



Criminal Justice Responses to Organized Crime

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Acknowledgments

Dear Reader,

You have in front of you the final report of the project "Criminal Justice Response to Organized Crime", where the results of the observation of organized crime cases before the domestic courts during 2005 and 2006 are summarized, with a special emphasis on the trafficking in human beings.

The purpose of the project was to assess the functioning of the existing mechanisms in the fight against the organized crime and of their performance in the suppression of this growing phenomenon.

This report, which I believe is unique vis-à-vis the others addressing this problem, is a direct product of the professional engagement of the observers, Project Assistant, other human resources of the Coalition and of course the Project Coordinator who deserves all the positive reviews without reservation.

The report generally focuses on issues including the application of special investigative measures, the protection of the rights of victims of trafficking in human beings, and of course the penal policy in the Republic of Macedonia. These are all areas where no essential progress has unfortunately been made in comparison with the previous report, so this report once again reminds us of this situation.

During the implementation of the project, we once again faced full cooperation and understanding by the Presidents of the Courts of first instances where the cases were identified, as well as by the sitting judges, whom I once again thank warmly on my behalf and on the behalf of the project team.

The contribution to the contents of the report made by the participants at the round table of 8 February 2007 held in the hotel "Arka" in Skopje is not to be neglected. The participants emphasized that there was a need for continuous monitoring of the organized crime, for fighting it uncompromisingly and for making future efforts so as to find more efficient measures in the direction of its full suppression or reduction to bearable frames.

Finally, the implementation of this project would not have been possible without the financial support of the OSCE mission in Skopje, as well as of the US Embassy in the Republic of Macedonia, whose suggestions during the implementation of the project activities made a quality contribution to the project.

Coalition "All for Fair Trials" - Skopje
President
Trajce Pelivanov

Executive summary

With the main aim to prevent and fight the organized crime, and primarily *trafficking in human beings* as one of the most serious forms of violation of the fundamental human rights, different institutions and organizations in the Republic of Macedonia have been carrying out an increasing number of activities in different areas over the past couple of years.

The Government of the Republic of Macedonia, which adopted the National Program for Fighting Trafficking in the beginning of 2002, formally adopted the National Action Plan and the Strategy for Fighting Trafficking in Human Beings in March 2006.

For the purposes of dealing with human traffickers and with the organized crime in general, more successfully, as well as harmonizing the national legislation with the signed UN Convention against Transnational Organized Crime and its two protocols¹, amendments have been introduced to the Criminal Code and to the Law on criminal procedure. The Law on Witness Protection, the Law on Aliens and the Law on Public Prosecutors have been passed, which specify the powers of the newly established Unit under the Public Prosecutor's Office for prosecution of the perpetrators of crimes in the areas of organized crime and corruption.

A number of domestic non-governmental organizations have undertaken different activities in the area of trafficking in human beings, but their attention has mainly been focused on prevention of the potential victims or on providing assistance to the identified victims of trafficking in human beings.

The lack of a thorough empirical (scientific) analysis of the situation in Macedonia concerning the performance of the judiciary in coping with this type of crime stresses the importance of the survey covered in this Report.

This survey represents a systematized collection of data at national level about the majority of the cases related to the criminal offences of "trafficking in human beings", "mediation in prostitution" and "smuggling of migrants", as well as other forms of organized crime, which are tried before the basic courts in Macedonia.

These data can serve as a benchmark for the achievements in the field of fighting organized crime, and as an adequate basis for the future activity planning exercises.

¹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea.

The U.S. Department of State "Trafficking in Persons Report" for 2004 can be taken as an indicator of the international organizations' opinion about Macedonia's performance in the prosecution and penalization of the perpetrators of trafficking in human beings². This report gives an assessment of the foreign governments' efforts to eliminate trafficking in persons. According to this report, Macedonia was placed in tier 1³ in 2003, meaning that it belonged to the category of countries that apply the minimum standards for trafficking in human beings elimination and whose Government fully agrees with these standards. In 2004⁴, our country marked a fall from tier 1 to tier 2⁵, which means that the Government failed to fully comply with the minimum standards for elimination of trafficking in human beings. The explication of this assessment made by the State Department states, *inter alia*, that the judicial system failed to appropriately and effectively prosecute, sentence, and detain traffickers or provide adequate safeguards for victims and witnesses in courtroom settings.

The observation of the cases before the basic courts, the processing of the information obtained from the monitoring, as well as the chronological following of the data about the cases that were finalized with convictions from 2005 til today, enable one to determine if this assessment made by the international community is trustworthy or not, and if the Republic of Macedonia truly marks a regress in the elimination of this type of organized crime or not.

The report also answers the questions as to the extent to which the law provides an adequate framework for security and protection of the rights of the victim in the procedure, regardless of whether the victim appears in the capacity of a witness or as injured party, and how consistently the legal provisions regulating **the position of the victim in the procedure** are applied, i.e. to what extent the judicial practice allows for the exercise of the victim's right to be present during the hearing, to be informed of his/her rights, to have a legal representative, to explicate the claim for compensation, to suggest new evidence and to ask the witnesses, expert witnesses and defendants questions, and first and foremost to be provided with an adequate protection of his/her integrity.

The witnesses, especially those that are victims of trafficking in human beings, have an essential role to play in achieving successful prosecution and penalization of the perpetrators of criminal offences in the area of organized crime.

The Report suggests to what extent the witnesses that are victims are exposed to the risk of intimidation and retaliation threats in Macedonia, and what the success in providing physical protection to the victim before, during and after the completion of the hearing is.

The analysis of the huge number of factors that influence **the duration of the procedure** in the organized crime cases can point to the weaknesses leading to postponement of the procedures and to the ways to over-

² U.S. Department of State, Trafficking in Persons Report, June 2004.

³ According to the assessment of the implementation of 4 minimum standards, as well as the assessment of 10 factors that are taken into account as an indicator of the efforts to eliminate the forms of trafficking in human beings, all countries are placed into tier 1, tier 2 and tier 3. A country that fails to take significant actions to bring itself into compliance with the minimum standards for the elimination of trafficking in persons receives a negative "Tier 3" assessment in this Report.

⁴ The Republic of Macedonia received a "Tier 3" assessment in the 2005 report as well.

⁵ U.S. Department of State, Trafficking in Persons Report, 2005.

come them. Moreover, the statistics about the length of each phase in the procedure that is associated with a time limit, as well as the total duration of the procedure as a whole (this primarily refers to the main hearing), can answer the question about the efficiency of our courts in the justice administration process.

The situation and the tendencies of the crime in each country shapes the criminal policy, i.e. determines the resources and the methods used for efficient protection of the human rights and freedoms, as well as of the other social values and goods. The extent to which the Macedonian legislation follows the punitive orientation of the majority of the European countries in terms of **penalization of the perpetrators of criminal offences** in the area of organized crime, primarily trafficking in human beings and smuggling of migrants, and to what extent the tendency of far too soft practice of court's meting out of the penalty is in line with the value framework established in the Criminal Code, is in direct correlation with the level of success in the elimination of this type of crime.

Chapter I.

Activities of the Coalition

"All for fair trials" within the project

"Criminal Justice Responses to Organized Crime"

The Coalition of citizen associations "All for Fair Trials" - Skopje represents an organization with 19 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, "Civil paths"-Bitola, "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, "FOKUS"-Resen, "Temis"-Skopje, "ANI"-Shtip, "Mesechina"-Gostivar, "Citizen association"-Bitola.

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

In order to support the implementation of the National Program of the Government of the Republic of Macedonia on Fighting Trafficking in human beings and Illegal Migration, the Coalition "All for fair trials" started the implementation of the project "Observation of cases in the area of trafficking in human beings in the Republic of Macedonia" in November 2004.

In line with the project's subject of interest, the attention of the Coalition was focused on the cases associated with the following criminal offences: "trafficking in human beings" (Article 418-a of the Criminal Code⁶), "smuggling of migrants" (Article 418-b of the Criminal Code), "organizing a group and incitement thereof to the commission of the crimes of "trafficking in human beings" and "smuggling of migrants" (Article 418-c), "establishing a slavery relationship and transportation of persons while in slavery" (Article 418), as well as "mediation in prostitution" (Article 191 of the Criminal Code).

The **Report** "Combating trafficking in human beings through the practice of the domestic courts"⁷ was developed as a result of the analysis based upon the collected data on the cases observed in 2005⁸.

In 2006, the Coalition continued to monitor cases related to trafficking in human beings in order to continuously study the performance of the courts in dealing with the perpetrators of this crime as well as in providing protection of the rights of the victim as a witness and as an injured party in the procedure. Furthermore, in order to assist in the identification of the emerging forms of organized crime in Macedonia, and in the collection of data about the existing mechanisms established by different competent authorities and about their appropriateness in the fight against this phenomenon, the Coalition extended the scope of its interest to other crimes as well, but still having as priority the "trafficking in human beings" and the "smuggling of migrants" as forms of the organized crime.

The basic collection of data about the cases begins with the completion of questionnaires for observation of cases in the area of organized crime by experienced and trained observers immediately after the observation.

The data from the questionnaires are entered into a specially designed database, which enables further crosschecking and systematization.

Following the analysis of the processed data from the database for 2006, the Final report was developed by comparing these data with the 2005 data, as well as by analyzing directly the data in the questionnaires.

⁶ Official Gazette of the RM 37/96; 80/99; 4/02; 43/03; 19/04, hereinafter CC.

⁷ www.all4fairtrials.org.mk.

⁸ On 01.06.2006 the Coalition organized a Round table on the implementation of the recommendations from the above mentioned report, please see annex 1.

Chapter II. Organized crime

II.1 THE NEED FOR UNIFICATION OF THE ELEMENTS THAT CONSTITUTE THE DEFINITION OF ORGANIZED CRIME ARCHITECTURE

One of the most controversial notions in the criminal law theory, at both international and national level, is the notion of "organized crime". It seems that there are conflicting opinions even on the possibility to define it, i.e. whether one should look for a precise definition at all, or maybe organized crime should be defined through its emerging forms⁹. Its complexity does not allow one to reach consent to even the emerging forms of organized crime or to the elements that this notion comprises. Not going into enumeration of the ocean of definitions¹⁰, i.e. understandings of the organized crime concept, and not even trying to classify the elements constituting it as compulsory and not compulsory or as constant and variable, some of them will be mentioned in the following text.

Number of members of the group when committing crimes in the area of organized crime

The reaching of consensus about the minimal number of people involved in a group, so that it could be covered by the notion of organized crime, does not seem to be a problem especially after the widespread acceptance of the definition of the Convention against Transnational Organized Crime¹¹. According to this definition, "organized criminal group" is a "structured group" of three or more persons. The existence of a minimum of three persons in order to be able to talk about an organized group is also required by the Council of Europe bodies.¹²

⁹ Perhaps a clear and accurate definition of organized crime can neither be given nor constructed at the beginning of research...it is not always desirable to have exact definition because they have a dampening effect on research by closing off other lines of inquiry ...Kelly.

¹⁰ Definitions of Organized Crime, collected by Klaus von Lampe, <http://people.freenet.de/kvlampe/OCDEF1.htm>.

¹¹ Hereinafter: CTOC.

¹² Rec (2001)11 of the Committee of Ministers from 2001.

Perpetration of serious crimes

The minimal definitions do not require that more than one crime be committed, even though many authors have a widespread opinion that there has to be continuity¹³ in the perpetration of the criminal activities. However, there is a consent to the need for these to be serious crimes. The CTOC makes a distinction between the serious and the remaining crimes with the following criterion: "prescribed prison sentence of minimum four years". In addition to these crimes, CTOC also includes corruption, money laundering and obstruction of justice¹⁴ in organized crime. Some definitions include the opinion that organized crime is about perpetration of only specialized (concretely stipulated) criminal offences.

Teaming up for a certain time period

Persistence in the perpetration of the crimes expressed through the existence of the association for a long or indefinite period is another of the criteria that has to be fulfilled in order to be able to talk about the phenomenon of organized crime.

Generating proceeds

When defining organized crime the main emphasis is given to the issue of generating financial benefit. Namely, the basic goal of the organized association of groups is to obtain financial or other material benefit. In addition to the financial benefit, many authors speak about power¹⁵ as an accompanying component or an entity per se.

Use of violence when committing the crime

The use of violence¹⁶ and of other methods i.e. means for intimidation is an accompanying, but not necessarily a compulsory element of organized crime. In this respect, distinction is made between the use of violence internally with a view to maintain order and discipline and the violence used for the purpose of accomplishing the criminal activities.

Internal hierarchical structure, discipline and role distribution

While some authors talk about the existence of a strict internal discipline¹⁷ among the members of the organized group and precise allocation of duties, the more recent definitions do not insist on the existence of a

¹³ ...Organized criminal group, in which there is internal cooperation in the commission of crimes as a full-time occupation...Criminology 1969, Milutinovic Milan

¹⁴ Prison sentence of minimum four years is not provided for them

¹⁵ .. A non-ideological enterprise involving a number of persons in close social interaction, organized on a [structured] basis with [different] levels/ranks, for the purpose of securing profit and power by engaging in illegal and legal activities....Abadinsky

¹⁶ ... crime committed by criminal organizations whose existence has continuity over time and across crimes, and that use systematic violence and corruption to facilitate their criminal activities....Finckenauer and Voronin

¹⁷ FBI defines the organized crime as a group with a formalized structure and the main goal of which is to make profit through illegal activities.

strong internal hierarchy. The latter view is explained with the increasingly frequent phenomenon of creation of associations between relatively independent and specialized individuals (based on market demands).

A "structured group", according to the Convention against TOC, is a group that is not randomly formed for the immediate perpetration of an offence, and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Infiltration of illegal funds into legal flows

Money laundering, which is per se a form of organized crime according to a number of authors and according to the CTOC, appears at the same time as a normal accompanying segment in the existence of a criminal organization. Namely, the use of other people's legal businesses by means of bribery, intimidation or fraud, as well as the use of one's own businesses with view of infiltrating the "dirty money" into the legal flows, is one of the marks of the organized group activities.

Exerting influence on different actors with view of hiding i.e. avoiding prosecution and penalization

In order to avoid detection of the criminal offences and of the members of criminal groups, as well as to prevent prosecution and penalization, organized groups undertake a huge number of activities. These activities include use of violence, intimidation and corruption so as to influence the Police authorities, public prosecutors, judges, public administration, and the parties involved in the court cases at the "opposite side". Furthermore, this involves the use of politics and media as means to achieve the goals and to secure an unhindered criminal behavior. The enormous proceeds generated by the organized groups enable these influences to be at a very high level, thus posing a threat to the functioning of the rule of law, i.e. to the independence of the judiciary.¹⁸

II 2. THE LEGAL FRAMEWORK RELATED TO ORGANIZED CRIME IN THE REPUBLIC OF MACEDONIA AND THE PROBLEMS OF THE COMPETENT INSTITUTIONS IN THE FIGHT AGAINST ORGANIZED CRIME

Attempting to respond in an appropriate manner to the increasing expansion of organized crime, and at the same time to keep up with the international initiatives and to fulfill the undertaken obligations Republic of Macedonia made a huge number of normative and institutional changes.

