the costs associated with her travel to Macedonia with the view to participating in the court proceedings as a witness; and above all, have failed to provide for her physical protection against the traffickers in human beings.

Following the transfer of the victim by the Police to the border crossing with the neighboring country she was a national of, there was a real danger that she would be dragged again into the human trafficking cycle.

One also raised the issue of what happened with those human trafficking victims not originating from any of the neighboring countries, such as was the case with the majority of the victims[84].

After being punished for misdemeanor, these victims would return to the countries wherefrom they illegally entered Macedonia, thus being put in a position to commit another offence in terms of illegal crossing of the border into another neighboring country.

[82] Article 250 of the Rules of Procedure of the Ministry of Interior.
[83] "In cases when an authorized official establishes that a foreign national had committed a crime or a misdemeanor, he/she will transfer and hand the foreign national over to the competent court along with the prepared criminal charges document or the application for initiation of a misdemeanor procedure," - Article 251 of the MoI Rules of Procedure.
[84] According to the IOM report, Moldova, Romania and the Ukraine were the highest ranked countries regarding the origin of the victims.

Following the opening of the Transit Center for Foreigners in Macedonia (the first of this kind in the region) in April 2001[85] by the Government of Macedonia, the victims of trafficking in human beings, after the police has established their identity and the status of victims, were/are brought into the Center. In the Center, victims were/are provided with assistance and support by multidisciplinary teams composed of different professionals.

Year	Foreign victims of trafficking in human beings assisted by the IOM, Skopje	Domestic victims of trafficking in human beings assisted by the IOM, Skopje
2000[86]	114	-
2001	257	-
2002	220	-
2003	135	1
2004	15	-
2005	3	1
2006	14	3
2007 (first half)	6	2
Total	764	7
Total 771		

Between April 2001 and the first half of 2007, the IOM assisted a total of 771 victims of trafficking in human beings.

The victims' right to movement in the Center is restricted. Exceptionally, when there is a need for medical examination or for securing the victim's presence in a courtroom hearing, it is allowed for the victims to leave the premises of the Center, which are secured by the Police.[87]

[85] On 7 March 2001, the Ministry of Interior issued a Manual on the manner of work of the Transit Center for Foreigners, whereas the first actual admissions took place on 4 April 2001. The Center is situated within the MoI
– Sector for border affairs
– Department for illegal migration.
[86] Beforre the opening of the Center in 2000 the victims were situated in "alternative" places. Data provided from IOM Skopje.
[87] The entry into the TC is allowed only to the staff and to authorized officials holding passes to enter the facility. In exceptional situations, entry of other individuals may be allowed as well, and in such cases they are accompanied by authorized MoI officials.

The existence of the Transit Center[88] is one of the greatest benefits for Macedonia in the fight against trafficking in human beings. However, one has to note that the presence of human trafficking victims in the Transit Center should have been regulated in more detail in the legislation. Notably, the Transit Center for Foreigners, pursuant to the Law on Movement and Residence of Foreign Nationals, was envisaged only as an institution where the foreign nationals were referred to prior to their repatriation.

Notwithstanding that the practical application of the provisions in the new Law on Foreign Nationals has not commenced yet, certain innovations therein deserve comments.

Notably, the Republic of Macedonia now belongs to the group of countries that gives the victim of human trafficking a period to make up his/her mind whether she would collaborate with the competent state authorities in detecting the criminal offences and the offenders or she would return to her country of origin. This period (period for reflection) is two months and it is intended to provide the victim with protection and assistance and to avoid the influence of the perpetrators of the THB criminal offence[89].

This period may be extended only if the person in question is of minor age and if her interests require that. In its Article 81, the Law on Foreign Nationals regulates in detail the procedure to interrupt the reflection delay, listing all the possible causes for such thing to happen.

Following the reflection period, the victim of human trafficking may be issued a temporary residence permit for humanitarian reasons. The issuing of this permit is bound by certain conditions: first of all, the residence of the victim in Macedonia must be indispensable for the court proceedings against the traffickers, and secondly, the victim must demonstrate a clear intention to collaborate with the competent authorities in the detection and prosecution of the offenders. In addition, it is a must that the victim had interrupted all her relations with the individuals that trafficked her. If it is established that the contacts with those persons are renewed, this can be a reason for withdrawing her right to temporary residence. The latter also applies (i) if the victim stops to collaborate, (ii) if this is imposed by reasons related to the protection of the public order and national security, or (iii) if the competent authorities terminate the procedure against the offenders.

The temporary residence permit for victim of trafficking may last up to 6 months with a right to extension. Moreover, the victim may not be a holder of a permit of permanent residence in the Republic of Macedonia since article 87 of the Law stipulates that such a permit may not be issued to a person that had a residence permit for humanitarian reasons.

[88] The structural organization of the Transit Center for Foreigners and its role, Handbook on the fight against human trafficking and illegal migration, International Organization for Migrations, Mission to Skopje, 2005, page 36.

[89] There is no compatibility between the provisions of the Law on Foreign Nationals regarding the period for deciding whether the victim will participate in the procedure on the one hand, and the provisions of the Criminal Procedure Law on the other hand, regarding the summoning of a person located within the territory of the Republic of Macedonia to act as a witness. See more: III.2. The situation of the victim, Criminal justice response to organized crime, Coalition "All for fair trials", page 38, Skopje, F
february 2007, Violeta Velkoska.

It seems that our country as well makes the victim's residence dependent upon her willingness to participate in the court proceedings. Otherwise, the victim has to be repatriated into her country of origin. In addition to this, there is no legal ground for the victim to stay in Macedonia after the completion of the main hearing. Notwithstanding that there is room to debate the extent to which this approach is truly in the spirit of protection of the victim's best interest, it cannot however be contested that this legislation is certainly at the level of the models built in other countries and in any case a more appropriate arrangement than the one provided by the Law on Movement and Residence of Foreign Nationals.

It remains for the practice to provide confirmation for the stance that Macedonia has come up with a more appropriate mechanism for providing adequate status to the victims of trafficking in human beings.

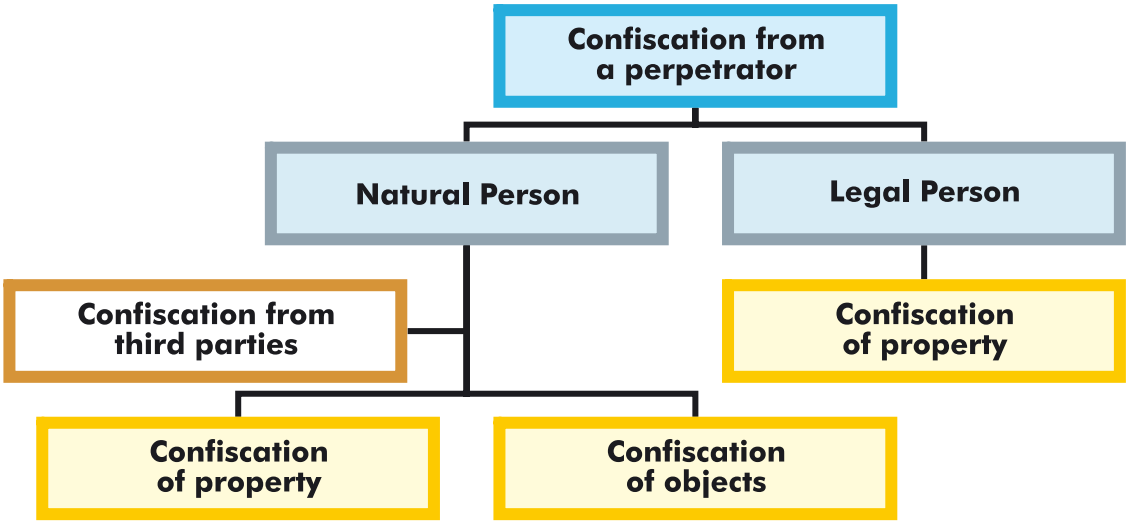
16. The proceeds of the traffickers and the application of the mechanisms for their confiscation

It is well known that trafficking in human beings is a form of organized crime that brings high proceeds for the offenders. This statement is supported by international reports[90] that make an evaluation of the proceeds generated from various crimes. Notably, the figures are within the range of seven to ten billion US dollars a year at global level[91]. The share of the Republic of Macedonia in this calculation can only be assumed due to the simple reason that such analyses have not been made in our country. Several indicators in the report of the Coalition "All for fair trials" of the number of hours of sexual services provided by the girls–victims of trafficking kept in the night bars, of the cost of one hour, of the number of girls kept in one bar i.e. belonging to one of the owners, can help in making a rough estimation of the proceeds. Imprecise although not illogical is the assumption that one owner of a night bar can/could generate proceeds of up to half a million Euro a year provided that he had at least three girls. The expenses that the traffickers incurred with the "purchase" of the victims range from 2500 to 4000 Euro (even though they were often "purchased" by means of exchange).

This calculation cannot be supported by an analysis of the confiscated assets in the proceedings against the perpetrators of these offences. The simple reason for this is that confiscation of assets i.e. of proceeds of crime has been applied only in few isolated cases in the judicial practice over the recent years. This is very surprising especially if we take into consideration the fact that the most powerful tool in the fight against organized crime, including trafficking in human beings, is the confiscation of the proceeds of crime. Out of a total of 278 individuals whose trial ended in a first instance court, the measure confiscation of assets was ordered for only 6 of them (86,815,870 denars were confiscated in addition to some real estate).

[90] UN estimate is that between seven and ten billion US dollars annually is the profit from this form of organized crime, "Women in an insecure world - Violence against Women, Facts, Figures and Analysis", page 80
[91] Trafficking in Person Report" June 2005, page 13; http://www.state.gov/g/tip/rls/tiprpt/2005/

The legislators in the country, starting from the premise that nobody may retain either indirect or direct proceeds of crime[92], laid down in the Criminal Code both the basis for and the manner of confiscation of the proceeds from both individuals and legal entities[93]. The assets/proceeds of crime are determined *ex officio* within a criminal procedure. The court and the other authorities before which the criminal procedure takes place are responsible for collecting evidence during the procedure and for exploring the circumstances that are of importance for determining the assets and the proceeds of crime.



The CC contains a general provision on confiscation of the assets generated by committing a crime, as well as of the objects that were intended to be used or were actually used in the commission of the offence. This general clause makes the provision of Article 418 a, Paragraph 7, which provides for confiscation of the objects and vehicles used to commit the crime, excessive to certain extend. Moreover if we take into consideration, the extent to which it has (not) been used.

The measure of confiscation of objects has not been pronounced in a case related to *trafficking in human beings*. Of a total of 66 pronounced measures, 55 were ordered in "Smuggling of migrants" cases (in this case, the State confiscated from the perpetrators of the criminal offences stipulated in Articles 418b and 418v of the Criminal Code 39 PMV, 2 vans, 16 mobile phones, 2 houses, two trucks and money), 2 in the cases: *Abuse of official position and authority*, and 9 for *Smuggling of goods*.

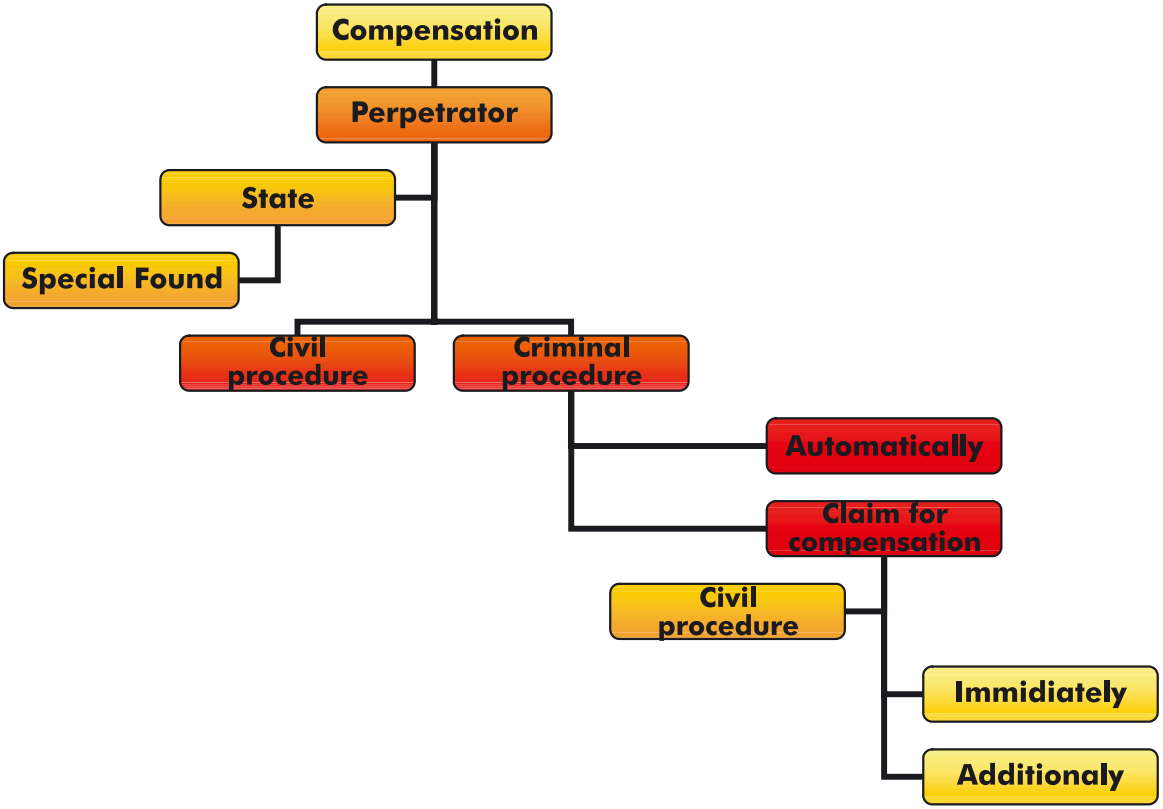
[92] Stipulated in Article 97, Paragraph 1 of the Criminal Code
[93] Compensating the victims, Suppressing human trafficking through the case law of domestic court, Skopje, November 2005, Violeta Velkoska, page 47

17. Providing adequate compensation for the victims of THB

Without justice life would not be possible, and if life had been possible
it would not have been worth living it. Through all times, for justice
died the most noble spirits whom the history of humanity owes its greatest appreciation
Giorgio Del Vecchio

The tendency to strengthen the position of the victim in the proceedings before the court in all legislations - i.e. to provide the victim with fast and efficient restitution and compensation and first and foremost with protection against secondary victimization - has led to an interesting shift of the obligation to provide adequate compensation from one actor to another. Lately, the majority of international instruments have stressed the obligation of the State to compensate

Overview of all possible modalities for compensating the victims



victims, including trafficking in human beings victims, regardless of whether the victim has succeeded in obtaining compensation from the offender or not. However, it seems that in practice, despite the availability of many different models for effectuating compensation, few countries (if any) can boast of having an efficient policy on compensating trafficking in human beings victims.