The Action Plan for Fighting Organized Crime was adopted in 2003, outlining the priorities and the way in which they are to be effectuated by different responsible institutions.

¹⁸ Certain analyses demonstrate a very strong link between the judiciary independence and the level of organized crime in one country. "Forum on Crime and Society, UNODC, Volume 3, Numbers 1 and 2, December 2003, page 12.

A Department for organized crime was established in the Ministry of Interior in the beginning of 2005. An Anti Money Laundering Unit has been established as well.

With a view to establish regional cooperation¹⁹ in the fight against the organized crime, Memorandum of Cooperation has been signed with the Public Prosecutor's Offices of the Western Balkan countries.²⁰

A Unit for prosecution of the perpetrators of crimes in the area of organized crime and corruption has been established within the Public Prosecutor's Office of Macedonia. This establishment was provided with the Law on Public Prosecutor's Office²¹. Notably, Article 29 of the law stipulates that this Unit should act upon:

- criminal offences for which prosecution is undertaken *ex officio*, which are committed by an organized group of at least three individuals acting for a certain period of time with view of generating indirect or direct financial benefit or other type of material benefit, and committing one or more criminal offences;
- criminal offences for which a prison sentence of minimum four years is prescribed;
- criminal offences in the area of corruption (notwithstanding that the action upon these crimes is not explicitly mentioned as with the other two categories of crimes, this is implied based upon the rest of the text in the article).

Starting from the clear tendency to harmonize the Law on the Public Prosecutor's Office with the CTOC, given the fact that the latter defines only the minimum requirements that the states should cover in their legislation, we are not surprised by this so broadly stipulated jurisdiction of the Unit for prosecution of the perpetrators of criminal offences in the area of organized crime and corruption.

What is perhaps surprising is the part "as well as for other criminal offences for which a prison sentence of minimum four years is prescribed". Namely, while the Convention stipulates that serious crime(s) (those with a minimum prison sentence of 4 years) are those committed by an organized group of three or more persons, existing for a period of time and acting in order to obtain a financial or other material benefit, the provision of the Law on the Public Prosecutor's Office requires that the crime only belong to the group of serious crimes (without any further determination of the elements making this crime be "organized crime")²².

Things get even more complicated if one looks at one responsibility of the Unit that is set forth in the Rulebook on the organization and the composition of the Unit for prosecution of the perpetrators of criminal offences in the area of organized crime and corruption. The Rulebook²³ stipulates that the Unit should act, besides upon the criminal offences determined in Article 29 of the Law on the Public Prosecutor's Office (see above), also upon criminal offences arising from the international conventions ratified by the Republic of Macedonia, as

¹⁹ The establishment of a regional network of public prosecutors was set as a first priority in the national action plan.

²⁰ At the same time, Memorandum of Cooperation has been concluded between the PPO of Macedonia and the National Bureau for Fighting the Mafia of the Republic of Italy.

²¹ The Law on the Public Prosecutor's Office entered into force in the middle of 2004, and somewhat later so did the secondary legislation acts, primarily the Rulebook on the organization and operation of the Unit for prosecuting the perpetrators of crimes in the area of organized crime and corruption.

²² According to this arrangement, even a murder committed by a person for whom a prison sentence of minimum five years is prescribed, may be treated as organized crime.

²³ ..Individual provisions of the laws and other regulations are further defined and elaborated by means of a Rulebook, for the purpose of enforcement thereof...Art. 56 of the Law on the Organization and Operation of the State Administration Bodies.

well as upon crimes for which a prison sentence of up to five years is prescribed and for which there is a justified suspicion that they had been committed by an organized group, gang, group or another criminal association. It seems that the latter is an attempt to insert crimes that do not fulfill the criterion “generating proceeds” within the jurisdiction of the Department for organized crime.

One went to another extreme in the efforts to avoid a too narrow definition of what belongs to the notion of organized crime. The jurisdiction of the Unit became far too wide. The implication of this arrangement is the danger that the people working in the Unit would not be able to fulfill their obligations.²⁴

According to the new Law on Courts, the application of which should start as of January 2007, it is provided to establish specialized court departments²⁵ responsible for trying the cases in the area of organized crime in five basic courts in Macedonia.²⁶

Huge number of amendments was introduced to the Law on Criminal Procedure as well²⁷. Part of them²⁸ have has (or could have) a direct impact in terms of increasing the efficiency in the fight against the organized crime. First of all, one has to mention the introduction of 8 (new) special investigative measures that enable a more successful collection of data and evidence that are necessary for the conduct of the criminal procedure against the perpetrators of organized crime:

- ☞ Monitoring the communications and entry into the home and other premises or means of transport in order to create conditions for communication monitoring, under conditions and procedure stipulated by law²⁹.
- ☞ Inspecting and searching a computer system³⁰, and taking away a computer system or part thereof, or the base for storing computer data.
- ☞ Secretly observing, following and visual/sound tracking of persons and objects with technical devices³¹.
- ☞ Seemingly purchasing objects and seemingly giving and taking bribes³².
- ☞ Controlled delivery and transport of persons and objects.

²⁴ ..this is in contradiction of the basic goals of creating specialized bodies for fighting organized criminality...“Systemic analysis of the legal framework and of the cooperation between the competent institutions in the fight against the organized crime”, T. Vitlarev, G. Kalajdziev, M. Labovic, T. Stojanovski, Skopje 2005, p. 16

²⁵At the same time, training of judges that will decide on the cases in the area of organized crime is conducted.

²⁶ Art. 32 of the Law on Courts, “Official Gazette of RM” No. 58/06 dated 11.05.2006

²⁷ “Official Gazette of RM” No. 15/97; 44/02; 74/04 (hereinafter: CPL)

²⁸ This refers to the 2004 innovation of the CPL

²⁹ In the “Smuggling of migrants” case observed before basic Court in Skopje, one of the defence lawyers has required to separate the evidence from the case materials (listings and short messages sending) which has been provided with this measure, with the explanation that the Law on interception of communication has not existed when the measures have been ordered. The Court refused the request.

³⁰ Only in one observed case related to the crime “migrant smuggling” was an order given to apply the investigative measure “searching of the computer system”.

³¹ This measure was used in a case observed before the Basic Court in Skopje, where a number of people were accused of the criminal offence “migrant smuggling”. In addition to the numerous legal implications caused by the use of these devices, this was accompanied by technical problems during the presentation as well.

³² In a case observed before the basic court in Shtip related to the crime “taking bribes”, upon report made by a citizen, foreign currency banknotes had been marked and later used for the bribe sought by the sentenced individual. Following a quick reaction by the MoI, the person was caught in the act.

- ☞ Using undercover people for tracking purposes and for collection of information or data.
- ☞ Opening a seeming bank account on which proceeds from crime can be deposited.
- ☞ Registering seeming legal entities or using existing legal entities for the purposes of data collection.

These measures seem not to be applied in our practice very often, two years following the introduction thereof.

With the enlargement of the powers vested in the Ministry of Interior in the pre-investigative as well as in the investigative procedure, and of the powers of the authorized personnel from the Customs Administration and the Financial Police regarding a number of criminal offences listed by name³³, it seems that the intention is to defend the viewpoint that parallel jurisdiction vested in several institutions creates competition and thus greater efficiency in the implementation, that the monopoly of having just one competent institution is thereby avoided, and that the problem is approached from several different aspects. However, this situation on the other hand is a reason for shifting the responsibility from one organization to another in case of inefficient accomplishment of the tasks.³⁴

Also of importance is the provision of the CPL stipulating that the public prosecutor is not obliged to undertake criminal prosecution, i.e. he/she may give up the prosecution if the suspect, who is a member of an organized group, gang or other criminal association³⁵, collaborates on a voluntary basis before or after the detection or during the criminal procedure³⁶.

One has also provided for temporary measures aimed at securing the property or assets³⁷ related to the criminal offence, such as: temporary freezing, seizure, and withholding of funds, bank accounts and financial transactions or proceeds from crime. The court will order these measures ex officio when the requirements for confiscation of property and proceeds from the property are fulfilled. The seizure of the proceeds from crime, which are very high especially in the organized crime arena, is an efficient tool for coping with this problem, and at the same time a tool for compensating the victims.

³³ Art. 142-a of the CPL: (1) The powers vested in the Ministry of Interior in the pre-investigative as well as in the investigative procedure shall also be vested in the legally authorized personnel of the Customs Administration of the Republic of Macedonia in the cases when they work on detecting criminal offences and perpetrators thereof and on gathering evidence for the purposes of criminal prosecution of the perpetrators for the criminal offences referred to in Article 212; 213; 215; 232; 266; 273; 278; 278-a; 278-b; 279; 481-a of the Criminal Code, as well as for Articles 59 and 60 of the Excise Law and other crimes associated with import, export and transit of goods through the border.

(2) The powers vested in the Ministry of Interior in the pre-investigative as well as in the investigative procedure shall also be vested in the Financial Police in the cases when they work on detecting criminal offences and perpetrators thereof and on gathering evidence for the purposes of criminal prosecution of the perpetrators for the criminal offences referred to in Articles 279; 273; 278; 277 of the Criminal Code, as well as other criminal offences involving large and significant amounts of tax, customs fee or other proceeds.

³⁴ "Other practical problems during the cooperation and coordination in prevention of organized crime", "Systemic analysis of the legal framework and of the cooperation between the competent institutions in the fight against the organized crime", T. Vitlarev, G. Kalajdziev, M. Labovic, T. Stojanovski, Skopje 2005, p. 37

³⁵ "The notion of criminal association", *Organized crime*, Vlado Kambovski 2005, p. 169

³⁶ In this respect, this cooperation and statement made by that person should be of significant importance for the detection of the criminal offences and the perpetrators.

³⁷ Art. 203-a of the CPL.

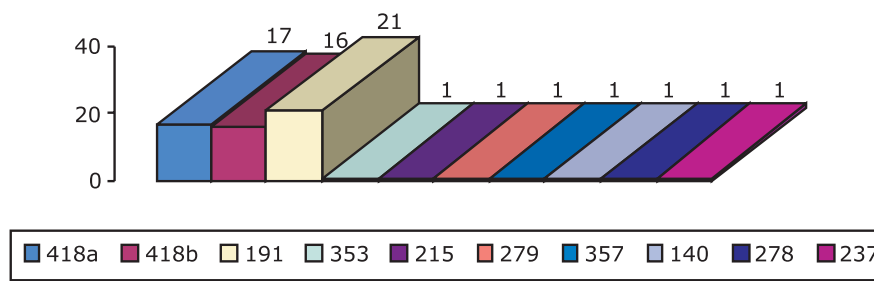
The introduction of the new chapter "Protection of witnesses, collaborators of justice and victims" laid the foundations for the enactment of the "Law on Witness Protection"³⁸, and at the same time the provisions on the special method of witness interrogation were introduced.

The latter, together with the Law on Witness Protection, were adopted as a result of the need to provide efficient protection to those individuals that are in possession of important information about the procedure and whose integrity, health and life are at risk³⁹.

II 3. OBSERVED CASES RELATED TO ORGANIZED CRIME BEFORE THE BASIC COURTS IN MACEDONIA (TRENDS IN THE PHENOMENA)

Within the project "Observation of cases related to trafficking in human beings", the Coalition observed 35 cases in 2005, with 143 hearings for the criminal offences "trafficking in human beings", "mediation in prostitution" and "smuggling of migrants". The observation process continued in 2006 under the new project "Criminal justice responses to organized crime". Under the new project, the subject of interest expanded to include other forms of organized crime that appear in the Republic of Macedonia. In addition to the cases associated with the previously mentioned criminal offences, the Coalition started to observe cases that are considered to belong to the area of organized crime according to the activities of the Unit for organized crime within the Public Prosecutor's Office.

During the two-year observation period from January 2005 until December 2006, totally 61⁴⁰ cases with 334 hearings against 178⁴¹ defendants were observed.



³⁸ "Official Gazette of RM" No. 38/05.

³⁹ Protection of witnesses, justice collaborators and victims in the national and international law.

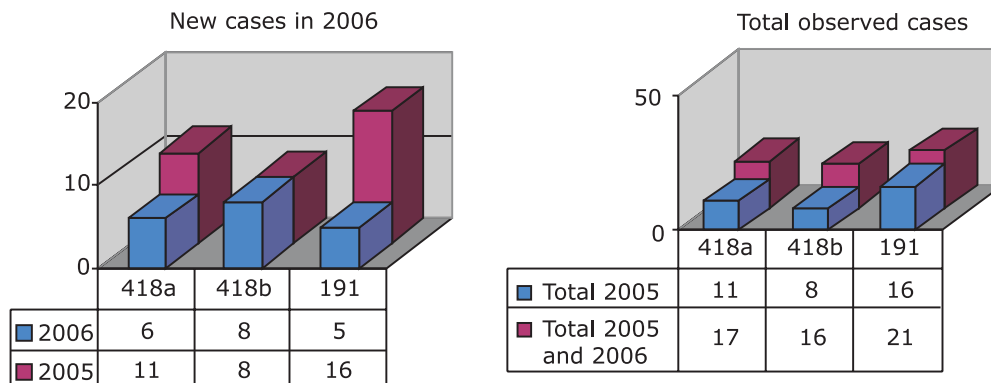
⁴⁰ Four of the cases which were brought back to retrial in Basic courts after receiving the decision of the Appeal Court are counted twice within the total number of cases (61), because of better following of the information from the data base. Two of them refer to criminal act "Trafficking in Human Beings" while other two refer to "Mediation in Prostitution".

⁴¹ The accused within the cases that were retrial in Basic Courts are registered only once in total number of accused persons.

Criminal Justice Responses to organized crime

The annual review of the cases by criminal offence, shows that there is a sharp decrease in the number of new cases associated with the criminal offences "trafficking in human beings" and "mediation in prostitution" in 2006⁴².

At the same time, the number of new cases associated with the crime of "smuggling of migrants"⁴³ is increasing⁴⁴.



If this situation before our basic courts is taken as an indicator of the trend in these phenomena, the first impression is that our country is successfully coping with the phenomenon of trafficking in human beings, by reducing it to half. However, this viewpoint is confronted by another, diametrically opposed one, which indicates that the reduced number of cases before our courts results from the change in the behavior of the perpetrators of these crimes, and from the failure of our law enforcement authorities to adjust to the new trends.

It is assumed that the classical and fairly public method of perpetration of the crime (in night bars in parts of a territory of the country that was not sufficiently controlled by the state authorities, especially in the post conflict period) is replaced by a new, less open method through the use of beauty shops, massages, employment agencies etc⁴⁵.

⁴² Problems of establishment precious distinction between the criminal acts "Trafficking in Human beings" and "Mediation in prostitution" in the judicial practice increases with the appearance of big number of pre-qualifications of the crimes. Mostly, those pre-qualifications goes in the direction of replacment of THB crime with the "Mediation in Prostitution" crime. More about th edistinction between those crimes, please see Coalition's report "Combating Trafficking in Human Beings through the practice of domestic courts" from 2005, page 21.

⁴³ Cases within which charges of some of the accused are according to the article 418v with regard to Smuggling of migrants issue, are also part of the total number of "Smuggling of migrants" cases

⁴⁴ Although the number of cases regarding Smuggling of migrants in 2006 is 8 as well as the number of cases in 2005, still it can be concluded that smuggling of migrant cases are increasing since from 8 cases in 2005, three of them have started in 2004 (only 5 new cases have started in 2005).

⁴⁵ There is also one opinion that human traffickers are more careful and smarter when doing their criminal business. Namely, the victims are given a minimal compensation, their freedom is only partially limited, and violence is not used in an open way, which is characteristic of the current cases that are tried before our courts. In other words, attention is paid to the elements constituting the crime "trafficking in human beings", with a view to avoid criminal prosecution (at least for the trafficking, which is a more severe crime than "mediation in prostitution" from the punishment point of view).

Even though the Macedonia's legislation provides penalization of legal entities⁴⁶, in no single case legal entity was accused.

Moreover, certain sources⁴⁷ mention the increase in trafficking in human beings involving domestic victims for the purposes of sexual exploitation, even though this is not confirmed in the practice of the basic courts at the moment, where it has a minor share in the total number of cases⁴⁸.

The answer to the question as to which of these two approaches is the correct one cannot be sought in the main hearing stage but much before that, as early as the stage of Police activities and the investigation.

The increased number of "smuggling of migrants" cases before the basic courts is following the dynamics of the phenomenon in the Republic of Macedonia according to the official statistics of the prosecution authorities.

The reason for migration in the majority of cases is the search for a job and for a better living standard. Namely, the goal of the majority of migrants is to cross the Macedonian – Greek border. How ready they are to achieve this goal can be seen, inter alia, in their willingness to pay up to 5000 EURO for forged documents and illegal transfer over the border.

The inexistence of a precise definition of the notion of organized crime in Macedonia, of any analysis whatsoever of the organized crime situation, and of statistical indicators both at the level of the authorities responsible for criminal prosecution and penalization and the scientific researches, have lead to the situation where the problem is still an actual enigma in spite of the multiple year treatment of the problem of organized crime by the expert community. This is a paradox if compared with the knowledge that an average citizen⁴⁹ has gained through the media, his/her environment and the everyday life.

Namely, since the independence, Macedonia went through (has been going through) a painful process of transition characterized by uncontrolled snatching of the socially owned assets, huge number of bankruptcy procedures under more than suspicious circumstances, decrease in the living standard with increase in unemployment, situation of an armed conflict the correlation of which with the organized criminal activities is a notorious fact even internationally etc.

⁴⁶ If the trafficking in human beings is done through a legal entity, the latter shall be punished with a fine - Paragraph 6 of Article 418 a, Trafficking in human beings.

⁴⁷ In the shelter for domestic victims of trafficking in human beings, which was opened in July 2005 by the NGO "Open Gate", 11 victims (and presumed victims) of trafficking in human beings have been taken care of by September 2006. Only four of them were involved in a court procedure: one in a case associated with the crime "trafficking in human beings", one in "mediation in prostitution", and two in "unlawful deprivation of liberty" (the two juvenile victims were kept in a weekend cottage and they were allowed to walk only to the restaurant where they were providing their services. When they attempted an escape, the defendant found them and brought them back, during what they suffered some corporal injuries. The restriction of the freedom of movement lasted for more than 30 days, thus classifying this offence under Article 140 Paragraph 5 of the Criminal Code, for which a prison sentence from one to five years is provided. The perpetrator was sentenced in the basic procedure to an effective prison sentence of 6 months).

⁴⁸ Even though domestic victims appear in a very small number in a procedure before the basic courts, this phenomenon has lately attracted the attention of both state authorities and non-governmental domestic and international organizations.

⁴⁹ According to the 2005 Transparency International Corruption Perceptions Index of "Transparency International" the Republic of Macedonia ranks 104 on the list; <http://www.infoplease.com/ipa/A0781359.html>.

While the emerging forms of organized crime can be noticed through a most simple observation of the everyday life, what is surprising is the small number of activities by the authorities that are trained and responsible for dealing with this phenomenon.

The Coalition, taking a prudent approach to the selection of the topic of interest, started with observation of the main hearing mainly of the cases that were specified as organized crime cases by the Public Prosecutor's Office, i.e. the Unit for prosecution of the perpetrators of criminal offences in the area of organized crime and corruption.

The small number of data does not allow a thorough analysis of the baseline situation with regard to the general topic of organized crime. However, the two-year observation of the phenomenon of trafficking in human beings and smuggling of migrants that are part of it, enables one to draw conclusions regarding some important elements, tendencies and characteristics⁵⁰.

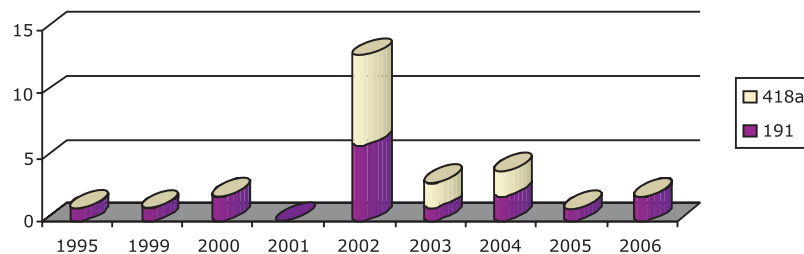
⁵⁰ According to certain sources (Changing patterns and trends of trafficking in persons in the Balkan region, IOM Report 2004, p. 84), more than 250 criminal groups are operating in the Republic of Macedonia – in its western part. On the other hand, the Transcrime report (The contribution of data exchange 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), covering the same reporting period, suggests the existence of 1 to 10 organized groups (having 10 members each).

Chapter III.

Trafficking in human beings in Macedonia as part of organized crime

III. 1 CERTAIN CHARACTERISTICS OF TRAFFICKING IN HUMAN BEINGS

In the cases monitored before our basic courts in 2005, as well as in those initiated and observed in 2006, which are associated with the criminal offences of “mediation in prostitution” and “trafficking in human beings”, the action in the majority of the cases (more than half) happened (or started since most of them are permanent criminal offences) in 2002, less in 2003 and 2004, and very rarely in 2005.



Over 20 night bars and restaurants in Tetovo and Gostivar with the surrounding villages are mentioned in the accusations as places where the offences were committed. Ohrid, i.e. bars in Ohrid, and Struga rarely appear as places where such events have taken place. The defendants are owners of the night bars in the majority of the cases, but there are also a high percentage of defendants that worked as waiters in the bars. On the other hand, there are no women in the capacity of perpetrators, even though it is obvious from the stories of the victims that women had often assisted the perpetrators in the pursuit of the daily activities and in the control of the victims of trafficking in human beings⁵¹.

⁵¹ Only in two cases is a female Macedonian national mentioned as assistant to the trafficker.

The victims most often include female foreign nationals, mainly from Romania and Moldova. It is very rare that Macedonian names of girls that are victims are mentioned in the criminal law event.

The foreign victims were most often brought to Macedonia from Moldova, through Romania and Serbia (Kosovo).⁵²

The entry in Macedonia was illegal in most of the cases, usually through the woods or fields, by cargo trains or special buses. The victims mainly had their passports taken away⁵³.

One of the victims in a case observed before the basic court in Tetovo (Tet 009) associated with the crime of “trafficking in human beings”, arrived in Serbia illegally by cargo train from Moldova through Hungary. After a stay in a private apartment in e:Belgrade, she was illegally transferred by bus to a private house in Macedonia. Prior to the detection of the crime, she was kept in four night bars in villages near Tetovo.

Their freedom of movement was limited and they rarely were allowed to leave the rooms within the catering facility where they were staying. Most often those rooms were in the basement, and they provided the sexual services either in the rooms above the bars or in the nearby hotels.

In a case observed before the basic court in Tetovo (Tet 009), the victim explained in her statement that there were no possibilities for escaping because one of the windows of the room where she was staying gave onto the yard of the perpetrator, whereas the other one was boarded up from the outside. A 3 meters high wall surrounded the yard.

Every time they would leave the premises of the catering facility, they would be accompanied by some of the staff, i.e. some of those involved in the crime. If in exceptional cases the victims would be allowed to go out unaccompanied, they would be given a strict time to come back, which they were not allowed to exceed.

One of the victims/witnesses in a case observed before the basic court in Gostivar (Gos 007) associated with the criminal offence of “mediation in prostitution”, gave a statement at the main hearing that she had no freedom of movement. In the rare situations where she would go to the green market or to the store that were near the coffee bar, one employee of the bar would always accompany her.

The classical story about the high expenses that traffickers incurred for the transport or the procurement of the victims, which the latter had to pay back (repayment of a debt) i.e. work off by providing sexual services repeats in almost all cases. However, even after the repayment of the (fictitious) debt, which could be a very long period, the victims would continue to work without getting even a small amount of money. The waiters in those bars often had the role of guard, chauffeur and cashier.

Different forms of intimidation and a high level of violence would be used to keep the victims in submission. Escape attempts would be cruelly punished in the majority of cases.

⁵² From Moldova, the route in some cases was going through Romania, then Hungary or Bulgaria, and then via Kosovo to Macedonia.

⁵³ In some cases, the victim had managed to hide her passport from the perpetrators. Only in one case did the victim pay 1000 \$ for forged documents (which she never received).

In a case observed before the basic court in Tetovo (Tet 003) associated with Article 418-a of the Criminal Code, the victim attempted to escape after a long period of mistreatment, but in doing that she was caught by the convicted individual, beaten up and left naked for two hours in a wood. When she attempted to commit suicide by cutting her veins, she was saved with a medical intervention by a private practice from one of the surrounding villages.

A usual scenario seems to be the divided roles of good and bad guys between the perpetrators in terms of the treatment of the victims, for the purposes of having better control over them.

The CTOC (Article 3) relates to the criminal offences of corruption, money laundering and justice obstruction, as well as to **serious crimes that by their very nature are transnational and involve an organized criminal group in the execution thereof.**

Here comes the question whether the crime referred to in Article 418a of the Criminal Code enters automatically the domain of transnational organized crime⁵⁴, or Trafficking in Human Beings is organized form of crime only when the minimum elements required by the Convention are fulfilled.

Trafficking in human beings represents a **serious crime**, i.e. its basic form as referred to in Article 418a of the Criminal Code carries a prison sentence of minimum 4 years, which according to the Convention is a condition for the crime to be considered serious.

Internal trafficking in human beings, even though it draws much attention of the professional public, appears before the basic courts more as an exception. Almost all observed cases are about trafficking that involves **crossing of the state border**, i.e. two or more states.

The Convention speaks about "organized criminal group" when one or more⁵⁵ serious crimes have been committed by a structured group of three or more individuals over a certain time period with a view to obtain direct or indirect financial or other type of material benefit.

Generating profit

Trafficking in human beings, together with drugs and weapons trafficking, are high on the list of the most profitable forms of crime. According to FBI⁵⁶ data, trafficking in human beings generates 9,5 billion dollars⁵⁷ a year globally.

Even though one can only assume the amount of the proceeds from trafficking in human beings in the Republic of Macedonia, certain acknowledgments can serve as indicators that this amount should not to be underestimated at all.

⁵⁴ "According to its nature, trafficking in human beings is always organized, because it involves at least three parties: the seller, the transporter and the buyer. Page 264, V. Kambovski, Organized crime, Skopje, 2005.

⁵⁵ 39% of the total number of defendants for trafficking in human beings crimes are recidivists, p. 33. "Combating trafficking in human beings through the practice of the domestic courts", 2005.

⁵⁶ Trafficking in Person Report" June 2005, p. 13; <http://www.state.gov/g/tip/rls/tiprpt/2005/>

⁵⁷ The estimate of the UN is between 7 and 10 billion dollars, "Women in an insecure world-Violence against Women, Facts, Figures and Analysis", p. 80.

Notably, owners of night bars (40%)⁵⁸, who in almost one third of the cases had kept more than 3 victims in their facilities for the purposes of sexual exploitation, are the ones that appeared the most often as defendants in the procedures before the court. The amount paid for the service provided by the victims would range from 50 to 100 EURO for one hour.⁵⁹

According to the statement of one of the victims/witnesses in a case observed before the basic court in Gostivar (Gos 007) associated with the crime of "mediation in prostitution", this girl together with 4 other girls would on average give sexual services 4 to 8 times a day on a working day, and even more during weekends.

All this automatically brings up the issue of the use of personal legal "business structures" with a view to hide the proceeds from the crime committed. The possibility of infiltrating funds in other people's legitimate businesses through voluntary cooperation, corruption, fraud or intimidation, is not excluded either. This is why it is surprising that one requested to assess the material situation of the defendant in only two cases out of thirty two.

In the cases before the court associated with the criminal offences "trafficking in human beings" and "mediation in prostitution", more than twenty night bars in Gostivar (area) and Tetovo (area)⁶⁰ were mentioned, in which the victims were forced to provide sexual services.

By compiling the individual stories in one general picture, one gets the impression of a fairly **solid cooperation** between the different night bars during the handover of the victims, no matter if it was about buying and selling or just exchanging one victim with another.

Structural setup (number of members and homogeneity of the group)

While the generation of proceeds with the crime of trafficking in human beings is an element the existence of which is almost uncontested, the existence of a structured group of three or more persons, which is a requirement of the CTOC in order to be able to talk about transnational organized crime, is something that could be verified in a more difficult and indirect manner.

Namely, there were minimum three (three or more) defendants in 46%⁶¹ of the total number of cases associated with the crime of "trafficking in human beings". Two questions come up here: (i) can one talk about a "structured group" in these 46% of the cases or not; and (ii) as for the remaining 54% of the cases, is it automatically that this is **not** organized crime, or maybe all this is about insufficient performance of the prosecution authorities with regard to the identification of all actors that took part in the criminal event. It is useful to mention that in the trafficking in human beings cases in which one or two persons appeared as defendants, at least four other persons had taken part in the criminal event according to the statements of the

⁵⁸ This percent is 60 in the "Mediation in Prostitution" related cases.

⁵⁹ The victims that have been trafficked are resold for an amount of 2500 to 4000 EURO, or there is an exchange of one with another girl.

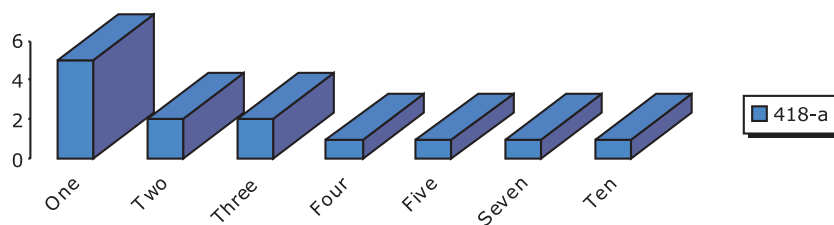
⁶⁰ Very rarely in Ohrid as well.