In the majority of countries, the obligation to provide compensation for the damage caused by the offence is primarily vested in the defendant. If this proves to be impossible for various reasons, the State should activate the compensation mechanisms. These mechanisms are often bound by the existence of a large number of circumstances i.e. criteria, which only makes the compensation process more difficult. It is a fact that in large number of cases this obligation of the State remains at declaratory level and that many countries have not provided for compensation funds yet. As a result of this the victim is left only with mechanisms for receiving compensation from the perpetrators of the crimes.

The victim may receive compensation from the perpetrator either in a civil or a criminal procedure or in both, depending on the model accepted by the country. Sometimes, the decision of whether this issue will be dealt with in a criminal procedure depends upon certain criteria such as the type of the offence, the factor of "postponement of the procedure", the outcome of the criminal procedure i.e. whether a condemning sentence is passed or not. etc.

Should the reaching of the decision on the compensation be an integral part of a criminal procedure, several mechanisms are possible. The first one[94] provides for the possibility of the victim to be automatically compensated without needing to file a compensation claim, based upon the mere fact that a damage has been caused by the offence that is the subject of the trial (in this case, the crime has to be a violent crime). Therefore, the courts are obliged to order ex officio that the compensation should be provided by the defendant, and even to designate the instruments for forcible fulfillment of this obligation in case the perpetrator fails to comply voluntarily. This model seems to have many advantages over the other models. This primarily applies to the speed of reaching the decision on the compensation without any need for additional efforts to be made by the victim, the latter being in a less favorable position in a situation when legal assistance is not provided to him/her[95].

In the majority of countries, obtaining compensation goes by filing a compensation claim in any phase of the criminal procedure (before its completion). The decision on the claim may be reached immediately i.e. together with the verdict on the guilt of the offender, or in a form of additional decision.
m :The possibility that the court may decide not to reach a decision on the claim for compensation filed within the criminal procedure is not excluded either. In this case, the court advises the victim to put in a claim within a civil procedure.

[94] Characteristic of England and Wales - http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_eng_en.htm#1.1.
[95] In parallel to England (Scotland and Wales), there is the so-called Criminal Injures compensation scheme, which provides for a compensation for the victims of violent offenses. Namely, the person who was victim of a violent offence within the territory of Great Britain has the right to apply to the Criminal Injuries Compensation Authority for receiving compensation for a psychological or physical injury (more at https://www.cica.gov.uk)

This automatically raises the issue of the length of the process of deciding on the claim on the one hand, as well as of the compliance thereof with the legal status of the victim within the territory of the country hosting the trial. Namely, if the mechanisms for providing the victim with a legal status while the procedure is ongoing (this refers to the civil procedure distinct from the criminal one) are not available to her, she is doomed to give up the civil law compensation claim.

In the Republic of Macedonia, the victims are compensated by way of filing a compensation claim within the criminal procedure. This issue is decided in a civil procedure only when the court acquits the perpetrator of the offence "Trafficking in human beings".

In the criminal procedure, if the evidence provide sufficient ground for deciding on the compensation, the court will reach a verdict immediately i.e. along with the sentence punishing the perpetrator. However, if the evidence does not provide sufficient basis for full or partial decision on the compensation claim, and if the additional provision thereof is jeopardized by the possibility of unjustified delay of the criminal procedure, the court will adjudicate only on the basis or on the basis and partially the amount of the compensation, and will reach an additional decision on the amount of the compensation claim or on the remaining part of it. The law does not include a provision on the time limit within which the additional decision should be reached.

The above said is of special importance given that there are several additional verdicts waiting to be reached in the area of trafficking in human beings, and this has not been done yet even 2 to 3 years later.

In view of the fact that only in as few as three cases (three victims) in Macedonia the court had awarded damages for **non-material** injury to trafficking in human beings victims despite the court's obligation to decide on the compensation claims within the criminal procedure, it seems that our country can not boast of having a good practice of compensating the victims. What is striking is that the situation is similar (or even worse!) in the other countries of the region.

The reasons for this can be sought in several directions: first and foremost, the willingness of the judges to implement the amendments to the 2004 Criminal Procedure Law and to abandon the habit of referring the victims to a civil procedure; further on, the small number of expert witness testimonies, which creates problems with the determination of adequate compensation. One has to mention also the problems of securing repeated presence of the victim with the view to enabling a later expert witness testimony once the victim has been repatriated, as well as the problems of late expert witness testimonies given that the actual situation, i.e. the psychological and physical consequences of the torture of the victims committed by the perpetrators can realistically be determined immediately after the commission of the offence. The latter is put into correlation with the long period elapsing between the moment of commission of the offence and the time of the trial. If we add to all the above the failure to use the mechanisms for securing the compensation claim, it may be possible to obtain a clearer picture about the factors acting in an opposite direction of the desired one regarding the victim compensation in Macedonia.

Namely, Article 203-a of our Criminal Procedure Law stipulates that the investigative judge or the trial panel may issue a Decision document on securing on a temporary basis the property or assets associated with the criminal offence. This temporary security includes temporary freezing, seizure, and retention of funds, bank accounts and financial transactions or proceeds of crime. In practice, by October 2007 this provision was used in only one case.

The first instance court in Kumanovo, sentenced to prison sentences of 5 to 7 years seven individuals as per Article 418a Paragraph 1 of the Criminal Code. Towards the end of 2003, the first defendant (now first convicted) proposed to the injured party to flee for Germany together promising her falsely that he would marry her. He also persuaded her to take quite a large amount of money from her home.

After placing her in a hotel room in Kumanovo, he began to mistreat her and to hit her with a gun on the back and to pull her hair. He also put out cigarettes on her body. He then moved her to a hotel in Skopje where she was forced to provide sexual services to several strangers during a period of 4 days.

After this period, he brought her back to the first hotel in Kumanovo and called four of the rest of the defendants to tell them that she was in that particular hotel. The injured party was hit with arms and legs all over the body, thrown down on the ground and told that she had been sold to them. She was transferred to another motel where they beat her again and threatened her that they would burn her fingers on a heater. After multiple rapes by all of them, the injured party was offered to other individuals for sexual exploitation.

On one occasion, she managed to escape from the four perpetrators, went to see the father of the first defendant and told him her story of terror and abuse. Deceived again that his son must marry her, and with the view to hiding her until this issue has settled down, the sixth defendant took her to a "secure house" in Kosovo. After organizing an illegal crossing of the border, he handed her over to two other individuals who continued with the sexual abuse.

Again placed in a hotel, physically abused, forced to drink and swallow pills of unknown composition and raped over and over again, she was given to new "bosses" for exploitation purposes. As a result of the long-term mistreatment and of the posttraumatic stress disorder, the injured party suffers from severe anxiety and depression with threatening indicators of aggravating symptoms - reads in the finding and opinion of the expert witness. As compensation for non-material damage, the court responded to the compensation claim by reaching a verdict that all convicted individuals should pay the amount of 216,666,00 MKD. In order to secure the compensation claim, the measure of ***temporary seizure of defendants' assets*** *was ordered. This case is the first one in our case law in the THB area in which the measure of securing the compensation claim was pronounced.*

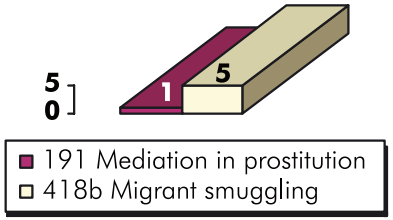
In its Article 99, the Criminal Code stipulates a possibility for covering the compensation claim filed in the criminal procedure from the perpetrator's confiscated assets provided that action is initiated within 6 months from the day when the decision

referring the respective person i.e. the victim to litigation became final. However, unless the compensation claim was filed within a criminal procedure, the coverage of the claim from the perpetrator's confiscated assets may be requested in litigation within a three months period from finding out about the verdict with regard to the confiscation.

Regretfully, this provision alone cannot help in the realization of the victim's compensation claim unless there is a more common practice of confiscating traffickers' assets.

One must not forget either the provision of Article 180 of the Criminal Procedure Law that allows for the compensation claim to be covered from the guarantee given as a measure for securing the presence of the defendant at the main hearing. This measure has not taken roots in practice primarily due to the absence of "guarantee" orders in the procedures against the traffickers in human beings. Out of a total of 6 registered "guarantee" orders within all observed cases, 5 of them were a replacement for the "detention" measure in the cases of "Smuggling of migrants", whereas one was pronounced in the case of "Mediation in prostitution"[96].

Pronounced measure of "guarantee"



In addition to the physical consequences suffered by the victims as a result of the mistreatment by the traffickers, the psychological injuries inflicted on the young girls and women are assigned even greater vigilance and significance. Namely, according to the survey[97] of the non-governmental organization "For happy childhood", carried out by the team established with the view to providing psychosocial support to the THB victims in the Transit Center, 90% of the girls one worked with manifested behavioral and adaptation disorders such as: depressive mood, crying and feeling of helplessness, insecurity, anger, dependence on other people; lowered tolerance threshold and physical unrest, destructiveness and aggressiveness.

If we add to all the abovementioned the permanent consequences some of the victims have suffered with regard to their reproductive organs (this is primarily related to the non-rare situations of submission to abortions carried out in poor conditions), one gets the impression that even if very high damages were paid to the victims for the evil they suffered, which is certainly not the case in our practice, the injury inflicted on them is irreversible.

[96] 5 out of the total of 6 "guarantee" measures were pronounced in the first instance court in Bitola
[97] Psychosocial support for women-victims of THB, Verica Stamenkova Trajkova, 2004, Skopje

The expert witness testimonies, which are the only competent instrument for determining equitable compensation, must be more present in the trafficking in human beings cases.

Conclusions

All victims-witnesses in the procedure are female, for the most part foreign nationals mainly from Moldova and Romania. Domestic victims are more an exception than a rule.

The Republic of Macedonia belongs to the group of countries that provide the victim of trafficking with a two-month reflection period during which she might decide if she will cooperate with the relevant state authorities in detecting the criminal offences and the perpetrators or be repatriated to her country of origin.

Despite the legal possibility for coverage of the compensation claim filed in the criminal procedure from the perpetrator's confiscated assets provided that action is initiated within 6 months from the day when the decision referring the respective person i.e. the victim to litigation became final, the implementation of this procedure is unfortunately not possible unless there is more common practice of confiscating the traffickers' assets. Namely, the provisions on confiscation of the assets/proceeds of crime, as well as the provisions on the temporary seizure of the assets associated with the respective crime are very rarely applied by our courts.

Confiscation of assets was pronounced for 6 of the total number of convicted individuals. They were convicted of: Abuse of official position and authority and Money laundering in the basic court in Skopje. Out of the total number of rulings on confiscation of objects, 55 were related to the crime of "Smuggling of migrants", 2 to "Abuse of official position and authority", and 9 to "Smuggling".

Macedonia is relatively successful in implementing the on policy on securing witnesses in the court proceedings against perpetrators of THB crimes.

The modest number of compensations for non-material damage awarded to THB victims speaks in favor of the conclusion that our country lacks a good practice of victim compensation.

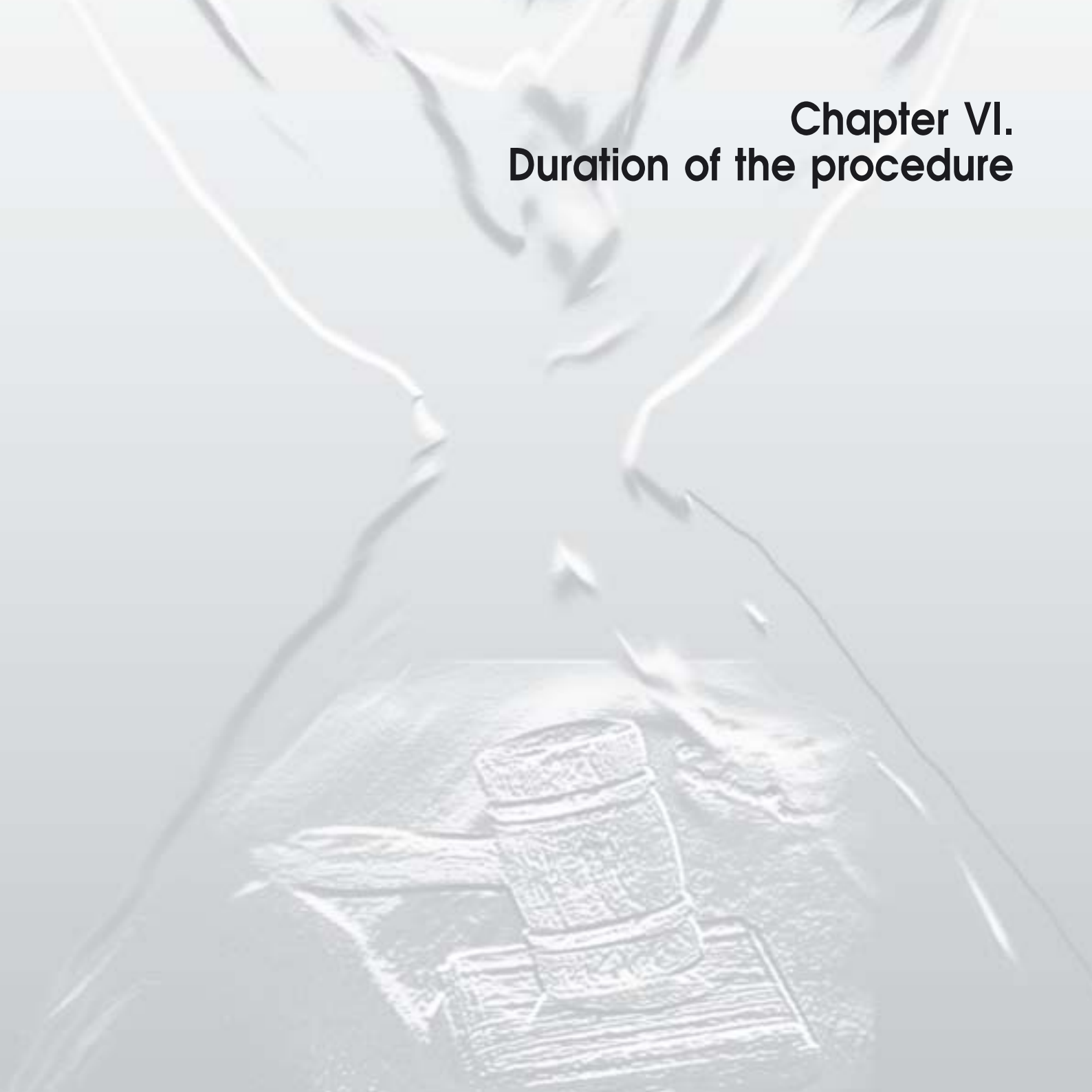
Recommendations

The use of the provisions on confiscation of assets gained on illicit way is a necessary imperative and the most powerful tool in the fight against organized crime, including the trafficking in human beings. The practice of rare application of these provisions is an obstruction to the process of coping with this phenomenon.