⁶¹ In the cases associated with the crime "mediation in prostitution", this proportion amounts to 25%.

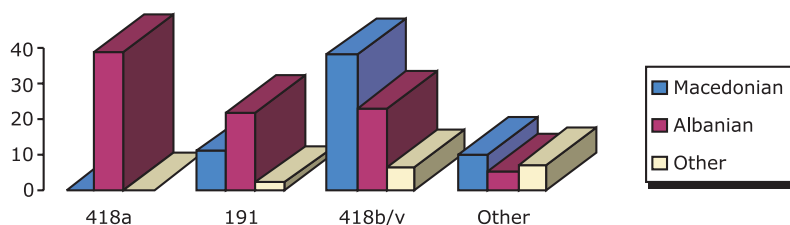
victims/injured parties in the procedure (based on observation of the trend in the buying and selling of the victims i.e. of their services).

If one starts from the viewpoint that modern criminal groups are increasingly putting on the form of “individually organized crime”, the importance of the existence of a certain minimal number of participants in the event is reduced.

Namely, in spite of the existence of homogenous organized groups with hierarchically established structure, relatively independent members often appear in the (international) practice, joining certain structures according to the need of the market for their services, i.e. according to the opportunities for generating proceeds. It is very difficult to categorize the so-called modern organized groups from the point of view of their structure i.e. composition.⁶²



As regards the breakdown by ethnicity of the individuals accused of crimes in the area of organized crime, it can be concluded that in 55% of the cases these persons were members of the Albanian ethnic community, in 36% of the Macedonian ethnic community, whereas in 9% of the cases they were from other ethnic backgrounds.



The homogeneity of the group with regard to the ethnic background is at the highest level in the cases related to trafficking in human beings. Namely, in 86% of the cases there are minimum two defendants of the same ethnic background within one criminal event. If the existence of minimum three people within one case is set as a criterion, the result will be 100% homogeneity in terms of the ethnic background of the persons involved in the event.

In a case observed before the basic court in Tetovo (Tet 006) associated with the crime of “trafficking in human beings”, there was only one ethnic Macedonian among the defendants. The accusation for him

⁶² EU Organized Crime Threat Assessment 2006, EUPOL, 5.1.2 OC Group Structures, pag. 12.

related to the crime of “smuggling of migrants”, unlike the others that were charged with the crime of “trafficking in human beings”.

Compared with the situation in the other cases in the area of organized crime observed by the Coalition, a conclusion can be drawn that in the Trafficking in Human Beings crimes the groups are more homogeneous than in the other criminal offences.

Trafficking in human beings	Ethnic homogeneity (%)	Ethnic homogeneity (%)
minimum two defendants	86	14
minimum three defendants	100	0
All crimes in the area of organized crime	Ethnic homogeneity (%)	Ethnic homogeneity (%)
minimum two defendants	65	35
minimum three defendants	63	37

The fact that ethnic Albanians appear in all cases of homogenous structure associated with the crime of “trafficking in human beings” speaks in favor of the statement that the members of the Albanian ethnic community have a “monopoly” in the business of trafficking in human beings.

What is perhaps surprising is the difference with regard to the homogeneity of the structure of the persons accused of trafficking in human beings and those accused of mediation in prostitution. The proportion of cases with a minimum of two/minimum of three defendants of the same ethnicity amounts to 56% and 60% accordingly, which points to the conclusion that heterogeneity of the national structure is significantly higher with regard to the mediation in prostitution.

Mediation in prostitution	Ethnic homogeneity (%)	Ethnic homogeneity (%)
minimum two defendants	56	44
minimum three defendants	60	40

Use of violence within the trafficking in human beings

The issue of the use of violence when committing the crime of “trafficking in human beings” raises a particular interest, in terms of to what extent one can talk about planned and systematized use of violence and to what extent this is about momentary spontaneous “ad hoc” reactions of individuals. In other words, it is interesting to find out what is the level of the use of violence and if it is used only against third parties outside of the organizational scheme (for example against the victims or the prosecution authorities, or against the internal members i.e. co-perpetrators of the crime) with a view to maintain the discipline in the group.⁶³

The Criminal Code defines the following methods of perpetration of the crime: coercion i.e. use of force or serious threat, abduction, fraud, abuse of somebody else’s situation or state of pregnancy, powerlessness or

⁶³ Unfortunately, we have no data about the internal hierarchical setup of the persons involved in the criminal offence, or about the degree of intimidation therein.

physical or mental disability, or giving or receiving money or other benefits in order to obtain the consent of a person that has control over the person being trafficked.

The “force”, which consists of a physical action aimed at overcoming an expected or existing resistance by the victim, and the “threat”, which means making some bad thing likely to happen where the fulfillment of this likelihood is under the control of the perpetrator and depends on whether the victim will act according to the perpetrator’s will, are in the majority of the cases the means for coercing a certain behavior by the victim. Notably, victims have stated that the perpetrators had often used physical force (beating with hands, belt, bottles, chairs), starvation, keeping in isolation, mistreatment (pulling somebody’s hair) as well as threat (that she would be beaten up, given to someone who would beat her more, with a knife, gun and hand grenade).

In a case observed before the basic court in Tetovo (Tet 003) associated with the crime of “trafficking in human beings”, the defendantbeat the victim with a belt all over the body, threatened her with a knife, hand grenade and a gun which he possessed, starved her, and fed her only with bread. He kept her for two days in isolation and then forced her to have sex with clients....

In a case observed before the basic court in Tetovo (Tet 001), the convicted individual.... accepted the injured party, hired her as a waitress and forced her to provide sexual services to the guests in the coffee bar. If she would refuse, he would beat her...and inflict injuries on her i.e. break her fingers on both hands...

Abduction is a crime against the freedom of movement and the freedom of decision-making, and, similarly to fraud, represents an individual criminal offence regulated by Article 141 of the Criminal Code. However, as per Article 418 a, all these activities are just methods of perpetration of the crime of “trafficking in human beings”.

In a case observed before the basic court in Tetovo (Tet 002) associated with the crime of “mediation in prostitution”, the victim, while waiting for a bus in some town in Romania, was sprayed in the eyes and pushed into a vehicle whereby she was brought to Macedonia. Under a threat of use of force, she was forced to provide sexual services.

In addition, fraud is often used as a means to secure submission and behavior in the desired direction.

In a case tried before the basic court in Gostivar (Gos 7) associated with the criminal offence “mediation in prostitution”, the victim-witness, when explicating the reasons why she had not reported the perpetrator to the Police when she would go out unaccompanied, said that she had been told that the Police could also sell her. The perpetrator had told her that he controlled the Police as well. The witness was convinced that there were two Police administrations in the Republic of Macedonia - Macedonian one and Albanian one.

Even without taking into consideration the more subtle ways to “persuade” the victim, i.e. methods which mean taking advantage of the vulnerability of the victim: ...state of pregnancy, powerlessness or physical or mental disability of someone... it can be concluded that in our reality, violence against the victims is often an accompanying element when committing the crime of “trafficking in human beings”.

In this respect, violence is most often used as an offensive rather than defensive tactic. It appears equally as a premeditated means to adequately intimidate and keep the victims in submission, and as momentary spontaneous and quick reactions with view of demonstrating force. The latter, especially if it appears in an extreme form, can only have counterproductive effects for the group because it attracts the attention of the public as well as of the prosecution authorities.

Tendencies of avoiding criminal prosecution and penalization

According to certain authors...“The problem of corruption in the Republic of Macedonia rises up to the level of existential systemic problem that endangers seriously the concept of a democratic state governed by the rule of law, endangering even the very subsistence of the state if account is taken of the presence of this factor in the 2001 armed conflict”!⁶⁴

Given the political factors, i.e. the lack of accountability among the holders of public functions, the economic factors in terms of the enormous unemployment and increased poverty levels, the sale of the socially and state owned assets under various influences and pressures, the enormous number of bankruptcy procedures, the growth of the informal (“gray”) economy, the non-finalized implementation of the independent judiciary concept, and the threats to the security of citizens, the conclusion that comes up is that Macedonia has a high level of corruption, implying insufficient efficiency in its prevention.⁶⁵

This overall political, economic and security situation represents a fertile ground for criminal activities carried out by organized groups, including those in the area of trafficking in human beings. These groups, through corruption and other forms of influence, act in the direction of reducing the risk of criminal prosecution or enabling “safe heaven” for doing business and expanding their activities with a view to generate proceeds.

The measures undertaken by these criminal groups are diverse. There are measures undertaken for obstructing the detection of the criminal activities, measures for hiding the identity of the group members, as well as measures aimed at avoiding accusation and penalization.

Even during the period when trafficking in human beings, especially in certain areas in the country, was a very visible phenomenon that was taking place in night bars and catering facilities that even the ordinary people had knowledge of, various measures were undertaken in order to make the process of identification of the activities and persons involved in the crime difficult. For example, it is not rare that the victims know only the nickname of the perpetrators, but not their real name and surname. This creates a problem in regards with determining the identity of human traffickers.

In addition, some cases mention changing a letter in the name of the girls/victims in the computer by an official when entering the country, in order to avoid identification when they would reenter the country, accompanied by the same perpetrators.

⁶⁴ “Corruption – the biggest social evil and threat to the rule of law”, comments on the Law on Prevention of Corruption and the Law on Prevention of Money Laundering, Vlado Kambovski and Petar Naumovski, p. 21.

⁶⁵ The corruption in the Republic of Macedonia - preventive and penal measures for averting it, Skopje 2005, Mihajlo Manevski.

Even though the involvement of officials from the Ministry of Interior in the activities of criminal groups is mentioned in only two of all observed cases, it is realistic to assume that their involvement, especially in the post conflict period, was at a significantly higher level⁶⁶.

In a case observed before the basic court in Gostivar (Gos 008) associated with the crimes of “mediation in prostitution” and “abuse of the official position and powers”, one of the defendants – authorized official – was sentenced to prison because he informed beforehand the perpetrators on several occasions of police raids planned to be conducted in the bars, through the second defendant.

One observed before the basic court in Ohrid (Ohr 001) a case associated with the crime referred to in Article 191 of the Criminal Code, in which a condemning appealable sentence for three persons was passed. In the catering facility in which the activities of mediation in prostitution were taking place according to the statement of the witness, who is the father of one of the persons working in this facility and at the same time authorized official in Ministry of Interior who stated that he would go to this place at least twice a week, no prostitution was noticed.

The influence i.e. control over the actions of the victims that are potential witnesses in the procedure is exerted both through intimidation, threats and brutal violence (see above), as well as through fraud and bribery. Namely, in addition to the fabricated or true stories about the corrupted Police⁶⁷, victims are also intimidated with the threats about criminal prosecution because they are illegally within the territory of the Republic of Macedonia.

In an observed case before the basic court in Gostivar (Gos 001) associated with the crime of “trafficking in human beings”, one of the injured parties/witness in the procedure stated that the defendant (through the girl that was mentioned as his associate helping him to collect the money from the users of the sexual services) had promised her and the other girls 50 EURO each if they said that the defendant had treated them nicely.

In a case observed before the basic court in Tetovo (Tet 005) associated with the crime of “trafficking in human beings”, the lawyer of the defendant, behaving offensively towards the participants in the procedure during the main hearing, uttered a threat against the legal representative of the injured party and the deputy public prosecutor. The closing arguments of the latter were delivered in writing to all those who were present.

It is not a rare phenomenon where the behavior of the lawyers of the defendants at the main hearing is impertinent and offensive towards the other participants in the procedure in the cases related to the crimes of “trafficking in human beings” and “mediation in prostitution”. However, the court never pronounced any fine⁶⁸. In these cases, which is otherwise provided by Article 74 of the Criminal Procedure Law⁶⁹

⁶⁶ One of the bars (“Dutko”), in which sexual services were provided by victims of trafficking in human beings, was located next to the Police station in the village of Tearce.

⁶⁷ Individuals in a Police uniform show up in the bar with a view to demonstrate the involvement of the Police in the trafficking in human beings network.

⁶⁸ The court may punish with a fine ranging from 100 to 1000 EURO the participant in the procedure that offends the court or a person participating in the procedure.

⁶⁹ Out of the total number of hearings (334), five fines were pronounced in only one case associated with the crime “migrant

III 2. THE POSITION OF THE VICTIM

Depending on whether the victim of the criminal offence of “trafficking in human beings” appears in the main hearing phase within the procedure before the court only as a witness, as an injured party or cumulatively – both as a witness and as an injured party, this situation of hers determines the type and scope of activities that she can undertake in the procedure before the court.

The victim of trafficking in human beings, upon submission of a proposal for being granted a claim for civil compensation i.e. compensation for damage⁷⁰, acquires the status of a procedural subject in the criminal procedure, thereby having a very active role and a possibility to influence the epilogue of the trial.

The fact that the injured party appears at the same time as a witness in the procedure, does not change the procedural position of the victim significantly.

However, when the victim is only a witness in the procedure, but not an injured party, the situation is somewhat different. The person is obliged to respond to the summons and to give a statement in the court in person.

This means that while the participation of the injured party in the procedure is on a voluntary basis and depends only on her desire to become involved in the process, the participation of the witness is compulsory and depends on the court’s free appraisal of the need to question the witness.

However, the latter applies only to cases when the victim is still residing within the territory of the Republic of Macedonia⁷¹. If the victim has already returned to her country of origin, her appearance before the Macedonian court, according to the bilateral agreements between Macedonia and the victim’s country of origin, depends on her free will.

There is an interesting situation when the victim is summoned to testify in the procedure before the court during the period which, pursuant to the new Law on Aliens⁷², is provided for a victim of trafficking in human

smuggling”.... In a case observed before the Basic Court in Skopje (Sko 003) associated with the crime “migrant smuggling”, three lawyers (one three times) were fined with 100, 700, 1000 EUROS each for disturbance of the order in the courtroom, following a caution by the judge....

⁷⁰ The property claim may refer to both compensation for damage as well as restitution of objects or annulment of a certain legal affair

⁷¹ Providing the victims of trafficking in human beings with a legal stay in the countries in which they were trafficked has a vital importance from two aspects: first, for the sake of providing the victim and her rights with a quality protection, and, second, for the sake of providing an efficient tool for criminal prosecution and sentencing of the perpetrators of crimes associated with trafficking in human beings.

Given the fact that the victims of trafficking in human beings often have no license to stay in the destination country or they had one but in the meantime it expired, these people are in many states expelled from the country immediately after the detection of their status. This practice substantiates the stories which human traffickers threaten the victims with, which is that in case of reporting the crime they would be punished or expelled, thus discouraging the victims to approach the Police authorities. At the same time, the access of the victims to assistance and protection is impeded, and the state deprives itself of one of the most powerful tools in the prosecution of human traffickers, which is the witness in the procedure.

⁷² Official Gazette of the Republic of Macedonia, No. 35/06 from 23.03.2006. Will enter into force in March, 2007.

beings to reflect and decide if she wants to join the criminal prosecution or not⁷³. Namely, according to Article 81 of the Law on Aliens (Temporary residence permit for victims of trafficking in human beings, period for making a decision), an alien, for whom there are grounds for suspicion that he/she is a victim of trafficking in human beings, is enabled a two-month period for making a decision within which he/she should state if he/she would cooperate with the competent state authorities in detecting the crimes and the perpetrators, or return to his/her country of origin. While the Law on Aliens provides the victim with the right to decide about his/her participation in the procedure before the court as a witness, the Law on Criminal procedure provides no possibility for voluntariness in deciding if he/she would testify or not⁷⁴.

In 82% of the situations, the victims have filed a claim for compensation (damaged party and witness), whereas in 18% they appear only as witnesses in the procedure.

Providing legal assistance

The victim, as an injured party in the procedure, can exercise his/her right through a person authorized to undertake procedural actions in the criminal procedure in the name and in the interests of the victim, i.e. though a legal representative.

A legal representative represented the victim, when appearing as injured party in all the observed cases.

When the victim appears only as a witness in the procedure, she has no right to a legal representative. In exceptional cases, even though the victim had filed no claim for compensation, a legal representative accompanied her.

⁷³ The legislative provisions on the status of the victims of trafficking in human beings vary from country to country, the variations ranging from countries that do not provide any licenses to stay for the victims, to arrangements enabling the victims to stay permanently in the destination country. Some countries make the issue of a license for a temporary stay conditional upon the victim's consent to participate in the court procedure as a witness against the human traffickers, whereas other countries allow the victim to stay irrespective of her participation in the procedure, with a view to secure her protection (in **Austria**, if the victim decides to testify against the perpetrators of crimes associated with trafficking in human beings, she may be granted a license to stay for the duration of the process, or she can have her return to the country of origin postponed. In the opposite case, i.e. if she doesn't agree to participate in the procedure, she will be deported. In the Austrian practice, the majority of the cases are so that the deportation of the victims is just postponed, unlike the issue of the licenses for temporary stay which is rare and depends mainly on the circumstances of the case and on the region within the country -www.femmigration.net/victims).

While in certain states the victims are allowed a period for making a decision if they will be witnesses in court or not, other countries don't provide for this right (in **Germany**, the period for the victim to decide if she would bring charges/lawsuit is 4 weeks, whereas in the **Netherlands** this time period is three months. The **Belgium** law provides the victim with a period of 45 days to decide if he/she would bring charges against the perpetrators of the criminal offence "trafficking in human beings". If the victim decides not to cooperate with the authorities, she will be returned to her country of origin following the expiration of this period). The possibility for permanent stay of the victim in the destination country is differently regulated, depending on the efficiency of the country strategy for protection of the victims and witnesses of trafficking in human beings.

⁷⁴ Exceptions to the rule that every person summoned to be a witness is obliged to testify include only the situations when (i) a certain person must not be questioned as a witness and (ii) when some people are free from the duty to testify in special cases. The first case is about a person who would violate the duty to keep an official or military secret with his/her statement, or about a lawyer of the defendant concerning what the client has confided to him/her.

The second case is about persons that can, but don't have to testify⁷⁵, and they are listed in the Criminal Procedure Law by name.

		Filed claim for compensation		Total
		Yes	No	
Legal representative	Yes	18	0	18
	No	3	4	7
Total		21	4	25

The legal representative of the injured party attended 66% of the total number of hearings in the court. In 74% of the attendances, these were cases associated with the crime of "trafficking in human beings", whereas 57% were cases associated with the crime of "mediation in prostitution".

There is no institutionalized way of providing legal assistance in the Republic of Macedonia.

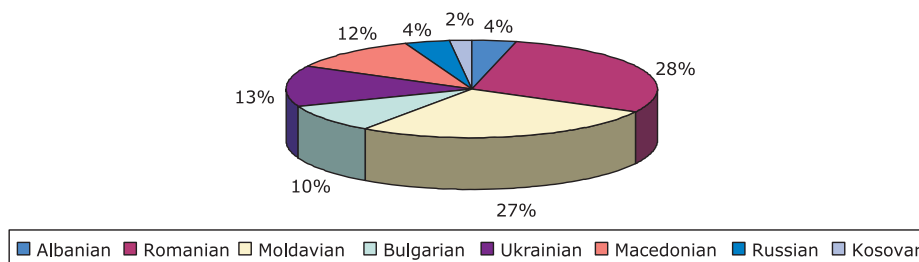
In all cases associated with trafficking in human beings, the victims (foreign nationals only)⁷⁵ were represented by two persons commissioned by the International Organization for Migrations (IOM) and the Macedonian Bar Association⁷⁶.

Presence of the victim at the main hearing and active role thereof in the criminal procedure

The victim, as an injured party in the procedure, has the right to be summoned to the main hearing. Given that in almost all observed cases the victim (foreign national) is summoned to the main hearing after she has already been returned to her country of origin, the summons are delivered according to the provisions of the Law on Criminal procedure related to the international legal assistance and execution of the international agreements in the criminal law cases.

In all observed cases in the area of trafficking in human beings and mediation in prostitution, a total of 75⁷⁷ victims have been registered, all of them women.

Romanian nationals appear in 28% of the cases, Moldavian nationals in 27%, as well as Bulgarian, Ukrainian and other nationals to a lesser extent.



⁷⁵ For the domestic victims of trafficking in human beings, legal assistance is provided, inter alia, within the project activities undertaken by the NGO "Open gate" in the shelter.

⁷⁶ All legal representation provided in the country is within the scope of international funding.

⁷⁷ Only one victim appears twice in different cases.

Trafficking in human beings in Macedonia as part of the organized crime

Country of origin of the victim	Criminal offence ⁷⁸		Total
	Article 418 a Trafficking in human beings	Article 191, Mediation in prostitution	
Albania	1	1	2
Bulgaria	3	2	5
Macedonia	2	4	6
Moldova	5	9	14
Romania	8	7	15
Ukraine	1	6	7
Kosovo	1	0	1
Russia	0	2	2
Total	23	29	52

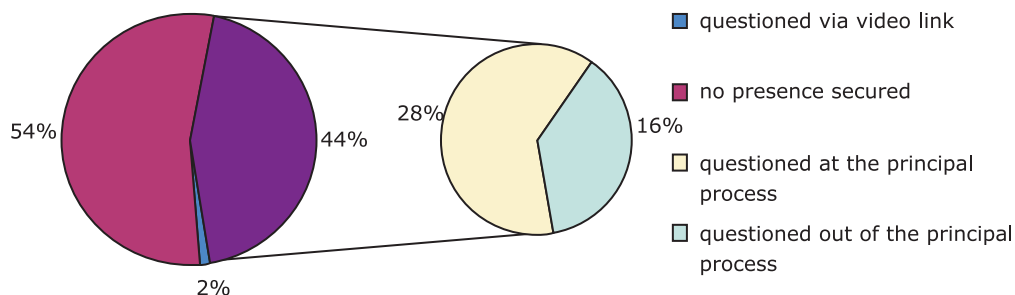
If one observes the correlation between the origin of the possible victims and the type of cases (crimes) before the court, it can be noticed that the number of victims involved in trafficking in human beings is almost equal to the number of victims involved in mediation in prostitution.

The victims from Moldova and Romania are the most represented in both criminal offences.

Macedonian nationals appeared as victims in only three cases⁷⁹.

The modest data about the age of the potential victims show that 7 (around 10 %) girls within five cases were of minor age. Two appear in cases associated with the crime of "trafficking in human beings", while five associated with the crime of "mediation in prostitution"⁸⁰.

The potential victim was questioned in person in 44% of the cases. Her presence was in the majority of cases secured through the SECI center⁸¹. In the rest of the cases, the statement given during the investigation was read. The reasons for absence from the main hearing included (i) inaccessibility of the victims for the state authorities i.e. the impossibility to find them at the known addresses, or (ii) their unwillingness to testify.



⁷⁸ Data have been provided for only 52 victims.

⁷⁹ One case is about a deceased victim.

⁸⁰ Despite existence of the provision from CPC according to which examination of the of minor witness (which should be done very carefully in order not to influence at the mental health of this person) could be done, if necessary, with help from professional expert, still this provision is not used in practice.

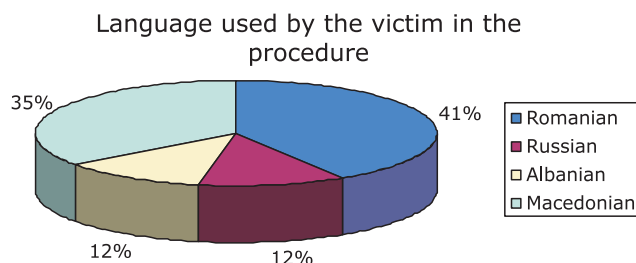
⁸¹ The SECI center (Southeast European Cooperative Initiative) has had an essential role in securing the presence of the wit-

Out of the total number of situations when the victim was questioned in person, in 16% the questioning took place out of the main hearing because there were no conditions to do it. As expected, the majority refers to cases of "trafficking in human beings".

Criminal offence that is subject of the trial		Main hearing		Total
		Out of main hearing	At the main hearing	
418 Trafficking in human beings	Questioned in person	8	3	11
191 Mediation in prostitution	Questioned in person	2	14	16
	Video conferencing	0	1	1
Total		10	18	28

Right to adequate interpreting

The victim, no matter if she appears as a witness or as an injured party in the procedure, has the right to free assistance from an interpreter if she does not understand or speak the language of the procedure. Even though the problem of adequate interpreting in the language of the victim, who is a foreigner in the vast majority of cases, is mentioned as one of the bigger problems faced by the judiciary, our analysis shows that the interpreting during the questioning of the victim was mainly at satisfactory level⁸². In the majority of cases, the victims used the Romanian language in the procedure.

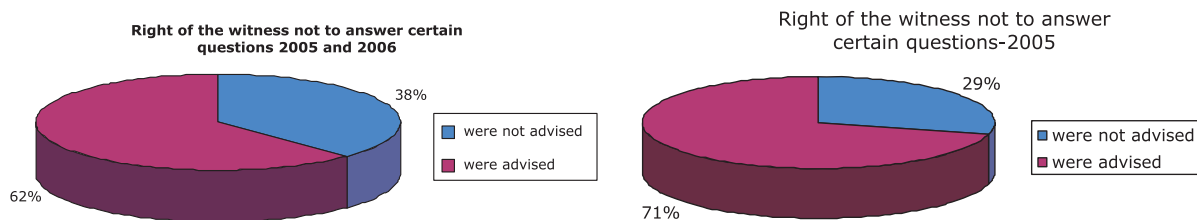


nesses that were victims of trafficking in human beings at the hearings in the Republic of Macedonia. This is an independent diplomatic mission with the status of an international legal entity registered in Bucharest, Romania, which acts based upon the Agreement for cooperation and prevention in the elimination of transborder crime. Within the activities of the working group for prevention of trafficking in human beings and illegal migration, 20 requests for finding 48 witnesses that were victims of trafficking in human beings and forced prostitution were submitted during 2004. Out of 15 persons that were found, 11 were secured for the hearings before the basic courts in Macedonia. In 2005, 18 foreign nationals were found from a total of 24 requests submitted, of whom 11 were willing to show up at a scheduled main hearing in the basic courts. "Southeast European Cooperative Initiative -SECI", Elizabeta Ilieva, Judicial Review, No. 2, September 2006.

⁸² Only in one case was the interpreting provided for the sake of questioning the victim of very poor quality.

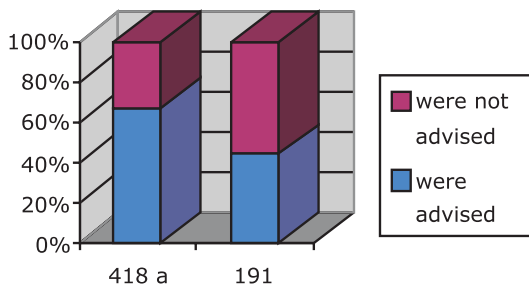
The right not to answer certain questions

If the victim who is a witness would expose herself with her statement to a severe disgrace, she is not obliged to answer certain questions. The criminal Procedure Law provides for an obligation for the court to inform the witness of this right of his/hers.



According to the available data, the witness in the procedure was not informed of this right of hers during the questioning in 33% of the cases. If this datum that relates to a total of 54 observed cases associated with the crimes of "trafficking in human beings", "mediation in prostitution" and "smuggling of migrants" after two years of observation is compared with the datum for the same crimes in 2005, conclusion can be drawn that there is an increase in the proportion of situations when the witness was not informed of this right of hers.

However, if one separates only the data on the crimes of "trafficking in human beings" and "mediation in prostitution", the proportion of witnesses that were not advised on the respective right rises to 46%.



The right to put forward new evidence and to ask witnesses, expert witnesses and defendants questions

The victim has the right to suggest that new facts be presented and that new evidence be obtained by the end of the main hearing. This right is rarely used⁸³.

The victim/injured party in the procedure, upon approval by the President of the Council, may either directly or through her legal representative ask the witnesses and expert witnesses questions. It happened very rarely

⁸³ In addition to the two situations when the legal representative asked the defendant questions during the procedure, in two other cases questions were posed to the victim-witness in the procedure as well.

(only in two situations) that the legal representative asked the defendant questions about his property situation with a view to determine the amount of the claim for compensation.

The right to explicate the claim for compensation

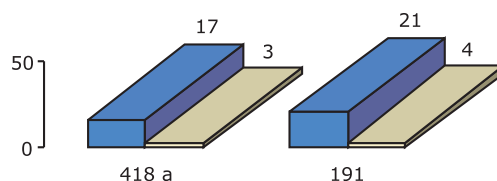
The injured party has the right, following the end of the probative proceedings, not only to explicate the claim for civil compensation, but also to take a position and analyze the evidence presented, on which depends not only the criminal liability of the defendant, but also the outcome of the claim for civil compensation.

In the cases observed by the coalition, the legal representative of the victim files the claim for civil compensation in writing in the majority of cases, and rarely presents it orally. In the latter case, this is done in the closing arguments of the hearing for the most part (about 70%).⁸⁴

The right to a trial in camera

The Criminal Procedure Law of Macedonia provides a possibility for excluding the public from the main hearing as a whole or from a part thereof, either ex officio or upon proposal of the parties for the following reasons: keeping a secret, keeping the public order and peace, protection of the moral, protection of the personal and intimate life of the defendant, witness or injured party, and protection of the best interests of a juvenile person.

Taking into consideration the high level of sensitivity that is typical for cases of trafficking in human beings and mediation in prostitution and the need for avoiding secondary victimization of the victim, special attention was given to the increasing number of trials in camera especially when statements were given by the injured party acting in the capacity of witness in the procedure.



Out of a total of 38 cases, there were 7 trials in camera, among which in two cases this was done for protection of a juvenile person (injured party - witness), whereas in the rest of the cases this was done for protection of the moral and the personal and intimate life of the witness/injured party. Two of the cases are associated with the crime of "trafficking in human beings", whereas the other three are associated with the crime of "mediation in prostitution"⁸⁵.