It is necessary to set a time frame in which the court would be obliged to reach the additional verdict regarding the compensation claim filed within the criminal procedures before the courts in Macedonia.

There is a need for compatibility between the legal status of the victim within the territory of the country where she appears in the capacity of injured person in the proceedings on the one hand, and the mechanisms for securing appropriate compensation (this refers to a civil procedure outside the criminal procedure) on the other hand, so that the victim could achieve a civil compensation claim.

Chapter VI.
Duration of the procedure



Duration of the proceedings

"The purpose of the law is not to abolish or restrict,
but to preserve or increase the freedom",
John Lock

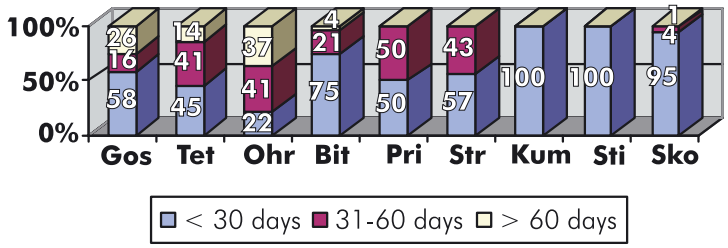
The analysis of the frequency of postponements of the main hearing within all observed cases in the area of organized crime in the period between the beginning of January 2005 and the end of June 2007, as well as the analysis of the reasons for the postponements, enables the creation of a picture on the duration of the procedure and its justification.

In the statistical processing of the period of postponement of the hearings, two criteria were taken into account: the basic court before which the case was tried and the type of the criminal offence.

In the majority of cases in the first instance courts in Skopje and Bitola (as well as in Kumanovo and Stip, but because of the very low number of observed cases before these courts the data on them must be taken with reserve), the hearings were postponed for a period of time under 30 days.

In the first instance court in Ohrid, in only 22% of the cases were the hearings postponed for a period under one month. High 37% of the total number of observed hearings was postponed for a period of above 60 days. In this case, the procedure needs to start from the beginning.[98] Not very far behind is the first instance court in Gostivar with 26% of the total number of postponed hearings of over 60 days.

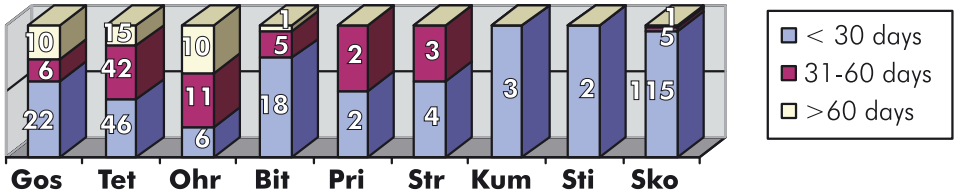
Duration of the hearing postponement by court (in %)



In order to avoid a wrong impression about the situation that was found in the different courts due to the disproportional number of observed cases, the graph below shows the postponements by number of observed hearings.

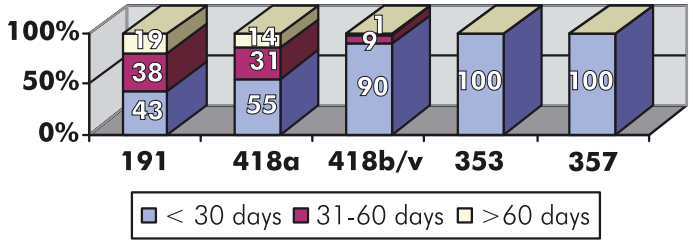
[98] According to Art. 297 (Paragraph 5) of the Criminal Procedure Law, if the postponement of the hearing exceeds 60 days, it will start all over again.

Duration of the postponement by number of hearings



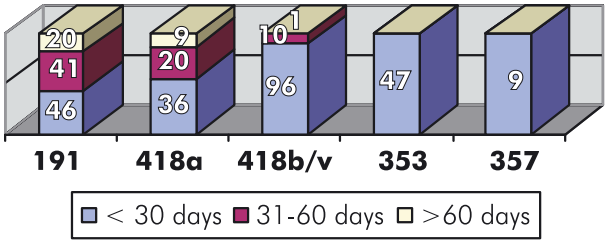
As regards the type of the criminal offence in correlation with the postponement of the hearing, the situation is as follows: in nearly all (if not all) cases of postponement with regard to the offences Smuggling of migrants (as well as the organized form thereof stipulated in Article 418v of the Criminal Code), Abuse of official position and authority and Taking bribe, the hearing was rescheduled for a period of time under 30 days. With the cases of Mediation in prostitution, the proportion of postponed hearings for less than 30 days is 43% (the lowest). This is also the crime where the proportion of hearings postponed for over 60 days is the highest and amounting to 19% of the total number of postponements.

Period of hearing postponement per crime in %

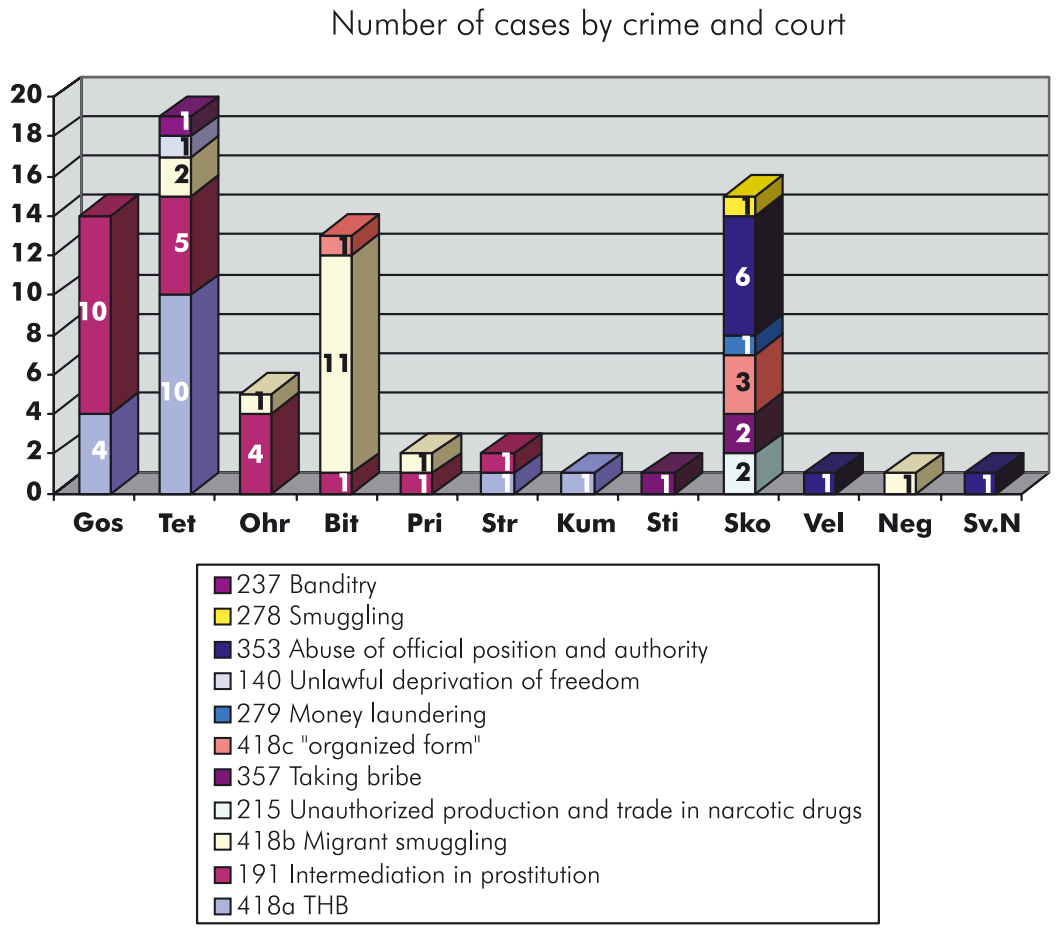


For the sake of greater accuracy, only the offences appearing more frequently in the Coalition's observation process were taken into account while doing the analysis.

Period of postponement of the hearing
by crime and number of hearings

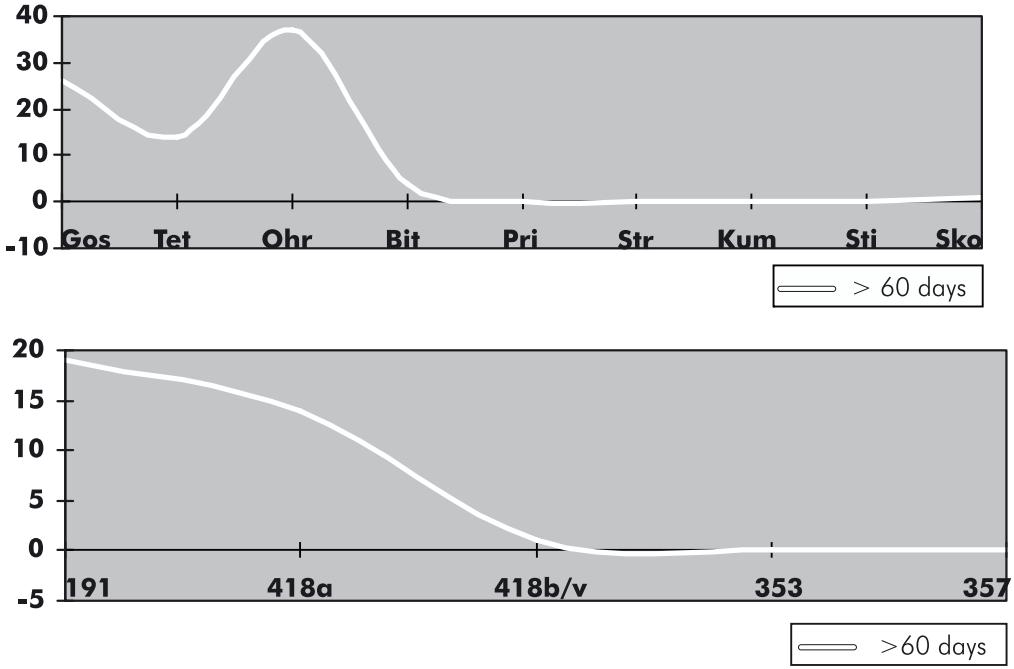


The above situation is not surprising if we take into account the fact that the majority of cases related to THB were observed before the first instance court in Tetovo (see the table above), whereas the majority of the cases for mediation in prostitution were observed before the first instance court in Gostivar.



One can automatically raise the question if the factors associated with the type of the criminal offence (for example the impossibility to secure the presence of the THB victim/witness at the main hearing by making use of the provisions on the international cooperation) are responsible for the postponement of the hearing to be sometimes so lengthy, or if the duration of the procedure is in direct correlation with the court's staffing situation, case load, environmental conditions etc. What is of utmost concern is the proportion of cases postponed for a period of 60 days and the reasons for this to happen. Data have shown that the first instance courts in Gostivar, Tetovo and Ohrid, regarding the trials

for the offences "Trafficking in human beings" and "Mediation in prostitution", have the highest rates of postponement lasting more than two months. The situation described in the 2005 and 2006 Coalition reports[99] regarding the reasons for the postponement has remained unchanged in 2007 as well (mainly due to the not so drastically changed number of cases associated with these two criminal offences).

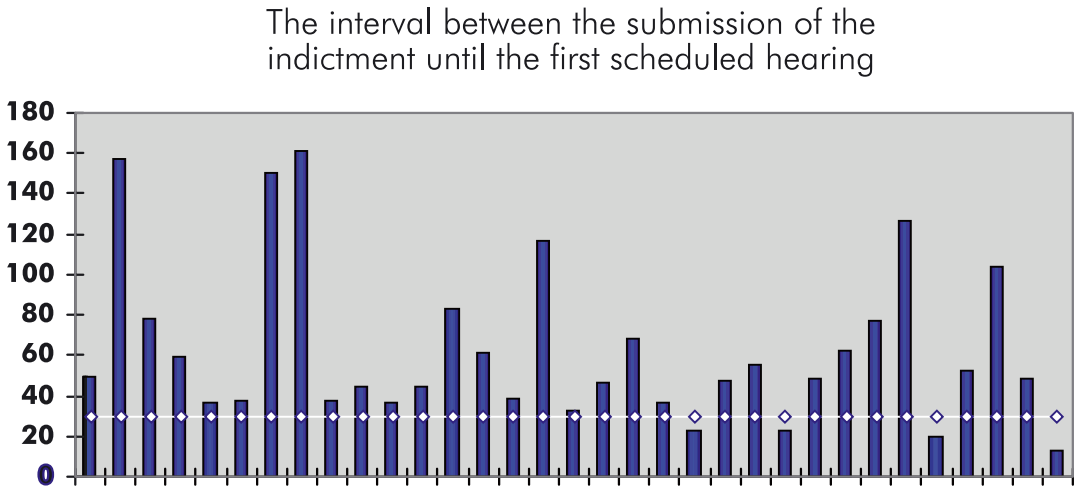


Even though the absence of the injured party has been the reason for the long postponements in the majority of cases, there has also been a high proportion of postponements as a result of the failure to secure the presence of the defendant and his attorney. The latter raises the issue if and how all the legally available instruments for securing their presence were used.