⁸⁴ One of the remarks of the sitting judges addressed at the legal representatives of the victims is about the too late submission of the property claim, thus hindering the timely issue of an order for expert witness investigation (which would be the most purposeful as early as in the investigation phase) and thereby the decision on the claim. Only in one observed case was this claim submitted as early as in the investigation phase.

⁸⁵ In only one situation the observers of the Coalition were not allowed access to the office of the judge in which one was in session, with the explanation that the case would be postponed.

Protection of the victim-witness in the procedure

Following the examples of almost all national legislations (of the countries with continental law) and the international trends in the fight against organized crime, the Republic of Macedonia provides protection of the witness in the procedure through the provisions of the Criminal Procedure Law and of the Law on Witness Protection⁸⁶.

The Law on Witness Protection entered into force in January 2006. In the cases observed by the Coalition, the provisions of this law had no practical application.

As for the Law on Criminal Procedure, the provisions that regulate the special method of interrogation of the witness were implemented. These provisions provide for questioning the witness only in the presence of the judge and the public prosecutor in a place that guarantees the protection of the identity, or through the use of telephone or videoconference facilities.

The special method of interrogation of the witness has been used in only one case associated with the crime of "mediation in prostitution". That is the questioning of the victim/witness via video-conference in a case in the basic court in Tetovo⁸⁷.

The law also provides a possibility for the witness to refuse to provide personal data (name and surname, name of the father, occupation, place where one is staying, age, and relationship with the defendant), if there is likelihood that he/she would expose himself/herself or a close person to a serious threat to his/her life, health or physical integrity by way of giving a statement or an answer to a specific question.

During the observation process, no case was recorded of a witness refusing to give data⁸⁸, which leads us to the conclusion that either there was no serious threat to the life, health or physical integrity of the witness (which would be weird given the sensitivity of the subject of observation, the high level of violence involved in trafficking in human beings, as well as the estimate about the high risk associated with the witnesses who decided to testify in the procedure before the court), or the witness was not informed of her right to refuse to provide personal data.

There is no provision in the Law on Criminal Procedure providing explicitly for an obligation that the witness should be informed of his/her right to refuse to provide data mentioned above.

The reason for this can also be sought in another direction. Namely, a witness that has denied to provide the abovementioned data, if it is determined that there is justified ground to establish the presence of a danger, should be provided with protection within 24 hours by means of involvement in the Witness Protection Program. In this situation, there is no possibility to make use of the provisions on the special method of interrogation of the witness in the procedure. If one starts from the fact that the Witness Protection Program involves high costs and mobilization of significant human resources, and that it is activated (or should be activated) in exceptional cases only, then the current legal arrangement, which makes it impossible to activate

⁸⁶ Official Gazette of the RM, 38/05

⁸⁷ This case, after as many as 20 postponements, has not yet received an appealable judgment.

⁸⁸ Only in one case did the victim/witness deny to provide data about her place of residence in the country of origin, but this was not in a situation covered by Article 223-a. The hearing continued without insisting on an answer.

the provisions on the special method of interrogation (especially through video-conference) in a situation of danger to the witness when he/she has disclosed certain data, is illogical.

The provision for questioning the witness in a room different than the courtroom and only in the presence of the judge and the public prosecutor has not yet been applied in practice. The reasons are sought both in the existence of a danger of violating the rights of the defendant in the procedure⁸⁹, and in the problem of insufficient legal elaboration of the manner in which the interrogation is carried out.

Possibility to question the victim without the presence of the defendant

The Council may decide, in exceptional situations, to remove the defendant from the courtroom temporarily if the victim-witness refuses to give a statement in his/her presence, or if the circumstances indicate that the victim-witness would not be speaking the truth in the presence of the defendant.

Only in one situation was the victim-witness questioned in the absence of the defendant in a manner as specified above. Namely, the victim was asked questions related to the statement given in the main hearing at the following hearing, which took place without the presence of the defendants and their lawyers.

Compensating the victims and confiscating the property and the proceeds of the property in the cases related to trafficking in human beings

With the development of the new criminal law philosophy about the human rights concept, a new orientation within the modern criminal policy was established, which goes in the direction of relativizing the assumption of the state as general victim and putting the individual victim in the forefront.⁹⁰

Many international documents, which have laid the foundations of the criminal legislation reform, protect the interests of the victim, in terms of providing the victim with access to the system of criminal justice and its efficient administration, restitution, compensation, social assistance, and protection against secondary victimization.

For example, according to Article 6 (Paragraph 6) of the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**, each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

The Recommendations R (2000) 11 and R (85) 11 of the Council of Ministers impose an obligation of the Member States to order the perpetrators of criminal offences to pay damages to the victims of trafficking in human beings.

⁸⁹ Primarily the right of the defendant to question the witnesses that are accusing him/her.

⁹⁰ Kambovski Vlado, The turn of the criminal law towards the victim of the crime, Criminal law reform before the challenges of the 21st century, Skopje, 2002, p.198.

The Hague Ministerial Declaration encourages the Member States to mobilize both public and private sources (including the founding of new sources) for the purposes of paying damages to the victims of trafficking in human beings.

A trend in the modern legislation can be noticed, whereby the legislation provides for the development of state programs for compensating the victims, which enables the fulfillment of the duty of the state to compensate the victim in all cases when this cannot be done by the perpetrator or by other people.⁹¹

Compensation of the victim is achieved by way of filing a claim for compensation in the criminal procedure. The compensation claim is submitted to the authority which the criminal charges have been brought to, or to the court before which the case is tried, at latest by the completion of the main hearing before the basic court⁹².

The criminal court decides for the compensation claim. Namely, together **with the convicting verdict**, the court decides fully or partially on the claim for compensation. If the evidence in the criminal procedure provides no sufficient ground for full or partial judging of the claim for compensation, and its additional securing involves a danger of unjustified postponement of the criminal procedure, with the judgment the court will judge only the ground, or the ground and partially the amount of the claim for civil compensation, and will pass an additional judgment on the amount of the compensation or on the remaining portion.

If the amount of the claim for civil compensation cannot be determined with other evidence or if the presentation of such evidence would lead to a significant postponement of the procedure, the court will judge the amount of the claim for civil compensation or a part thereof by means of an additional judgment fixing an equitable compensation⁹³.

⁹¹ According to the 1993 Criminal Justice Act of Ireland, the court may pass a judgment on compensation of the victim by the defendant upon the passage of the sentence, for any criminal offence.

Unless the convicted person pays the compensation within a certain period of time, the court may issue an order for salary reduction or detention.

The victim may also obtain compensation according to the system for criminal injuries compensation, established by the Department for Justice, Equality and Judicial Reforms, and implemented by the Tribunal for criminal injuries compensation. This system provides for compensation for costs and losses incurred as a direct result of violent acts or in an attempt to help while preventing the perpetration of a criminal offence or saving a human life.

Pain and suffering is not a ground for compensating a victim. In addition, compensation will not be ordered in the following cases:

- If the loss is smaller than 64.49 EURO
- If the victim has lived together with the convict
- If the injury is a result of a traffic delict
- If the victim fails to (reasonably) help the tribunal

When setting the amount of the compensation, the tribunal will take several factors into consideration:

- If this is about an injury with long-term or short-term effects, or about death of the victim;
- If the victim is a beneficiary of other benefits during the period of absence caused by the injury;
- If the victim had been previously compensated by the assailant.

The Tribunal may reduce the value of the compensation or not allow it in the first place if the victim has participated in the event (has initiated it), or because of his/her character, lifestyle or past sentencing.

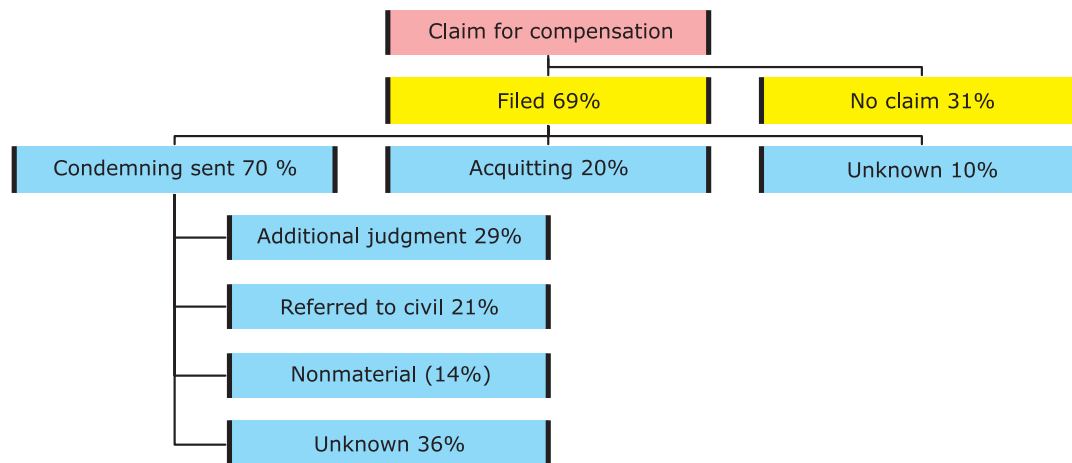
⁹² Ivancho Stojanov, "The injured party as a subsidiary subject in the criminal procedure ", Macedonian review on criminal law and criminology, 1996, p. 51

⁹³ Art. 101 of the CPL

Criminal Justice Responses to organized crime

When the court passes an acquitting sentence, it will advise the injured party to achieve his/her claim for civil compensation in a lawsuit.

According to the available data, out of all cases with regard to the crimes of trafficking in human beings and mediation in prostitution in which a claim for compensation was filed, a condemning sentence was passed in 70% of the cases. In 20% the sentence was an acquitting one, whereas in the rest of the cases: (i) the case is either not finished; or (ii) data are missing due to the delivery of the sentences in writing and not publishing thereof.



Among the finished cases where the defendants were declared guilty, the court decided in 29% of the cases to pass an additional judgment on the ground and the amount of the claim for compensation for non-material damage⁹⁴. Compensation for material costs that most often amounts to 98 023, 00 MKD is more easily (and more frequently) awarded.

In 21% of the cases, the court, in spite of its clear obligation to decide on the claim for civil compensation within the criminal procedure when passing a condemning sentence, referred the injured party to a civil procedure.

The court has awarded compensation for non-material damage in the amounts of 100 000,00 MKD for two injured parties – victims of trafficking in human beings, and 216 666,00 MKD per accused⁹⁵ for one victim⁹⁶.

Enormous number of problem occurs when determining the amount of the compensation for the non-material damage, especially in a situation of lack of practice in the area of trafficking in human beings.

⁹⁴ The claim for civil compensation in the trafficking in human beings cases relates most often to compensation for both material and non-material damage (compensation for suffered physical pain, for suffered psychological pain, for reduced life activity, damage on the reputation, honor, freedom or rights of the person, as well as for fear).

⁹⁵ The number of accused persons in that case is 7

⁹⁶ Until the end of December 2006, neither one compensation has not been carried out.

Namely, the victims, as a result of a continued brutal physical and psychological mistreatment by the human traffickers, are often susceptible to injuries, depressions, insomnia, anxiety and posttraumatic shock. Because of the coercion to have sex with a large number of clients, the likelihood for them to be infected by sexually transmitted diseases is high⁹⁷. It happens that the abortion is inevitable, which certainly impacts the condition of their reproductive organs. The poor hygiene and nutrition are factors that have an impact on the overall health status of the victim. carrying out

When determining the amount of the compensation for the physical pain⁹⁸, which is a purely subjective phenomenon, the quality, locality and intensity of the pain need to be taken into consideration. The intensity depends on the individual tolerance of pain, which on the other hand is a variable category associated with not only the source of pain, but with the different conditions in case of same source. The perception of pain is associated with the psychological situation of the injured, which leads to the conclusion that the psychological reaction to pain is very individual, different, and thus difficult to measure.⁹⁹

When giving an expert opinion on a suffered psychological pain in case of rape¹⁰⁰, which is usually an integral part of the life of trafficking in human beings victims, account should be taken of the different reactions in the sphere of the person's psychological life. In other words, there is a need to assess the degree of stress experienced in that particular situation, the permanent or short-term psychological experiences and disorders, i.e. to make a link between the neurotic disorder, depression, anxiety, shame, fear (if any) with the act (situation).

Fear¹⁰¹, together with the physical pain, is the most commonly used ground when giving an expert opinion on non-material damage¹⁰². Two types of fear are usually spoken about in the judicial practice: primary and secondary. The primary, which is most often intensive and relatively short lasting, appears in a situation of immediate danger to the personal integrity (fear for one's one survival), whereas the latter is directly linked with the injury itself.

The expert witness testimony should give an answer to the question if there is fear or not, what the nature, duration and intensity of the fear is, and what the consequences are if any, etc.

Great attention has lately been paid to the posttraumatic stress disorder. The traumatic process is directly

⁹⁷ The victims were most often not allowed to go to a doctor or to use condoms.

⁹⁸ According to the data included in the 2004 IOM report (Changing patterns and trends of trafficking in persons in the Balkan region) on the trends in the percentages of victims who reported physical abuse in the transit center in Skopje, it can be concluded that the use of physical force against the victims of trafficking in human beings is constantly increasing. Namely, 31% of the total number of victims were physically mistreated in 2001, 57% in 2002, and 67% in 2003.

⁹⁹ Lj. Novotni, Court psychiatry, p. 30

¹⁰⁰ S. Pejkovska, D. Mirchevska, M. Kujundziska, P. Kirovski, V. Filovska, Rape and non-material damage, Macedonian review on criminal law and criminology, 1998, No. 1 p. 143

¹⁰¹ According to one of the many definitions of fear (Kapor -1961), it is an intensive, short-term, unpleasant and sudden situation of tension, with intellectual content, in the presence of a certain danger (levels of fear: horror, anxiety, fear, stress, nervousness, dread, panic)

¹⁰² B. Cadikovski, P. Kirovski, M. Levenski, Compensation for fear, pain and psychological suffering, Macedonian review on criminal law and criminology, 1998, No. 1. p. 99.

G. Stankovska, B. Cadikovski, P. Kirovski, V. Dukovska, I. Mitkovska, V. Divjak, Forensic-psychiatric importance of the fear, Macedonian review on criminal law and criminology, 1998, No. 1, p. 127

dependent on the present risks or protection factors. One of the possible consequences of PTSD is the incapacity of the victim to remember what had happened to him/her. Any coercion can only lead to new traumatisation of the victim.

The generally accepted view in the psychology that people tend to remember recent events much better than more distant past events does not apply in the cases of the victims of violence. On the contrary, sometimes weeks are necessary before the victim has become capable of remembering what he/she had gone through and relate that experience.

As it can be noticed, the thing that is of vital importance in all cases associated with trafficking in human beings is the time for carrying out the expert witness investigation. All previously described situations are variable, time-dependent categories.