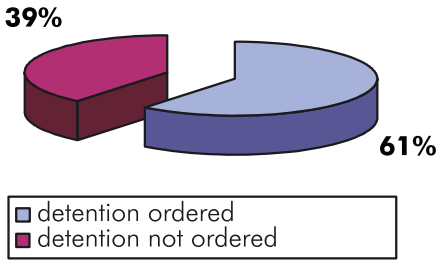
There is also the problem of the speed of completion of all the steps in the procedure. Namely[100], the President of the trial panel should schedule the main hearing within 30 days at the latest from the day of receiving the indictment in the court. The data available to the Coalition with regard to the period of time that elapsed from the moment of reception of the indictment in the court (i.e. deciding upon an objection) until the scheduling of the first hearing

[99] Criminal justice response to organized crime
[100] Pursuant to Article 295 of the Criminal Procedure Law (cleaned text)

demonstrate that in only 4 cases (12%) was this advised timeline observed. The average duration of this period in the practice of the domestic courts is at least double the legally determined one.



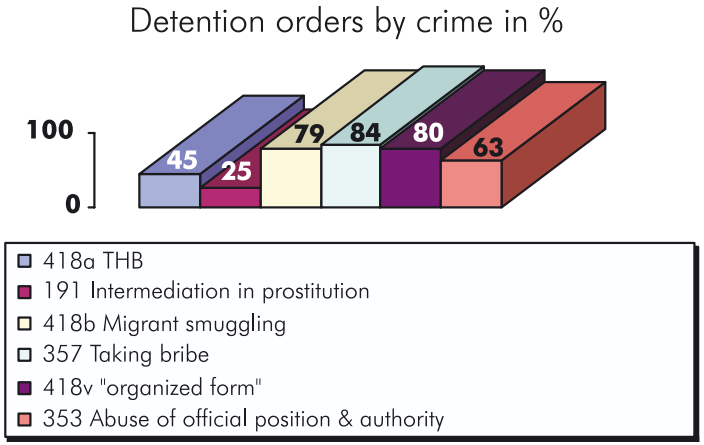
If the above said is put in correlation with the high percentage of detainees for offences falling under organized crime, as well as with the obligation for all the authorities participating in the criminal procedure to act with special urgency when the defendant is held in custody, it may be the situation that in this phase of the procedure the efforts to act as quickly as possible are not sufficient. Namely, detention order was pronounced on 61% of the total number of defendants (278).



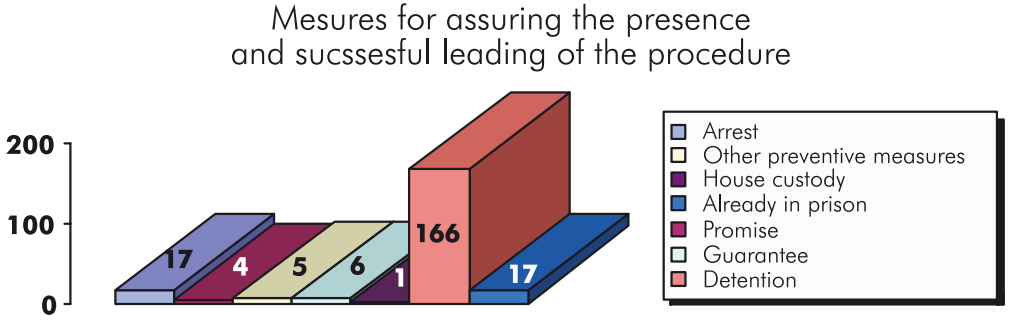
The table below shows the number of defendants for every criminal offence as well as the number of detention orders pronounced on those individuals.

Type of criminal offence	Number of defendants by crime	Number of detention orders	% of detention orders
191 Mediation in prostitution	44	11	25
418 b Migrant smuggling	91	72	79
215 Unauthorized production and trade in narcotic drugs	6	5	83
357 Taking bribe	25	21	84
418 v "organized form"	62	50	80
279 Money laundering	3	1	33
140 Unlawful deprivation of freedom	1	1	100
353 Abuse of official position and authority	24	15	63
273 Tax evasion	20	7	35
378 Counterfeiting identification papers	5	4	80
247 Fraud	3	3	100
361 Counterfeited official paper	4	1	25
278 Smuggling	11	11	100
237 Banditry	5	4	80
60 Excise	9	7	78
396	3	3	100
247	3	3	100
394	5	5	100
280	1	1	100
382	1	1	100
141	1	1	100

Not paying attention to the offences that rarely emerged in the course of the observation process, the analysis of the cases related to the offences involving a large number of defendants shows that the highest proportion of detention pronouncements were for the offence of "Taking bribe". This is immediately followed by the offence stipulated in Article 418v of the Criminal Code with significant 80% of the total number of defendants. The lowest number of such measures were pronounced for the offences of „Mediation in prostitution" and "Trafficking in human beings".



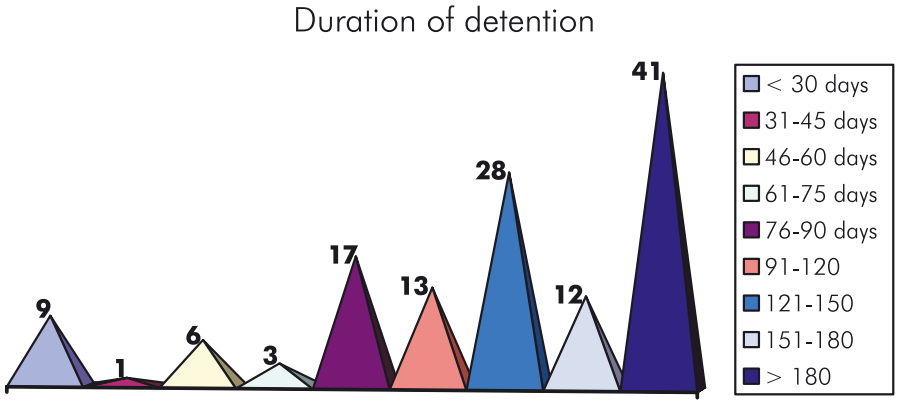
The same as in the previous two years, the conclusion that detention is the most utilized measure for securing the presence of the defendants at the main hearing as well as for carrying out the procedure successfully was confirmed.



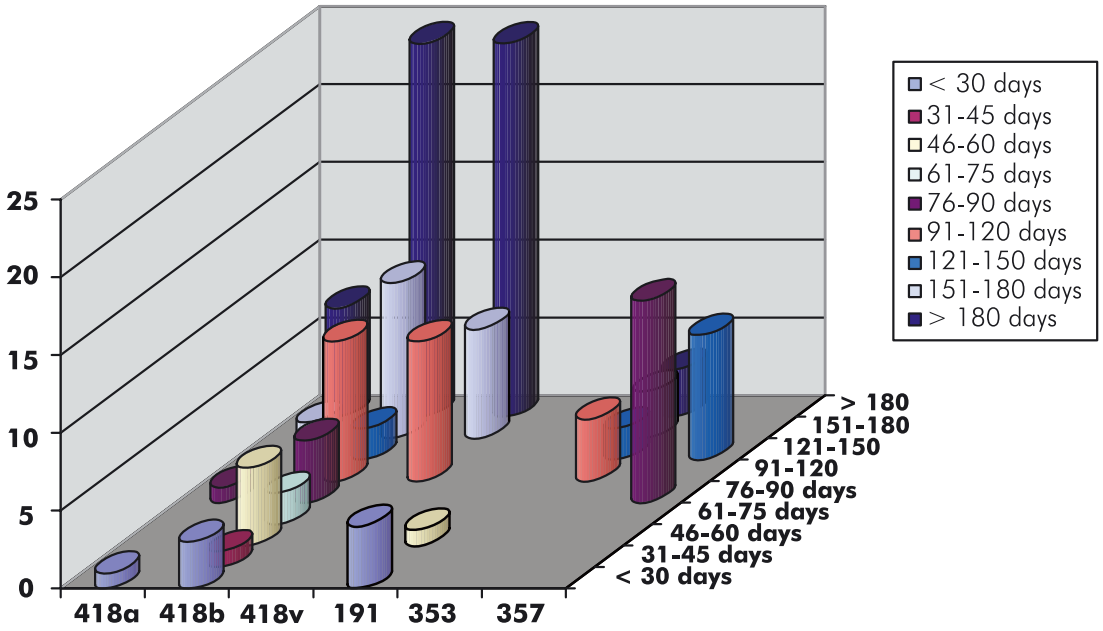
Namely, unlike the 166 detention orders, arrest was present in only 17 cases. In two situations the arrest moved into detention, but the latter was replaced by a guarantee in a total of 6 cases.

By means of a Decision issued by the investigative judge (or decision by the trial panel), the detention may last for a maximum of 30 days from the day of deprivation of freedom. Upon a justified proposal made by the investigative judge or the public prosecutor, the trial panel may extend the detention period in the course of the investigation for a maximum of 60 days. In case the investigation is conducted for a crime for which the law envisages a prison sentence of minimum five years, following the expiration of this period the panel of the immediately higher instance court may extend the detention for a maximum of 90 days upon a justified proposal made by the investigative judge. As a total, the overall duration of the detention measure within the investigation must not exceed 180 days.

After the indictment has been filed, the detention may last for up to one year at the most for the criminal offences entailing a prison sentence of up to 15 years, i.e. up to two years for the criminal offences for which a life imprisonment sentence may be pronounced.



As regards the observed cases, the majority of the detentions (32%) lasted for more than 180 days.

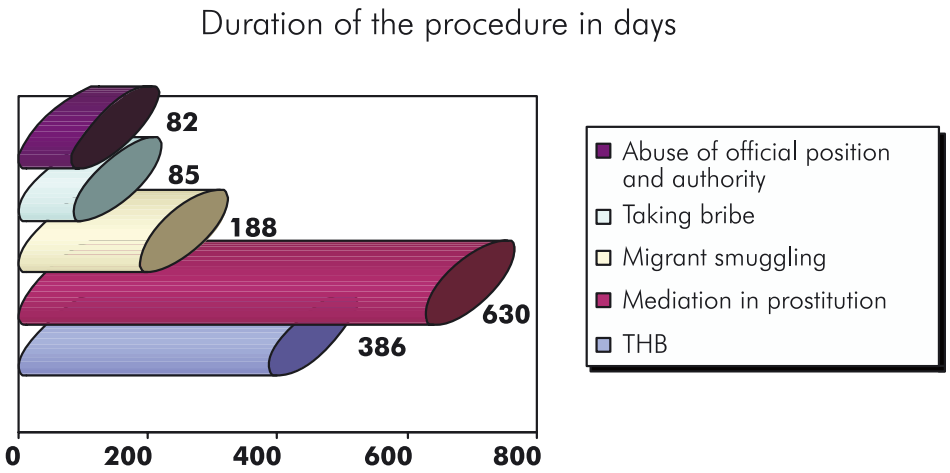


The longest detention period is characteristic of the offence stipulated in Article 418b and 418v of the Criminal Code. In around 80% of the total number of detention orders lasting for more than 180 days, the cases are related to the offence of "Organizing a group and instigation to committing the crime of smuggling of migrants". In 12% of the detention orders, detention lasting for more than 180 days was associated with "Trafficking in human beings".

Given that in detention cases one should act in accordance with the principle of urgency, it is logical to expect that the cases where detention measure was pronounced will end sooner than those where this measure was not pronounced.

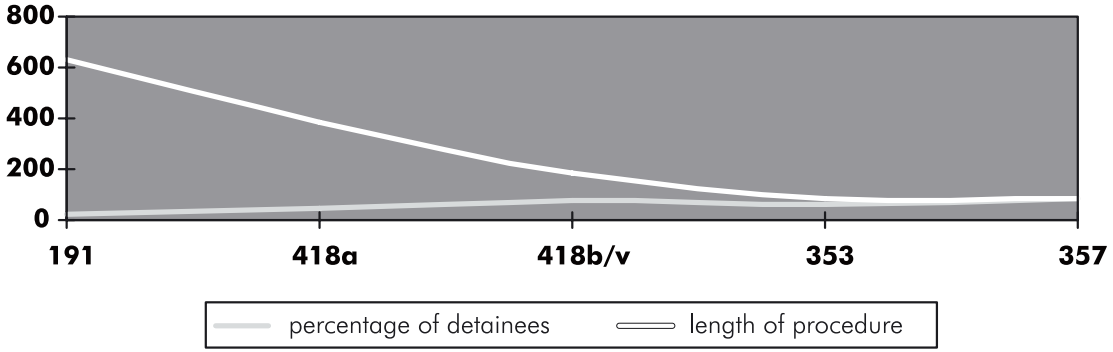
Watching the duration of the procedure from the submission of the indictment until the reaching of a first instance verdict in the observed cases in the area of organized crime by type of criminal offence, the following data emerge: in the cases associated with the offence of "Mediation in prostitution", the average duration of the procedure is 630 days, whereas in the cases associated with the offence of "Trafficking in human beings" - 386. The trial for the "Smuggling of migrants" offences lasts for 188 days on the average.

The cases associated with the offences of Abuse of official position and authority and Taking bribe normally end significantly sooner[101].



[101] If one added in the calculation the period of time taken by the five cases that were returned for re-consideration in the first instance procedure, this would result in changed mean values of the duration of the procedure for certain offences. Consequently, the average duration for the THB cases amounts to 435 days, whereas the respective figures for the offences of "Mediation in prostitution" and "Migrant smuggling" increased to 709 and 203 days, accordingly.