However, a generally accepted viewpoint is that the most appropriate time to order expert witness investigation of the victims of trafficking in human beings is during the investigation phase, while the victims are still in the country (especially taking into account the difficulties in securing their presence once they have left the Republic of Macedonia) and while not too much time has lapsed since the event.¹⁰³

In a case observed before the basic court in Gostivar (Gos 007) related to Article 191 of the Criminal Code, the legal representative of the injured party whose presence was secured at the main hearing asked that the court order a neuropsychiatric expert witness investigation of the injured party in order to set the amount of the compensation for the non-material damage on the same day. Because of impossibility to organize it, expert witness investigation was not carried out. Equitable compensation was requested.

Among the observed cases, expert witness investigation of the condition of the trafficking in human beings victims is very rare.

Notably, neuropsychiatric expert witness investigation of the victim-witness was ordered in only four cases out of a total of 38 cases, which is more than unusual if account is taken of the total number of victims/injured parties in the procedures (75) before the basic courts, as well as of the importance of the investigation with regard to determining the grounds and the amount of the claim for civil compensation¹⁰⁴.

In a case observed in January of 2005 before the basic court in Ohrid (Ohr 001) associated with the criminal offence referred to in Article 191 of the Criminal Code "mediation in prostitution", the order for carrying out a neuropsychiatric expert witness testimony was given on January 12, 2005, with a time limit of two months. The expert person did not comply with the time limit. As a result, the main hearing, which was already postponed for a period of 69 days, was postponed again for additional 55 days.

Notwithstanding that the position of the victim of trafficking in human beings with regard to the right to compensation in the procedure before the court is improving – from a situation of absence of legal assistance and of a status of injured party in the procedure generally speaking, to an increased number of additional judg-

¹⁰³ This was the case also at the roundtable held by the Coalition on the occasion of the implementation of the recommendations included in the report "Combating trafficking in human beings through the practice of the domestic courts".

¹⁰⁴ In one of them, the order was hard to obey because no one in the respective town wanted to give an expert opinion due to alleged threats by the defendants.

ments to decide on the issue of the claim for civil compensation, it still has to be noted that the changes are very slow.

It seems that in the basic courts in Macedonia, in spite of the sufficiently wide opportunities for compensating the trafficking in human beings victims provided by the law, there is still no established and developed practice to provide compensation for the non-material damage inflicted through the perpetration of the crime.

The timely reaction by the court (as well as by the legal representative of the victim in the procedure), and above all the willingness to provide adequate compensation to the victims for all the evil that had gone through, is of vital importance.

For the sake of protection of the claim for compensation in the criminal procedure, one may determine temporary measures for securing the claim for compensation¹⁰⁵ that resulted from the perpetration of the criminal offence.¹⁰⁶

So far, only in one case was property or assets associated with a crime secured, which is more than weird, especially if account is taken that trafficking in human beings is one of the most profitable forms of organized crime and that the criminals are using every possible way to hide the property (for example, by transferring it to persons close to them or similar). Given the fact that there is no state fund for compensating trafficking in human beings victims in Macedonia (as well as any victim of a crime), and that the victim cannot be compensated in any other way but from the property of the perpetrator, the need for pronouncing measures for temporary securing of property is more than obvious.

Compensation of the victim of trafficking in human beings is achieved (should be achieved) by using the legal practice "confiscation of property and/or proceeds of the property" from the perpetrator of the crime and by restituting the proceeds to the injured party, i.e. to the victim in the criminal procedure.

The court will, with the decision establishing the perpetration of a crime, order confiscation of the proceeds of the property obtained with the crime.¹⁰⁷ In this respect, the proceeds of the property may include money, mobile or immobile objects of value, as well as any other ownership, property or assets, material or non-material rights.¹⁰⁸ In case when the confiscation thereof is not possible, the perpetrator will be confiscated other property corresponding to the obtained proceeds of the property.¹⁰⁹

The confiscated things are restituted to the injured party, and if there is no such party, it remains state property.

¹⁰⁵ Temporary securing of property or assets implies, inter alia, temporary freezing, seizure, withholding of funds, bank accounts and financial transaction or proceeds from crime.

¹⁰⁶ ...When the conditions for confiscation of property or proceeds of the property are fulfilled, the court will order ex officio temporary measures for securing... (Art. 489 of the CPL)

¹⁰⁷ Liljana Ingilizova-Ristova, "The United Nations Convention against the Transnational Organized Crime and the punishment of property confiscation", *Judicial review*, 2002, No. 4, p. 47

¹⁰⁸ Art. 98 (Paragraph 1) of the Criminal Code

¹⁰⁹ The same article (Paragraphs 2 and 3) regulates the confiscation of (i) proceeds from third parties to whom it was transferred without an appropriate compensation if they had not known, but could have known or were obliged to know that the proceeds was acquired through a crime, and of (ii) objects that have been declared cultural heritage and natural rarity, as well as objects to which the injured party is personally attached, notwithstanding that the third parties had not known, nor could have known that the proceeds had been acquired through a crime.

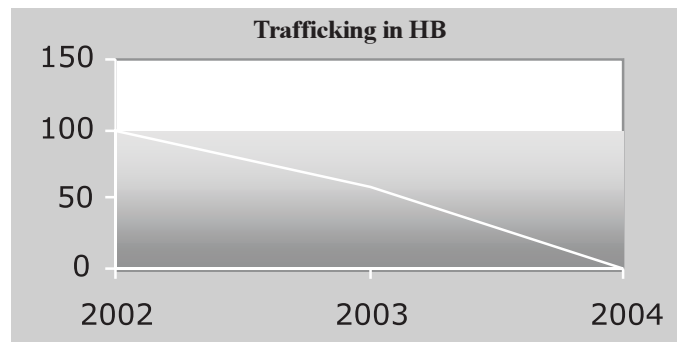
Of a total of 38 cases associated with the criminal offences "mediation in prostitution" and "trafficking in human beings", during the period January 2005 - December 2006, only in one case, upon the passage of a sentence declaring the defendant guilty the court ordered, order confiscation of the proceeds of the property obtained through the crime of "mediation in prostitution".

What deserves attention is the provision of Article 180 of the LCP stipulating that the court may decide to settle the claim for compensation (when damages were awarded by the court) from the money of the guarantee that was used as a measure to secure the presence of the defendant at the hearings.

However, this could have a practical application¹¹⁰ only if the guarantee measure would be used more often for securing the presence of the defendant. In this respect, account is taken of the high percentage of postponement of a hearing due to the absence of the defendant.

III.3 THE TREND IN DETERMINING THE SENTENCE IN THE CASES RELATED TO: TRAFFICKING IN HUMAN BEINGS AND MEDIATION IN PROSTITUTION

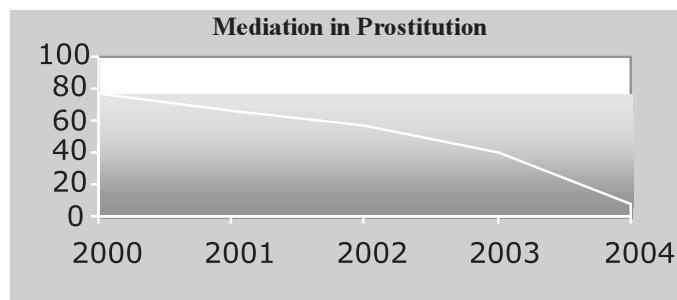
A tendency of a far too soft policy with regard to determining the sentence for the perpetrators of the crimes of trafficking in human beings and mediation in prostitution was protracting until the year 2004. Notably, if one follows the proportion of effective prison sentences of duration below the specific legal minimum for the crime "trafficking in human beings" since 2002, which was the year when this offence became incriminated, it can be seen that this percentage ranged from 100% in 2002 to 0% in 2004¹¹¹. Following the sudden tightening of the punishments in 2004, when the first most rigorous sentences were pronounced for the crime of trafficking in human beings, a mild increase was noticed in 2005.



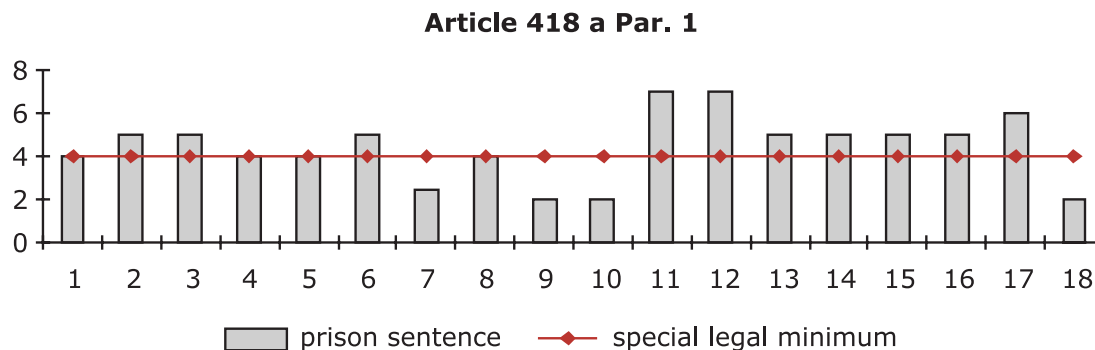
¹¹⁰ So far, this provision was not used in any of the observed situations.

¹¹¹ The data up to 2004 were obtained from the State Statistical Office.

The situation with the cases associated with the crime of “mediation in prostitution” marks a similar trend since the year 2000. Namely, in 2004, as a result of the tightening of the effective prison sentences, the percentage of sentences of a duration below the specific legal minimum dropped to 9%.



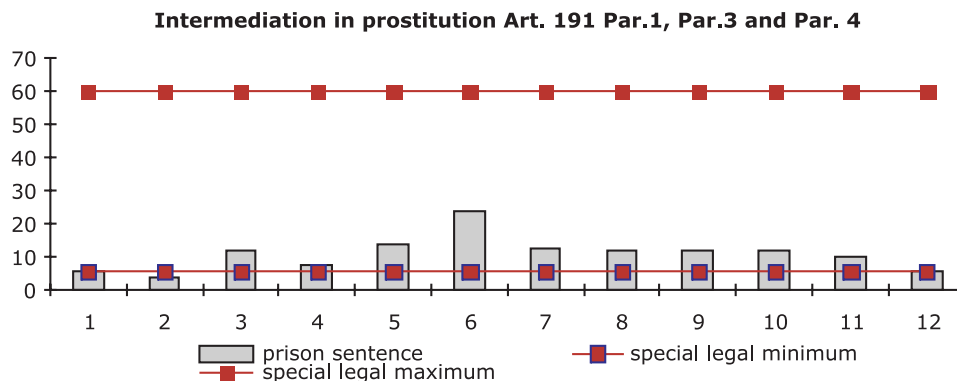
Based upon the data from the observation process from January 2005 until December 2006, among the cases associated with the crime of “trafficking in human beings”, it can be concluded that except for one case where the charge relates to Paragraph 4¹¹² of the Article 418 a, all other cases relate to Paragraph 1 (i.e. Paragraph 2 related to Paragraph 1) of the respective Article. The duration of the prison sentence mainly goes around the line of the specific legal minimum.¹¹³



The situation has been slightly different over the same period in the cases associated with the crime “mediation in prostitution”. Notably, by analyzing Paragraphs 1, 3 and 4 of Article 191 for which prison sentence in duration of six months to five years is prescribed, as well as Paragraph 6 of the same Article that relates to the perpetration of the crime in an organized form and provides for a prison sentence from one to five years, one comes to the conclusion that the sentences range within the legally prescribed frames, but still with a tendency to be closer to the specific legal minimum.

¹¹² Only in one case was a person convicted for using i.e. enabling someone else to use sexual services from a person known to be a victim of trafficking in human beings. This person was sentenced to one-year imprisonment.

¹¹³ The last seven condemned persons in the chart below are in the frame of one case.



According to the general rules on determining the sanction, set forth in Article 39 of the Criminal Code, the court will determine the sentence for the perpetrator within the legally prescribed limits, taking into account his/her criminal liability, the severity of the crime and the objectives of the punishment.

Our legislation obliges the court to take into account all the circumstances when determining the sanction, which have an impact on whether the sentence will be shorter or longer: the level of criminal liability, the motives for committing the crime, the extent to which the protected good has been endangered or damaged, the circumstances under which the crime was committed, the contribution of the victim in the perpetration of the crime, the past of the perpetrator, his/her behavior after the crime, as well as other circumstances related to the personality of the perpetrator (Article 39 Par. 2).

Level of criminal liability

The level of reproach that can be addressed to the perpetrator for the committed crime is reflected through: the degree of guilt i.e. if the crime is premeditated or negligent, the level of sound mind i.e. if it is (significantly) reduced, and the awareness about the unlawfulness. Premeditation is always treated as a more severe form of guilt than negligence.

With the exception of one case, in all other cases associated with the crimes of "trafficking in human beings" and "mediation in prostitution", the defendants were of sound mind and they committed the crime with premeditation.

Notably, in a case observed before the basic court in Tetovo (Tet 008) associated with the crime referred to in Article 418-a of the Criminal Code ("trafficking in human beings"), when the defendant was asked by the judge if he had understood the accusation and if he is fit from a health status point of view to give a statement at the main hearing, the defendant replied that he did not know why he was accused and that he was a sick man who was on treatment at that particular time! The trial was postponed for 25 days with a view to evaluate the ability of the defendant to give a statement. The next hearing in which a neuropsychiatrist was present was postponed for additional 33 days due to the absence of the defendant and of his lawyer. The next time, due to the absence of the neuropsychiatrist, who in spite of being properly summoned failed to appear in court, the hearing was again postponed for 78 days. The process ended after 7 observed hearings in a sentence acquitting the defendant because he was not of sound mind at the time of perpetration of the crime.

The motives for committing the crime

Although one can only make assumptions about the internal driving force of the perpetrators of these crimes, the assumption here is, as with all other crimes in the area of organized crime, that the guiding thought should be profit making. Notably, trafficking in human beings as a "low risk and high profit" activity.

The extent to which the protected good has been endangered or damaged

Trafficking in human beings is one of the most brutal violations of human rights. It is a source of different forms of violence, especially against women and children, who are most of the time¹¹⁴ subjected to exploitation.

In a case observed before the basic court in Tetovo (Tet 004) associated with Article 418-a of the Criminal Code, as a result of the use of force by one of the defendants, the victim needed intervention by a dentist. This same victim, after becoming pregnant, was subjected to abortion in a private practice.

The brutal mistreatment by the human traffickers, which protracts over a long period of time in the majority of cases, leaves permanent physical and psychological consequences and a reduced ability to normally integrate in the society¹¹⁵. The stigmatization accompanying the return of the victims into their families makes the integration process more difficult, and often appears as a factor supporting the process of new recruitment in the chain of trafficking and further exploitation.

Circumstances under which the crime was committed

Not going into a division of the circumstances of the crime into subjective or objective ones, nor into a selection of a narrower or broader meaning of the concept, the text below includes only some of the circumstances that are characteristic of the crimes of "trafficking in human beings" and "mediation in prostitution".

¹¹⁴ In Macedonia, no male victim of trafficking in human beings has been registered in the cases before the court.