If one compares the duration of the procedure in the cases of certain criminal offences with the percentage of detention orders pronounced on the defendants for those crimes (the higher the detention the lower the duration), dependence is noticeable at first glance.

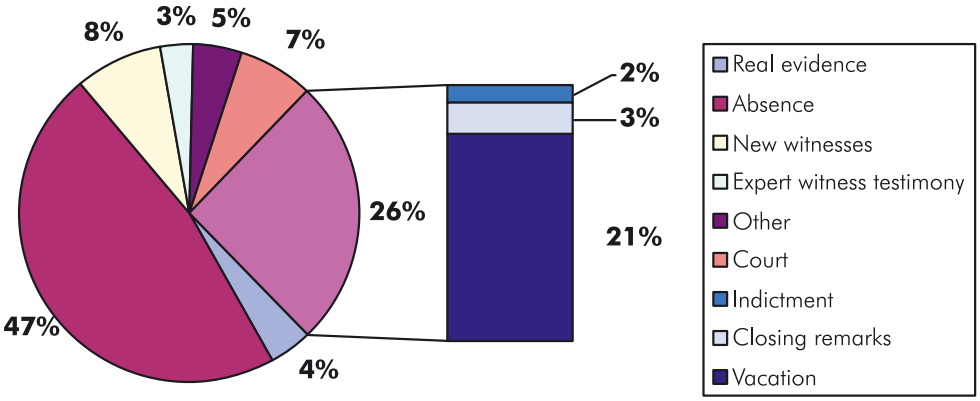


The magnitude of this dependence can be ascertained if one calculates the average duration of the trials in relation to the most represented offences within the observation process (Articles 418a, 418b and 418v and 191 of the Criminal Code) in which detention measure was pronounced, and if this is then compared with the duration of those trials where this measure was not pronounced. Notably, while in the case of the "Smuggling of migrants" offence (including the organized form) the difference in the duration of the proceedings with and without detention is almost negligible, with the offence of "Trafficking in human beings" the cases in which detention was not pronounced last 114 days longer than the cases comprising detention order. The difference in the case of the crime "Mediation in prostitution" is 192 days.

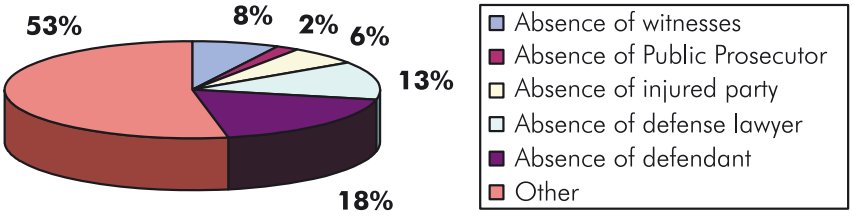
	With	Without
418b/v	180	214
418a	299	413
191	427	619

In almost half of the situations in the cases observed from January 2005 until October 2007, the absence of one or more of the relevant actors in the procedure was the **reason for postponement** of the main hearing. In a much smaller number of cases, the postponement was due to the need to secure new witnesses, court-related reasons, securing real evidence etc. The main hearing is most commonly interrupted for vacation reasons, and less often for the preparation of the closing remarks[102].

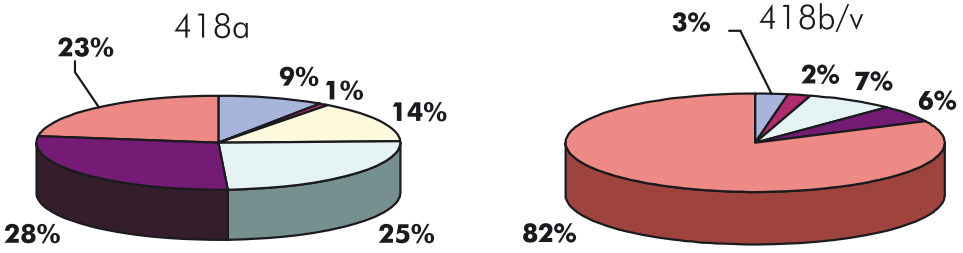
[102] Pursuant to Article 298, the Chairman of the trial panel may interrupt the main hearing for reasons of vacation or in order to obtain certain evidence in a short time, or for preparation of the prosecution or the defense.



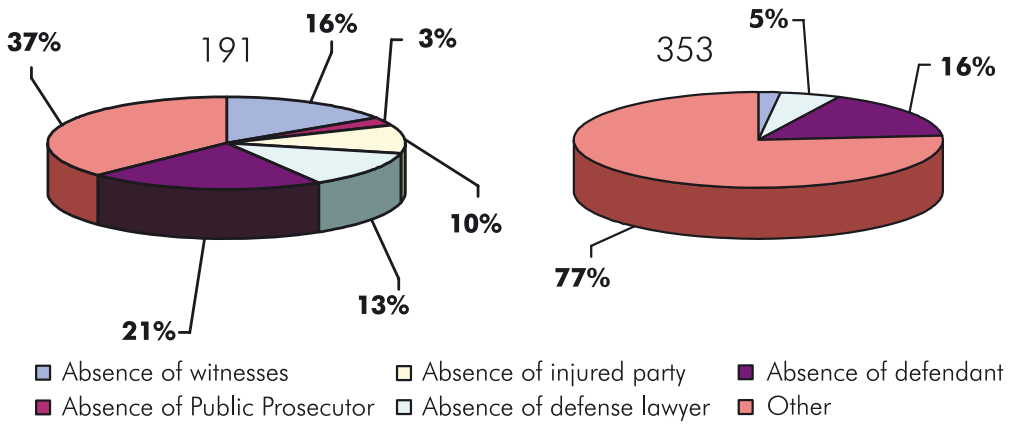
The absence of participants in the procedure as reason for postponement appears in 47% of the total number of situations[103].



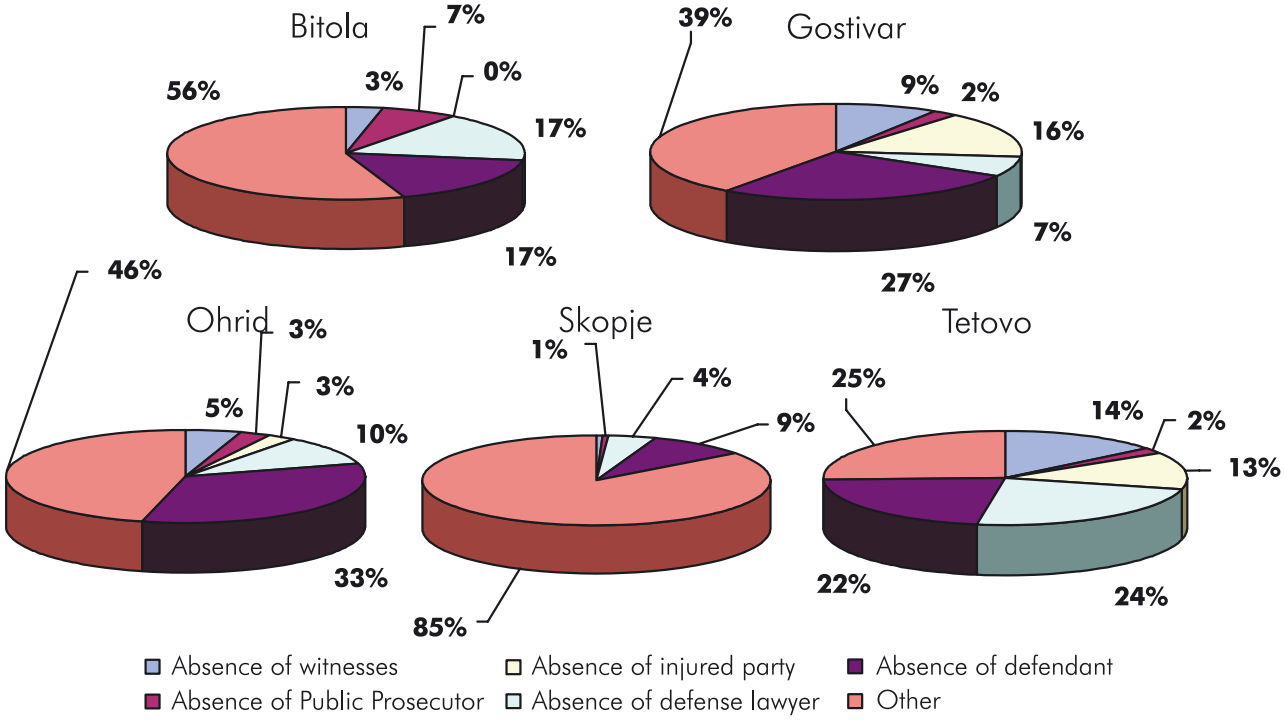
Among all observed cases - in line with the expectations - the highest proportion (18%) had the absence of the defendant as reason for postponement, with the absence of the defense lawyers (13%) also ranking high. Very rarely the hearing was postponed due to the absence of the injured party in the procedure as well as of the witnesses (not the injured witness[104]). However, if analysis is made as to which actors appear as a reason for postponement by type of criminal offence, a wide variety of situations will be noticed.



[103] 4% less than in the previous two years.
[104] The injured party as a witness is separated from the other witnesses as a special category because of her importance for the topic of the observation.

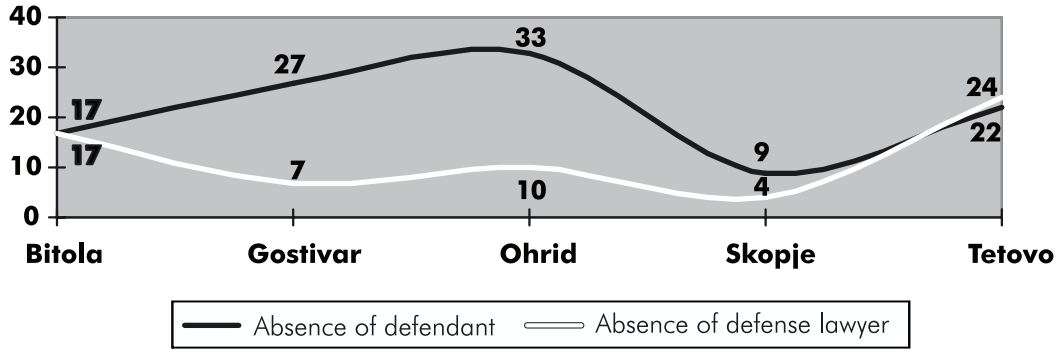


In the trafficking in human beings cases in which the absence of the key individuals in the procedure occupies high 77% of the total number of reasons for postponement, the category *absence of defendant* is ranked first. This one, together with the category "Absence of defense lawyer" is the reason for the prolongation of the procedure in more



than half of the cases. The presence of the witnesses in the procedure is most difficult to secure in the cases associated to the crime of mediation in prostitution.

Even though more than half of the defendants *abuse of official position and authority* cases were held in custody at the time of the trial, yet in relatively high 16% of the cases the absence of the defendant appears to be the reason for postponement. With regards to this offence, the defense lawyers seem to be the most diligent in terms of attendance during the main hearing.



The absence of the principal participants in the procedure is the main problem in the basic court in Tetovo with highest 75%, while this is the smallest of problems for the first instance court in Skopje (15%). The absence of the defendant and of his attorney is the most common reason for postponement of the hearing.

Conclusions

The proportion of cases postponed for a period of time over 60 days, (the main hearing will need to start from the beginning), during the almost three years of observation, amounts to 26% of the total number of postponements in the first instance court in Gostivar, only 4% in the first instance court in Bitola, 37% in the first instance court in Ohrid and 14% in the first instance court in Tetovo.

Divided by the type of the criminal offense, in 14% of the total number of cases, the cases related to trafficking in human beings were postponed for a period exceeding 60 days. This proportion is 19% in the case of the offence mediation in prostitution, and insignificant (1%) in the case of smuggling of migrants.

The absence of the participants whose presence is necessary for the main hearing to take place appears to be the most common reason for postponement (47%) of the procedure. In this respect, the highest proportion (18%) falls on the defendant and his attorney (13%).

Cases related to trafficking in human beings are mostly (77%) postponed due to the absence of the key parties of the procedure. The absence of the defendant is the most frequent reason. The absence of the defendant and the absence of defense lawyer tend to be the most frequent reasons for postponement in the observed cases (in more than half of the cases). The presence of the witnesses in the procedure is the most difficult to be secured in the cases associated with the crime of Mediation in prostitution.

The absence of the principal participants in the procedure is the main problem in the first instance court in Tetovo with highest 75%, while this poses the smallest of problems in the first instance court in Skopje (15%).

The analysis of the period of time that elapsed from the moment of reception of the indictment in the court (i.e. deciding upon an objection) until the scheduling of the first hearing which should be 30 days at the most pursuant to Article 295 of the Criminal Procedure Law, demonstrates that in only 4 cases (12%) was this advised timeline observed. The average duration of this period in the practice of the domestic courts is at least three times the legally determined one.

Detention order was ordered for almost 60% of the total number of defendants (278). In this respect, 45% of the total number of defendants for the criminal offence "Trafficking in human beings", 25% for "Mediation in prostitution", 79% for "Smuggling of migrants", and 63 % for "Abuse of official position and authority" were put under custody.

Detention is the most used measure for securing the presence of the defendants at the main hearing as well as for carrying out the procedure successfully. Namely, unlike the 166 detention orders, arrest was present in only 17 cases. In two situations the arrest moved into detention, but the latter was replaced by a guarantee in a total of 6 cases.

Among the cases observed, the majority of the detentions ordered (32%) lasted longer than 180 days. The longest detention period is characteristic of the offence stipulated in Article 418b and 418v of the Criminal Code. Notably, in around 80% of the total detention orders lasting for more than 180 days, the cases are related to the offence of "Organizing a group and instigation to committing the crime of Migrant smuggling". In 12% of the detention orders, detention lasting more than 180 days was associated with "Trafficking in human beings".

The average length of the procedure in the cases associated with the crime of "Mediation in prostitution" is 630 days and 386 days in trafficking in human beings related cases. The cases related to Smuggling of migrants are tried for an average period of 188 days. Significantly shorter duration have the cases related to the offences Abuse of official position and authority and Taking bribe.

Recommendations

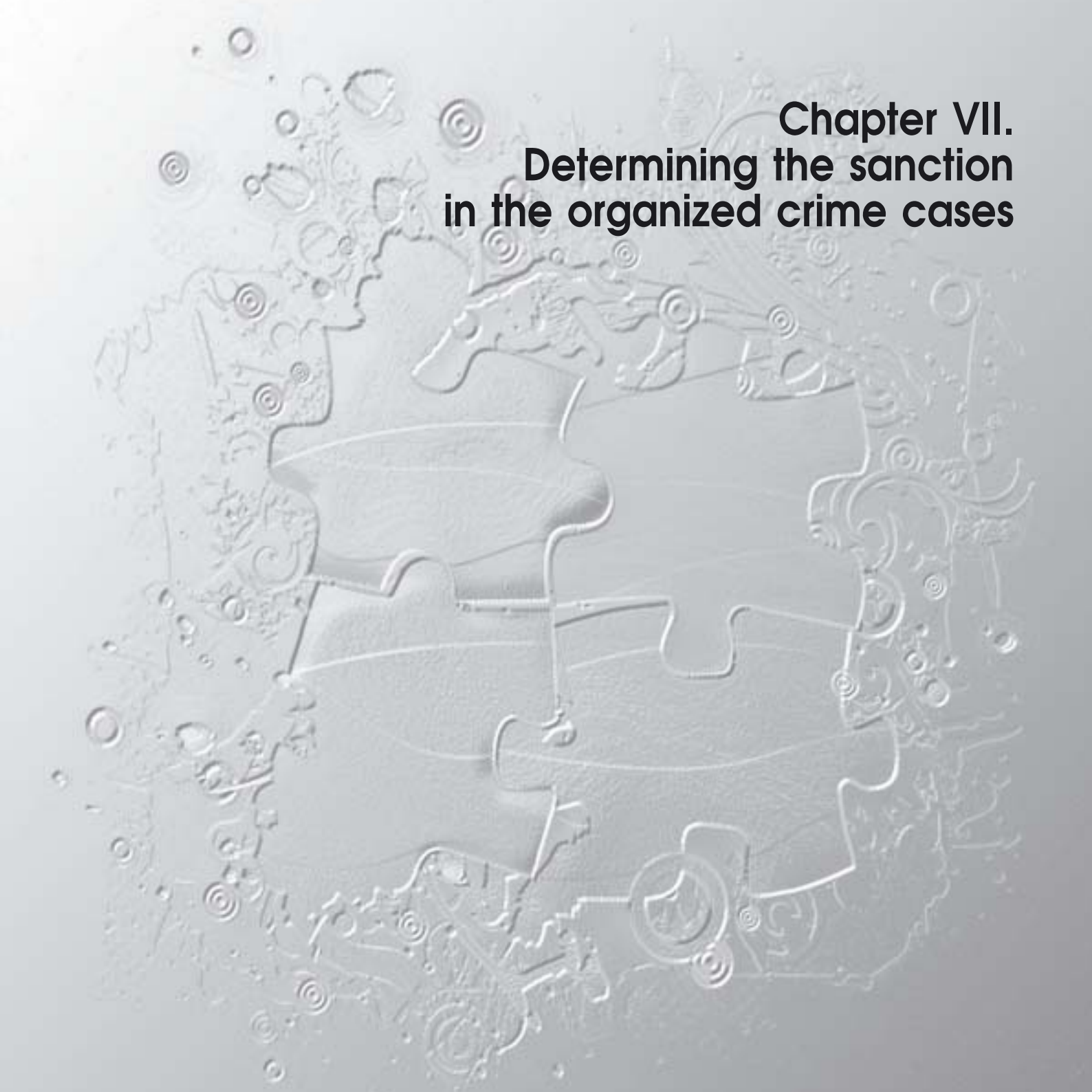
The courts must take all possible measures to reduce the period of postponement of the court hearings within the organized crime cases. Special attention should be paid to not exceeding the 60 days postponement period. In this case the procedure will have to start all over again.

Judicial vacations must not be the reason for restart of the court procedure as a result of a postponement exceeding 60 days.

Bearing in mind the high rate of postponement of the hearing due to the absence of the defendant, as well as the large number of measures available to the court to secure his presence and to carry out the criminal procedure successfully, it is desired that our courts make use of these measures more often. In situations when it is not necessary to pronounce the detention measure, the more frequent use of the "other preventive measures" introduced with the amendments to the Law on Criminal procedure may lead to a reduced duration of the procedure.

It is necessary to observe the advised timeline of 30 days from the moment of reception of the indictment in the court (i.e. deciding upon an objection) until the scheduling of the first hearing in all cases, especially in those where detention was ordered.

Chapter VII.
Determining the sanction in the organized crime cases



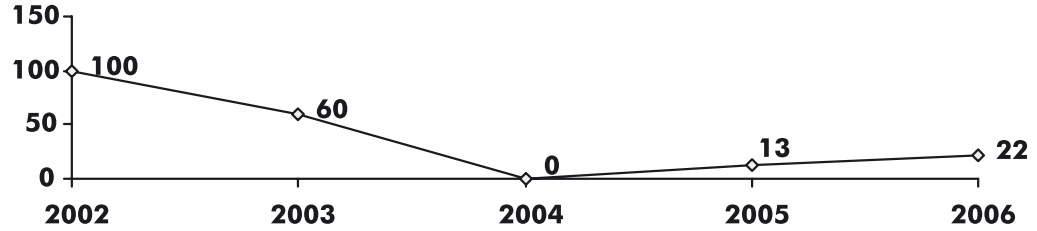
Determining the sanction in the organized crime cases

"The one who forgives the guilty one,
harms the innocent one",
Napoleon

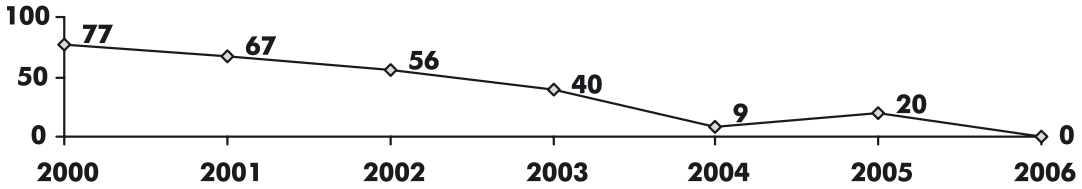
The several-year observation of the court cases by the Coalition enables a continued monitoring of the magnitude of the sentences passed on the perpetrators declared guilty of committing certain criminal offences, i.e. recording to what extent the prison sentences range within the envisaged legal minimum and maximum, and how often the legal institution of "mitigation of the sentence" is used.

By monitoring the proportion of effective prison sentences below the special legal minimum for the crime of "Trafficking in human beings" since the year 2002 - when this offence was criminalized[105] - until the year 2006, it can be concluded that a soft policy in determining the sanction prevailed until 2004, when this proportion decreased from 100% to 0%. Following the sudden sharpening in 2004, there was a mild increase in 2005 and 2006 as well.

Proportion of prison sentences below the legal minimum in THB cases by year



Proportion of prison sentences below
the legal minimum in "Mediation in prostitution" cases by year



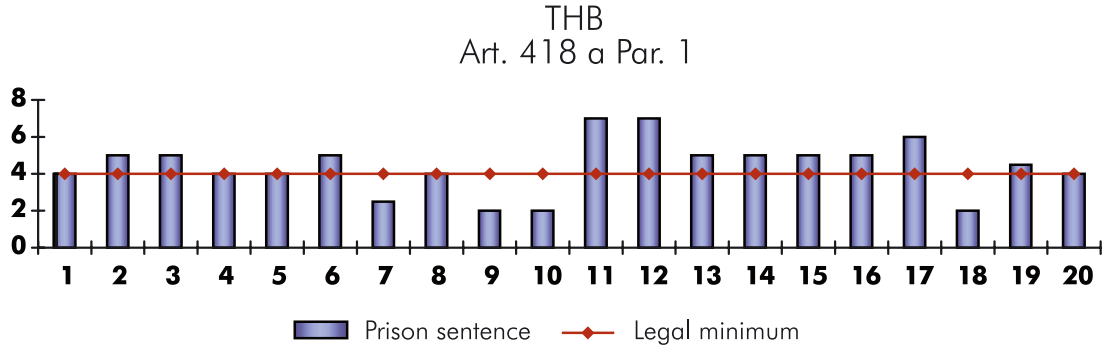
[105] The data until 2004 were received from the State Statistical Office, whereas for the period 2005 - 2007 from the survey carried out by the Coalition.

The situation with the cases of mediation in prostitution since 2000 resembles the one of trafficking in human beings. Due to the sharpening of the effective prison sentences, the proportion of sentences below the special legal minimum declined from 77% in 2000 to 9% in 2004. This was then followed by a mild sharpening of the sentences in 2005; in 2006 all the sentences were within the boundaries specified in the law.

The analysis of the Coalition's data, gathered during the observation process carried out in the period from January 2005 until October 2007 demonstrates that all "Trafficking in human beings" cases (with the exception of one case where the indictment related to Paragraph 4 Article 418 a), referred to Paragraph 1 of the same Article (i.e. Paragraph 2 in relation to Paragraph 1).

The graph below shows the prison sentences for 20 perpetrators who were found guilty (par. 1). The sentences are mainly around the line of the special legal minimum. Four of the total number of punished individuals (20%) got a prison sentence of below the special legal minimum.

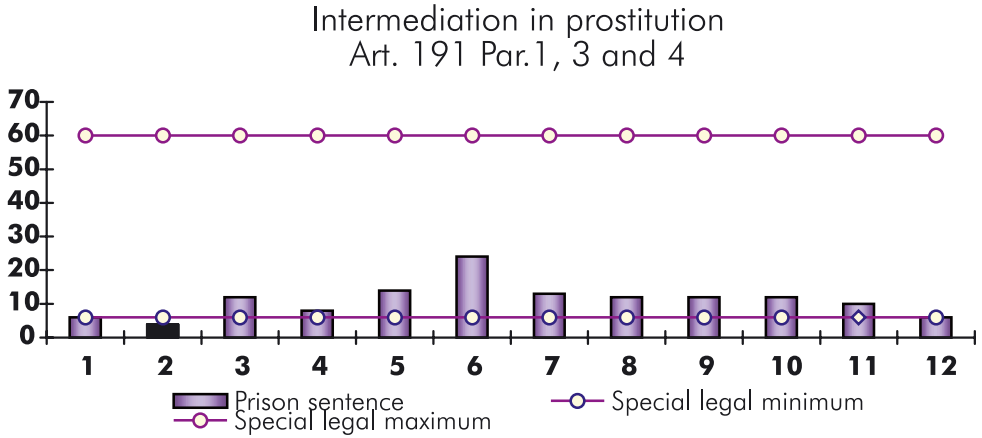
In a trial observed before the first instance court in Gostivar where one person was sentenced to 2,5 years of prison for the offence stipulated in Article 418a Paragraph 1 of the Criminal Code, the age of the perpetrator was taken as an especially mitigating circumstance that mitigated the sentence below the legal minimum. The defendant was over 70.

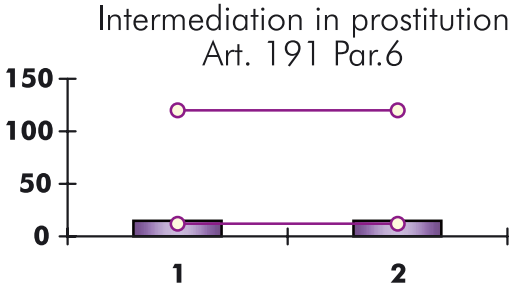


The data with regard to Paragraphs 1, 3 and 4 of Article 191, which provide for a prison sentence from 6 months to 5 years, as well as Paragraph 6 of the same Article relating to the perpetration of the offence in an organized form entailing a prison sentence from one to five years, are identical to those displayed in the last year's report of the Coalition, the reason for this being that no new sentence has been passed for this criminal offence among the observed trials. Namely, the sentences range mainly within the boundaries specified in the law, but the tendency is that they are closer to the special legal minimum. The proportion of the mitigated prison sentences in the last almost three years is 7% (according to the data of the Coalition).

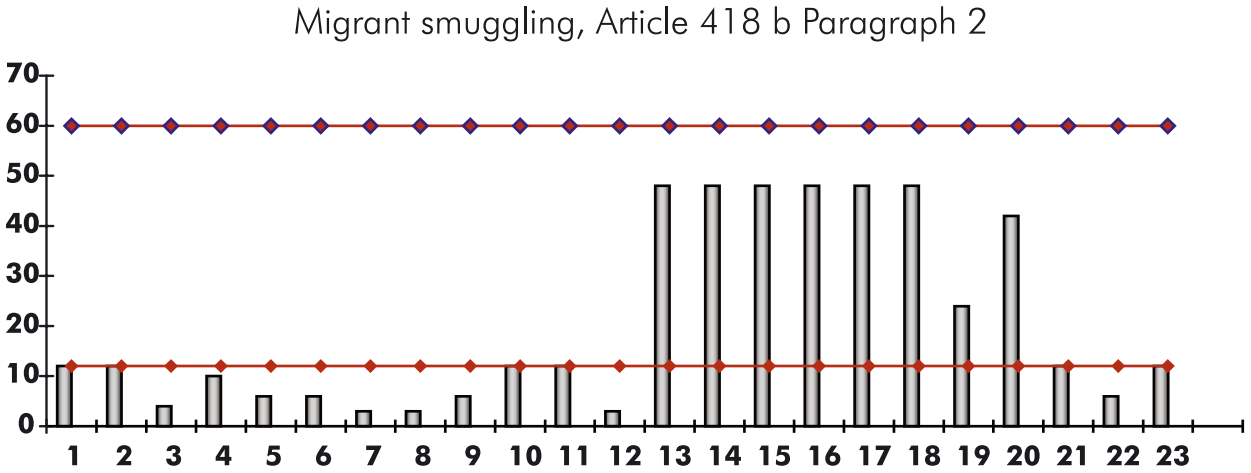
In a trial observed before the first instance court in Gostivar, the person that committed the offence of "Mediation in prostitution" was sentenced to 4 months in prison despite the fact that the Law provides for a prison sentence from 6 months to 5 years. As a reason for pronouncing a sentence below the legal minimum (as an especially alleviating circumstance during the commission of the crime) the court indicated the fact that the person was young and a father of two juvenile children, as well as that much time had elapsed from the moment of commission of the offence until the moment of reaching of the verdict. It seems that the slowness of the law enforcement authorities and of the process of delivering justice is treated in this specific case as "especially alleviating circumstance".

Unlike the previous two offences, the situation with the penalization of the offence of "Smuggling of migrants" is a little different. Namely, out of a total of 23 individuals convicted in a first instance procedure for the criminal offence

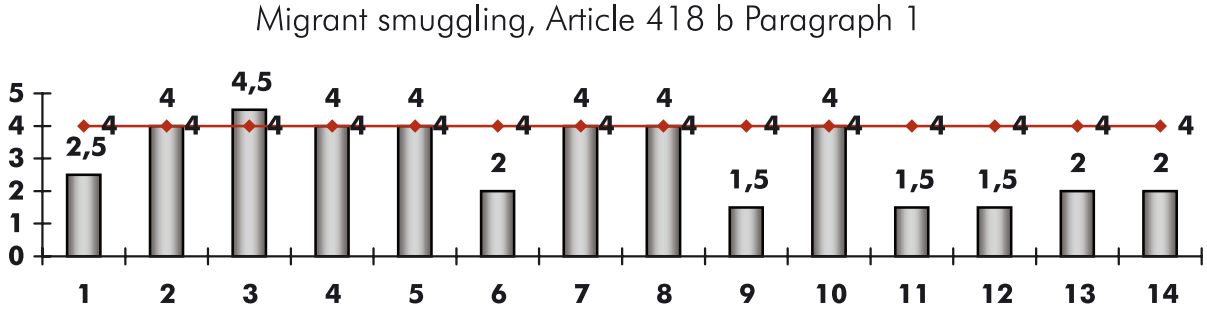




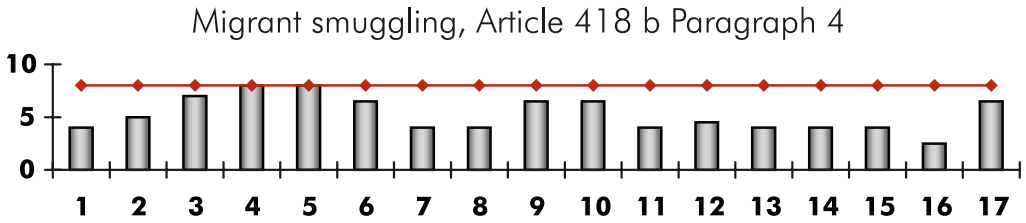
stipulated in Paragraph 2 of Article 418b of the Criminal Code, which entails a prison sentence of one to five years, only 8 of them got a prison sentence above the special legal minimum.



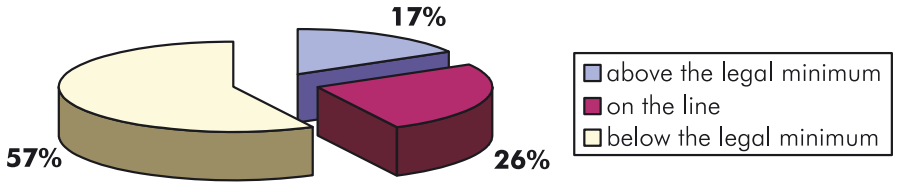
In 14 cases the court passed sentences for the offence indicated in Paragraph 1 Article 418 b, which entails a prison sentence of minimum 4 years. 50% of the prison sentences included mitigations.



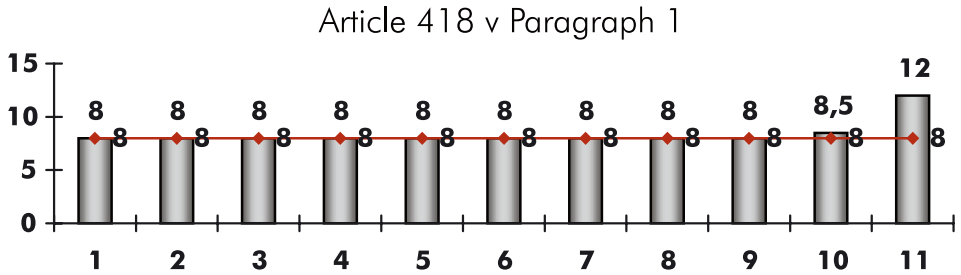
Seventeen individuals were convicted according to Paragraph 4 of the respective Article on the penalization of the smuggling of juvenile persons, which provides for a prison sentence of minimum 8 years. In 88% of the cases, the prison sentences were below the legal minimum.

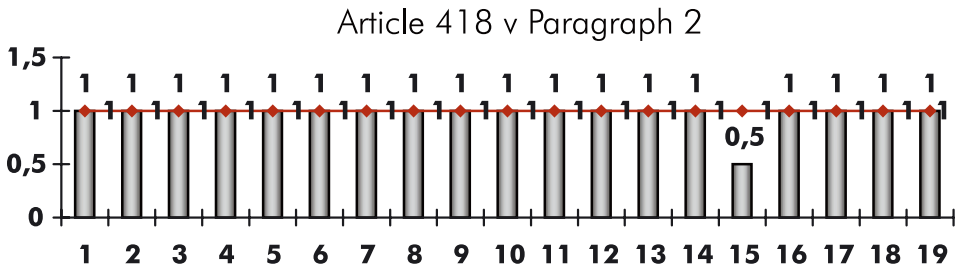


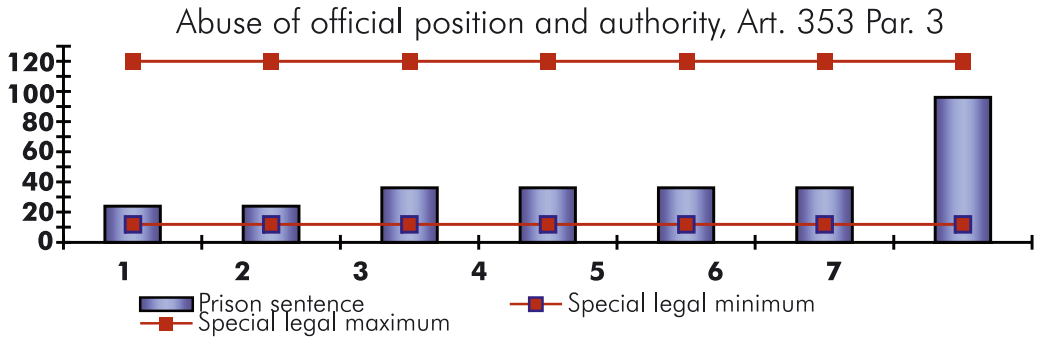
The analysis of the overall situation with regard to the magnitude of all pronounced prison sentences for the different paragraphs of Article 418b of the Criminal Code shows that in 57% of the cases the prison sentences were mitigated, whereas in 26% of the cases the sentence was close to the lower legal limit.



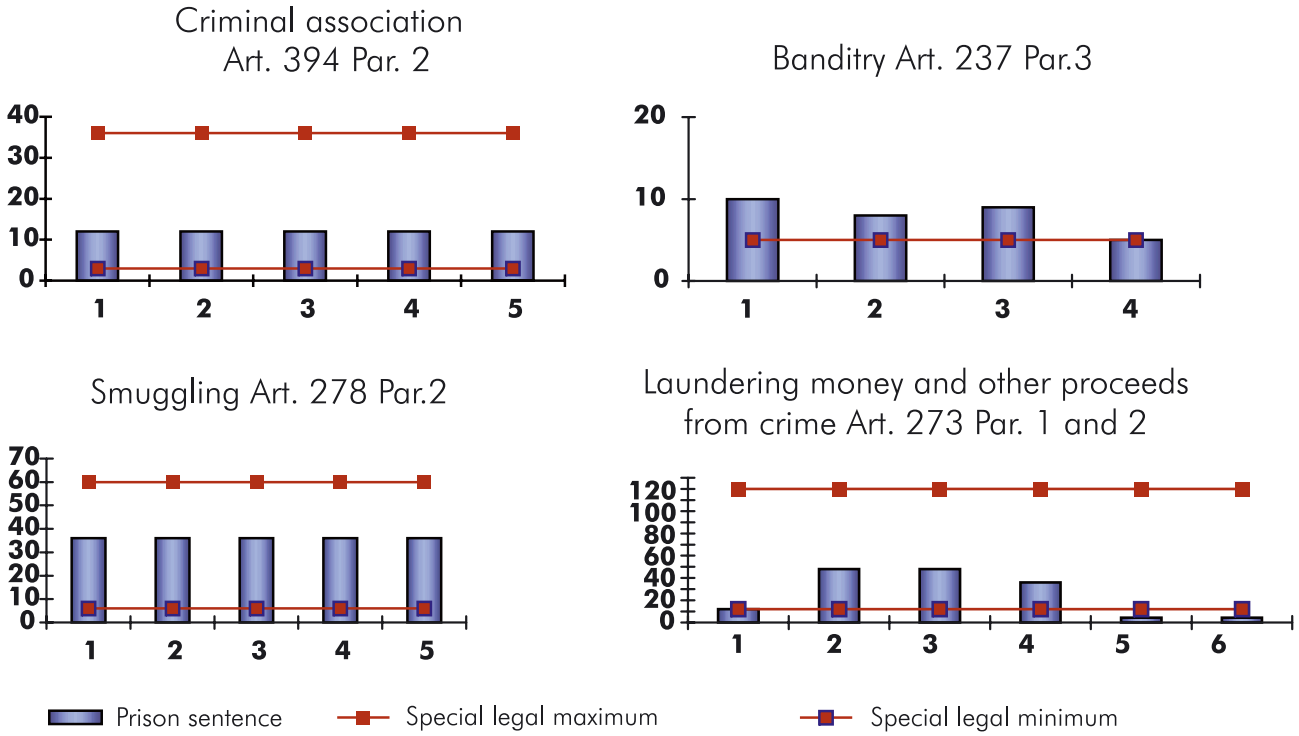
Regarding the offence stipulated in Article 418v of the Criminal Code, the prison sentences are also around the legal minimum.

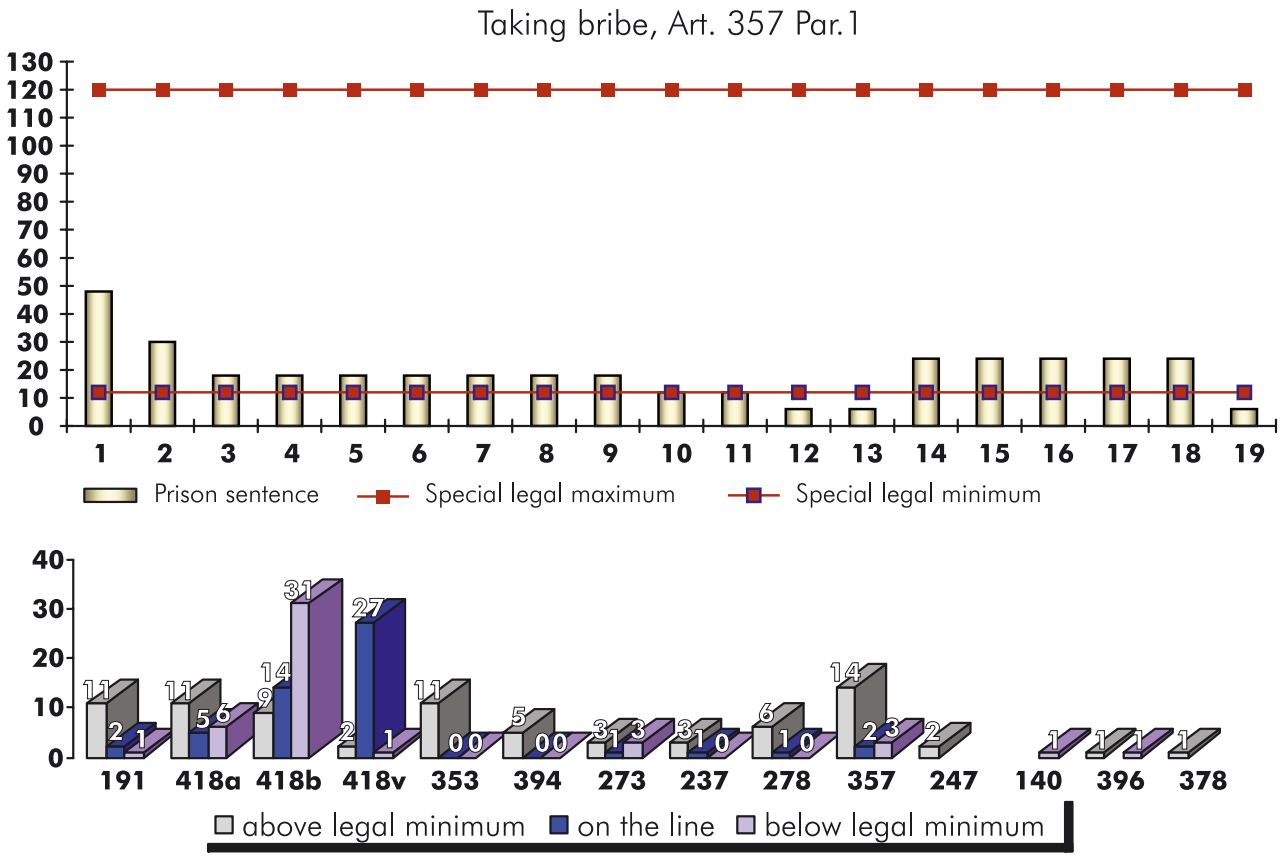




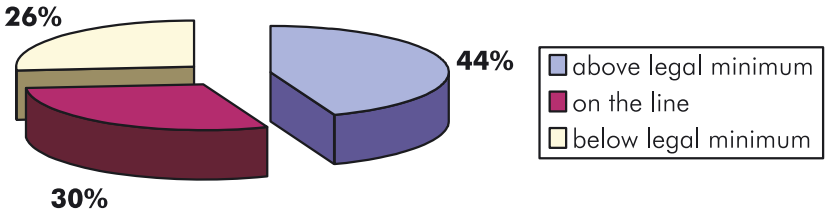


For all the rest of the offence in the organized crime arena, the penalties are in almost all situations above the special legal minimum.



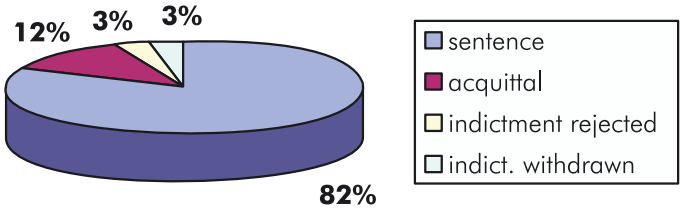


In 26% of the total number of pronounced prison sentences, the legal institution of "mitigated sentence" was used. The majority of them were pronounced within the cases in relation to the crime of "Smuggling of migrants".

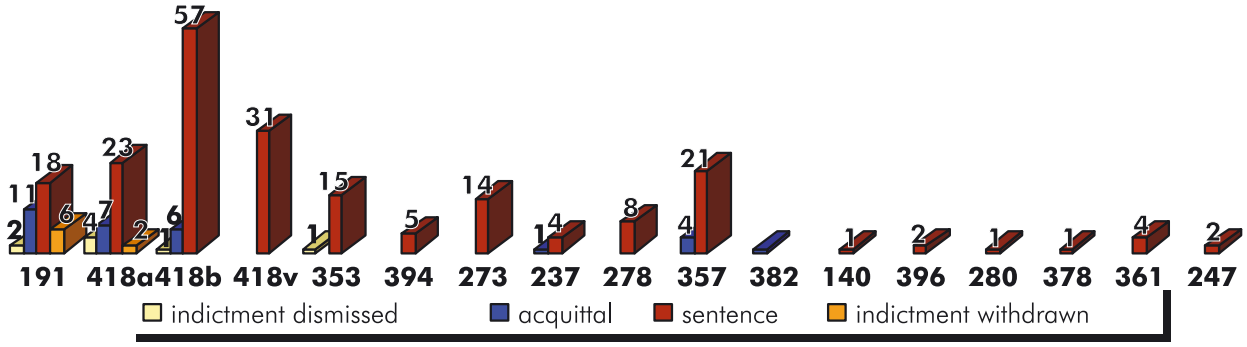


The question arises as to what the reasons are for such deviation from the legally determined model[106] for punishing the perpetrators of these offences. The analysis of the explanations in the verdicts about the circumstances that were taken into consideration when meting out the penalty shows that the most common reason for the short prison sentence includes the fact that the perpetrator is a young individual with no prior convictions and with poor financial status, and very often parent of juvenile child(ren). The second question deserving attention is the following: May and should these circumstances lead to a prison sentence that is beyond the legally determined minimum and maximum, i.e. can they be treated as especially alleviating circumstances as established in Article 40 of the Criminal Code?

In addition, nearly one third of the sentences are on the line of the special legal minimum.

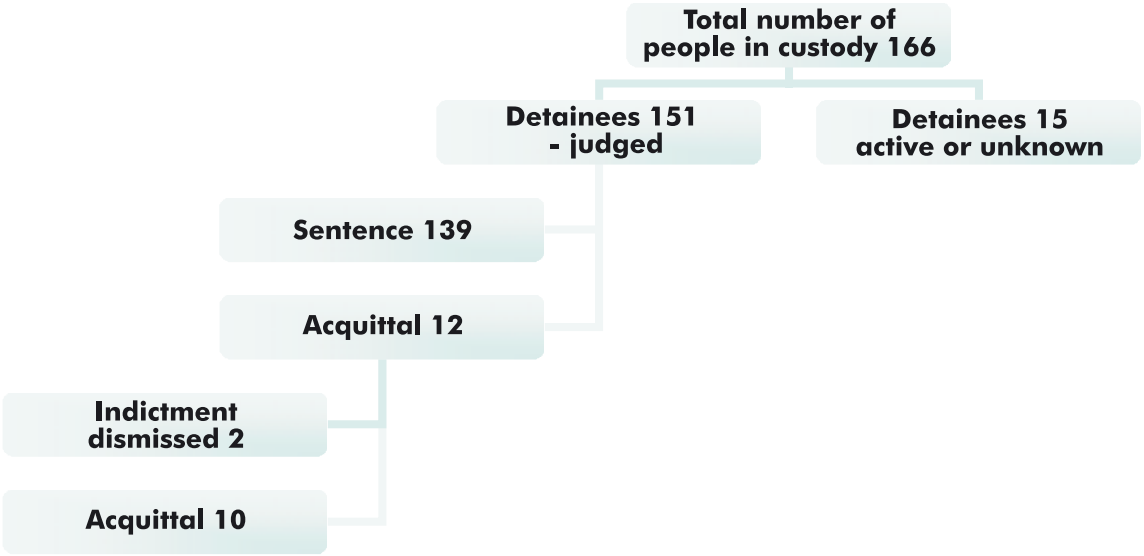


From all cases judged in a first instance procedure with regard to offences falling under organized crime observed by the Coalition from January 2005 until October 2007, 82% of the cases ended in a condemning verdict, whereas 12% in an acquittal. In this respect, the majority of the acquittals are related to the offences of "Mediation in prostitution" and "Trafficking in human beings", where this proportion is almost one fourth of the total number of verdicts for these criminal offences.



[106] More about the distinction between "alleviating circumstances" and "especially alleviating circumstances" on page 79 of the report "Criminal justice response to organized crime", Skopje, February, 2007, Violeta Velkoska.

Fifteen individuals out of a total of 166 for whom a detention measure was ordered are still awaiting a court outcome (or there is no data on the verdict because of (i) non-publishing thereof; (ii) the practice of informing the parties of the outcome in writing). 139 of the remaining 151 cases within different trials are individuals sentenced to prison in the first instance procedure. What should disturb us is the figure of 12 detainees in total who were: acquitted of all charges and whose indictment was dismissed. Notably, in 12 situations the right to freedom of the then indicted individuals was brutally violated.



If we take as a starting point Article 530 of the Criminal Procedure Law according to which a detainee against whom the procedure was terminated by means of a final decision (or that was acquitted by means of a final verdict or the indictment was dismissed) has the right to compensation for the damage, the conclusion follows that in these 12 cases the State has the obligation to provide compensations for the damage resulting from the restriction of the right to freedom. Of interest for this topic is also the provision of Paragraph 4 of the same Article according to which a person that spent more time in custody than the duration of the prison sentence to which he/she was sentenced has also the right to compensation.

There has been a discussion among the legal profession for quite some time on the existence of a correlation between the detention and the type of the verdict pronounced on the detainee, as well as the correlation between the detention and the pronounced prison sentence. Namely, it has been said that the detention influences the decision-making process in terms of increasing the willingness of the judges to pronounce "condemning" verdicts. At the same time, it is considered

that while determining the sanction, i.e. while setting the duration of the prison sentence, judges tend to take as a lower limit the duration of the pronounced detention measure rather than the special legal minimum.

If we compare the number of condemning verdicts with the total number of indicted detainees, with the number of the same verdicts in relation to the total number of persons on whom this measure had not been pronounced, we can find some correlation. Namely, 92% of the total number of detainees was convicted. In the cases in which the accused were not detained, this proportion (of condemning verdicts) is 67%.

The practice also sheds light on situations where the duration of the prison sentence equals (in precise terms) the duration of the detention measure.

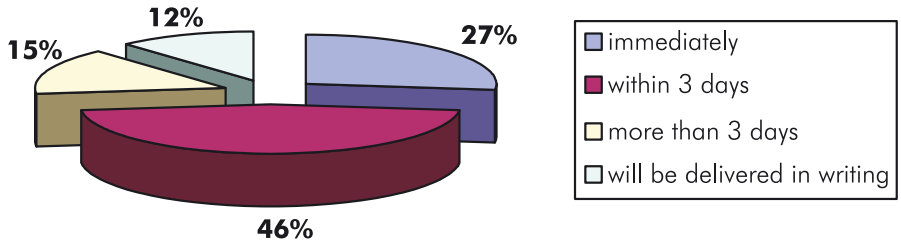
In a trial observed before the first instance court in Struga the person NN was sentenced to a prison sentence of 5 months and 16 days. The detention measure was pronounced on this person on 14 December 2005, and the verdict was reached on 30 May 2005.

In a trial observed before the first instance court in Skopje, two individuals were convicted of "Money laundering" to a prison sentence of 4 months and 13 days, which is exactly how long the detention lasted (from 30 November 2006 until 12 April 2007 when the verdict was reached).

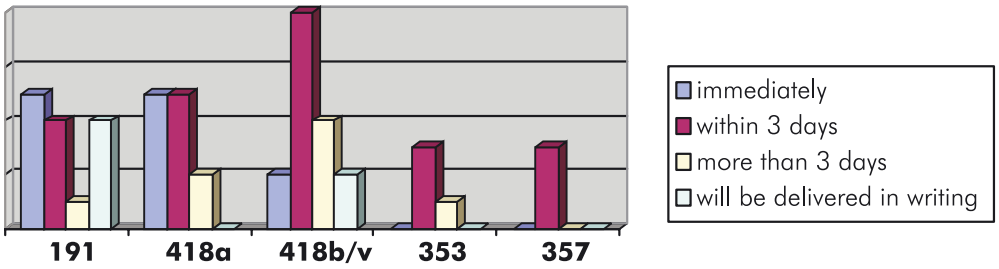
In a trial observed before the first instance court in Skopje, the individual MM, accused of the criminal offence stipulated in Article 418v Par. 2 in relation with Par. 1 of the Criminal Code as well as of continued offence stipulated in Art. 418b Par. 2 of the Criminal Code, received one prison sentence in the duration of 8 months and 27 days, with the time spent in custody from 17 February 2006 until 14 November 2006 calculated in this sentence. Given the fact that the offence stipulated in Article 418 b Par. 2 in the Criminal Code entails a prison sentence in the duration of one to five years, whereas the one stipulated in Art. 418v Par. 2 entails at least one year in prison, there is an obvious use of the legal institution "mitigation of the prison sentence", i.e. meting out the penalty below the legal minimum. It seems that while assessing the especially alleviating circumstances under which the crime was committed, it was established that they were eligible to lead to the pronouncement of a prison sentence in duration equivalent to the duration of the detention. At the same time, there is an obvious use of the principles for determining a unique prison sentence[107]. Notwithstanding that these two legal institutions were applied according to the provisions of the Criminal Code, the impression prevails that instead of them serving the basic principle in the area of meting out of the penalty – the principle of individualization - they were put in a position to serve the justification of the duration of the detention measure.

[107]Pursuant to Article 44 of the Criminal Code, if the offender committed several crimes with one action or with several actions, for which he is tried simultaneously, the court shall previously determine the punishments for each one of these crimes, and then shall pronounce a single prison sentence for all of these crimes according to the principles of aspiration, absorption or accumulation.

The court must pronounce and publish the verdict immediately, or if it is impossible to do so the same day, after the completion of the main hearing, the court will postpone the announcement of the verdict for a maximum of three days and will specify the time and venue for this announcement. Regretfully, in 27% of the cases the verdict was announced within a timeline exceeding 3 days, or the parties were only informed after the completion of the main hearing that the verdict would be delivered to them in writing, which is violation of the provision of the Law on Criminal



Procedure as well as a violation of the principle of transparency in the procedure. The majority of non-pronounced/ unannounced verdicts were in trials for the offences of mediation in prostitution, trafficking in human beings and smuggling of migrants.



Conclusions

In 26% of the total number of pronounced prison sentences, the legal institution of "mitigation of the sentence" was used. The majority of them were pronounced in smuggling of migrants cases. In 57% of the cases the prison sentence was below the legal minimum, whereas in 26% of the cases the sentence was on the line of the lower legal limit.

From all cases monitored, 82% ended with condemning verdict and 12% with an acquittal. In this respect, the majority of the acquittals are related to the offences of "Mediation in prostitution" and "Trafficking in human beings".

A total of 12 detainees that were acquitted of charges or whose indictment was dismissed are entitled to be compensated by the State for damages.

92% of the total number of detainees were convicted. With the individuals on whom detention was not pronounced, this proportion (of condemning verdicts) is 67%.

Notwithstanding the obligation of the court to pronounce and publish the verdict immediately, or if it is impossible to do so on the same day after the completion of the main hearing, the court will postpone the announcement of the verdict for a maximum of three days and will specify the time and venue for this announcement, in 27% of the cases the verdict was announced within a timeline exceeding 3 days, or the parties were only informed after the completion of the main hearing that the verdict would be delivered to them in writing. This number is the highest in the trials related to the offences of "Trafficking in human beings", "Mediation in prostitution" and "Smuggling of migrants".

Recommendations

It is necessary to strictly adhere to the provision of the law obliging the court to pronounce and publish the verdict immediately, or if it is impossible to do so to postpone the announcement of the verdict for a maximum of three days.

The pronounced detention measure must not have an influence on the type of the verdict for the defendant who is held in custody, nor on the duration of the prison sentence for the crime committed.

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CIP – Каталогизација во публикација
Национална и универзитетска библиотека “Св. Климент Охридски”, Скопје

347.993.03:343.9.02(497.7)”2005/07”

343.9.02:347.993.03(497.7)”2005/07”

VELKOSKA, Violeta

Efficiency of the Courts when dealing with Organized Crime cases year 2005, 2006, 2007/ [author Violeta Velkoska; translation]. Skopje : Coalition “All For Fair Trials”, 2008. 120 стр.: илустрации; 21x21 cm

фусноти кон текстот. – Библиографија: стр. 116–119

ISBN 978-9989-2502-9-3

а) Судство – Ефикасност – Организиран криминал – Македонија – 2005–2007 б) Организиран криминал – Судство – Ефикасност – Македонија – 2005–2007

COBISS.MK-ID 71937034

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