¹¹⁵ In the case of "Mediation in Prostitution" that took place before the Basic Court in Shtip, the minor victim witness after testimony and after the names have been disclosed to public, committed a suicide. "Report on Human Rights Situation in Republic of Macedonia"-October 2006, Helsinki Committee.

Notably, if the manner in which the crimes were perpetrated is analyzed, it can be concluded that victims were often subjected to an especially humiliating treatment, to cruel mistreatment i.e. infliction of physical injuries¹¹⁶ in case of disobedience, as well as to rape by the perpetrator(s).

.....he would sell me to other people, he would beat me. He would tell me to go with other people because that was for my own good. He would force me to go with other people. He would beat me. When I had refused to go with other people, he would then beat me. He would beat me with his hand all over the body. He would tear my hear out...

He wouldn't give me to eat. I would buy from the tip bread and salami myself and I lived on that. The store was next to the restaurant. ...¹¹⁷

From the point of view of intensity and duration of the events, they were permanent

criminal offences in most of the cases, with the victims being kept in the catering facilities 24 hours a day 7 days a week for a different period of time, without a chance to leave at all or allowed to leave the place of service provision under control.

....we had no right whatsoever to go out, they would take us by car and bring us back by car, so we couldn't move on our own and communicate.¹¹⁸

The very fact that trafficking in human beings and mediation in prostitution happened at public places for the most part (night bars)¹¹⁹, and that these crimes involve spreading of information about the offered services in order to be able to sell them, speaks sufficiently of the impertinence of the perpetrators while perpetrating the crime.

The past of the perpetrator, his/her conduct after the perpetration of the crime, and other circumstances related to the personality of the perpetrator

As for the behavior of the defendants in the procedure before the court, they usually deny the crime, say they don't know the victim, or that she works only as a waitress in their bar, or, say that she is their girlfriend¹²⁰ or mistress.¹²¹

The share of women in the population of perpetrators of crimes associated with trafficking in human beings in Macedonia is totally absent.

In cases observed before the basic court in Gostivar (Gos 001, Gos 005,¹²²Gos 009), a woman appears in the criminal event in addition to the defendant, who accepts the victims and informs them that large amount of money was given for them and that they should pay this money back, i.e. "work it off". This woman takes the money from the clients and organizes the provision of sexual services in the night bar.

¹¹⁶ ...beating with chairs, breaking beer bottles from the head of the victim, breaking teeth...

¹¹⁷ Statement of a victim – witness in the procedure

¹¹⁸ Fragment from a statement of a victim

¹¹⁹ Especially widespread in the Gostivar and Tetovo areas

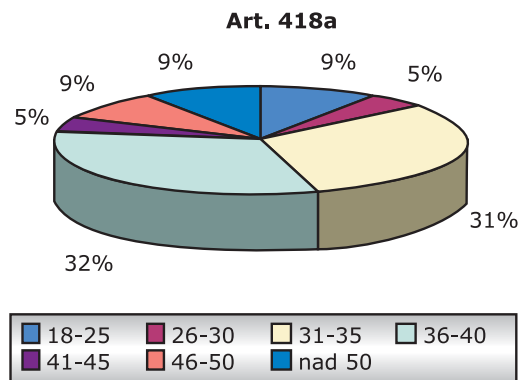
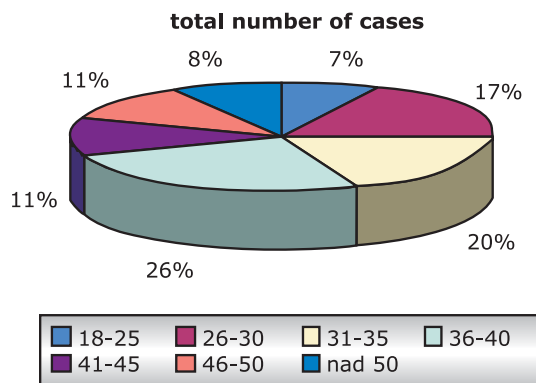
¹²⁰ ...she was in love with me....what she is doing to me now is out of spite....- part of the statement of the defendant

¹²¹ The defendant pleaded guilty only in one case – associated with the crime of migrant smuggling.

¹²² In two cases the girls were with Macedonian national.

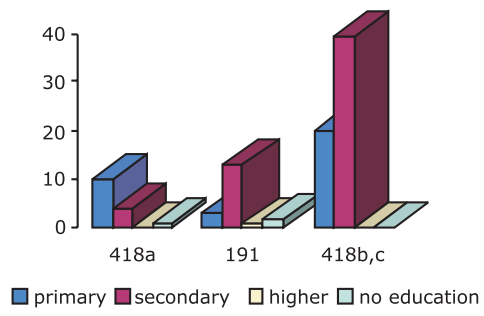
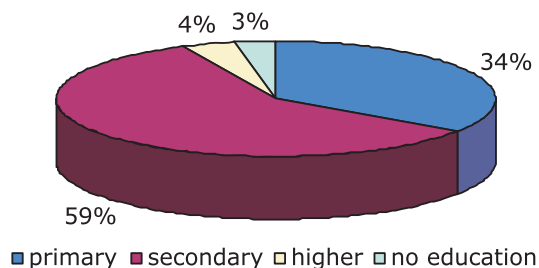
Notably, in none of the cases observed by the Coalition there was a charge brought against a female person (despite the fact that participation of female persons, in terms of assisting the perpetrators of the crime, is mentioned in the statements of the victims-witnesses).

In a case observed before the basic court in Tetovo (Tet 013), which the second instance court returned for reconsideration, it was noted down in the record that it was necessary to find the she-defendant and to conduct the hearing in the presence thereof, because previously she had been tried in absence. Upon the intervention by the public prosecutor, it was established that “the defendant” had in fact the status of a witness in the procedure and that an oversight was made.



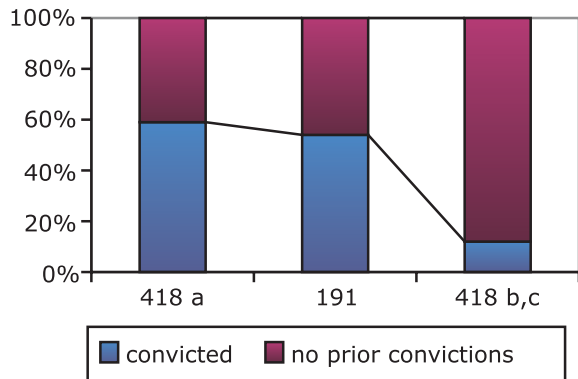
The age group 36 – 40 prevails with highest numbers of defendants (26 %) in all cases observed. This number increases in the cases related to Trafficking in Persons on the account of reducing the age group from 26 to 30.

Those with a secondary school degree prevail among the defendants (59% of the total number of defendants). While the share of defendants without any education and of those with a University degree in the total number of defendants within the observed cases is minor, there is high percentage of defendants with completed primary education. The most represented in the cases associated with the crime of “trafficking in human beings” are defendants with completed primary education, whereas in the cases associated with “mediation in prostitution” – those with a secondary school degree.



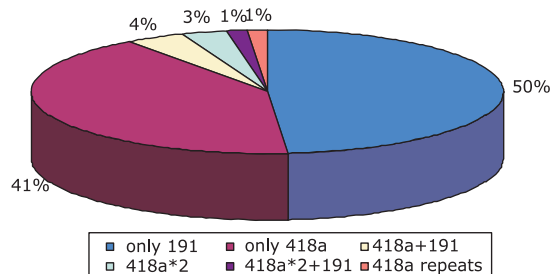
Criminal Justice Responses to organized crime

According to our Criminal Code, **recidivism** is an optional aggravating circumstance, which means that the sentence for the new crime should range within the legally determined minimum and maximum, but with a tendency to approach the legal maximum.

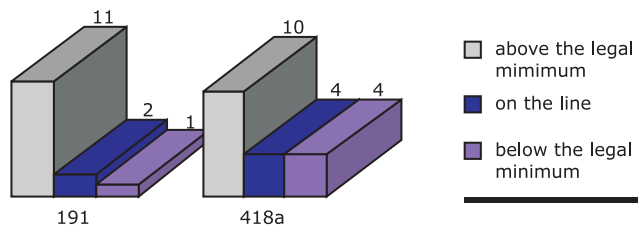


In 31% of the total number of cases, these are defendants that have been convicted in the past (very often for the same or similar offences). If analysis is made of the number of recidivists by the criminal offence they have been charged with, this percentage increases rapidly in the cases related to "trafficking in human beings" and "mediation in prostitution". This number is 57 % for the crimes referred to in Article 418a and 48 % in Article 191 of the Criminal Code.

Within the observed cases (only relating to mediation in prostitution and trafficking in human beings), five persons were charged with two criminal offences within different cases, whereas one person was charged with three criminal offences and one with four.

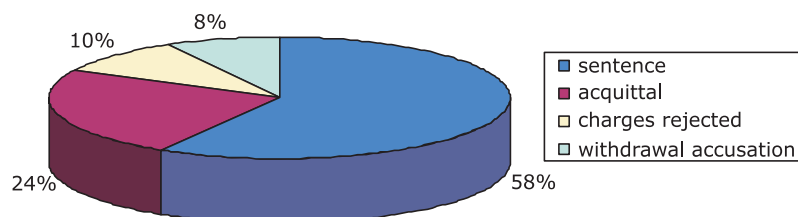


According to the available data, there was an effective prison sentence above the legal minimum in 65% of the cases. In 19% of the cases, the sentence was at the lower limit prescribed by the law for these two criminal offences, whereas in 16% of the cases the legal practice "mitigation of penalty"¹²³ was used.

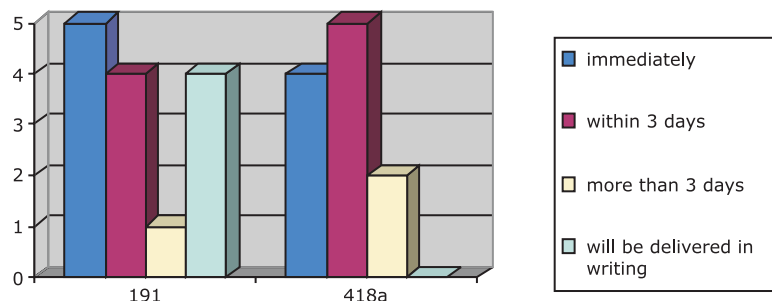


¹²³ In a case observed for the criminal offence referred to in Article 140 Par. 5 of the CC (Unlawful deprivation of liberty), for which a prison sentence from one to five years is prescribed, an effective prison sentence in duration of six months was pronounced. It is not included in the total percentage shown above.

From all decided cases with regard to the criminal offences "trafficking in human beings" and "mediation in prostitution" by December 2006 for which information is available, condemning sentence was passed in 58% of total accused persons.



In spite of the obligation of the court to pronounce and announce the sentence immediately (or if the court is unable to do it on the same day upon the completion of the main hearing, it will postpone the announcement of the sentence for a maximum of three days and will designate the time and the place of announcement of the sentence), in 28%¹²⁴ of the cases related to the criminal offences of "trafficking in human beings" and "mediation in prostitution", the sentence was announced within a time limit longer than 3 days, or the parties were only informed, after the completion of the main hearing, that the sentence would be delivered to them in writing.



CONCLUSIONS AND RECOMMENDATIONS WITH REGARD TO TRAFFICKING IN HUMAN BEINGS

CONCLUSIONS:

- ✎ In the majority of cases, the action in the cases related to the crimes of "trafficking in human beings" and "mediation in prostitution" happened or started in 2002, for the most part in the western part of Macedonia (Tetovo and Gostivar region), in night bars and catering facilities, in

¹²⁴ In almost half of the situation the cases are before the basic court in Gostivar.

a relatively obvious way and with the knowledge of the local population and of the prosecution authorities. The very fact that trafficking in human beings and mediation in prostitution happened at public places for the most part (night bars), and that these crimes involve spreading of information about the offered services in order to be able to sell them, leads us to the conclusion that the knowledge of the public and the law enforcement authorities about them was at a high level.

- ☞ **By compiling the individual stories about the events in the cases related to trafficking in human beings in one general picture, one gets the impression of a fairly solid cooperation between the different night bars during the handover of the victims, no matter if it was about buying and selling or just exchanging one victim with another.**
- ☞ **There were minimum three defendants in 46% of the total number of cases observed before the basic courts in 2005 and 2006 associated with the crime of "trafficking in human beings". In them, the homogeneity of the ethnic affiliation of the persons involved in the event amounts to 100 %.**
- ☞ **Violence against the victims in the observed cases, which appears equally as a premeditated means to adequately intimidate and keep the victims in submission, as well as momentary spontaneous and quick reactions with view of demonstrating force, is often an accompanying element in the perpetration of the crime "trafficking in human beings".**
- ☞ **Certain indicators show that it is realistic to expect that the involvement of law enforcement personnel in the activities of criminal groups with regard to trafficking in human beings, especially in the post conflict period, is at a significantly high level.**
- ☞ **The Criminal Procedure Law provides an adequate framework for securing and protecting the rights of the victim in the procedure, no matter if the latter appear as a witness or as an injured party. However, the inconsistency in the application of the legal provisions (especially of those covered by the amendments to the CPL), which relate to the following: deciding on the claim for damages within the criminal procedure; informing the victim of her rights; and first and foremost providing the victim with a proactive role in the process against the perpetrators of criminal offences associated with trafficking in human beings, results in weakening of the position of the victim in the trial¹²⁵.**
- ☞ **All victims that are witnesses in the procedure are female, for the most part foreign nationals mainly from Moldova and Romania, and they appear almost equally in the cases associated with the criminal offences of "trafficking in human beings" and "mediation in prostitution". In 10% of the total number of cases, the victims are of minors. Domestic victims are more an exception than a rule.**
- ☞ **The victim was questioned in person in 44% of the cases. In the rest of the cases, the statement given in the investigation was read. Reasons for being absent from the main hearing included (i)**

¹²⁵ The conclusion drawn based upon the analysis made in 2005 with regard to the legal framework for protection of the position of the victim in the procedure became confirmed in the analyses made in 2006 as well.

inaccessibility of the victims for the state authorities i.e. the impossibility to find them at the known addresses, or their unwillingness to testify.

- ⌘ **In all cases in which the victim-witness had announced a claim for compensation (82%), she was represented by a legal representative. Moreover, a legal representative of the injured party attended 66% of the total number of hearings within the procedure before the court.**
- ⌘ **In almost 1/3 of the cases in 2005, the witness at the main hearing was not advised on her right not to answer certain questions if that would be likely to expose her or a relative of hers to a severe disgrace, material damage or criminal prosecution, notwithstanding that this obligation is stipulated in Article 223 Par. 2 of the CPL. This percentage has increased in 2006.**
- ⌘ **In no case did a witness in cases related to trafficking in human beings refuse to give personal data (according to Article 223-a of the CPL), which is provided for situations where there is likelihood that the witness could expose herself or a close person to a serious danger to life, health or the physical integrity by giving a statement or an answer to a certain question. Only once was the provision from Article 312 of the CPL used, which provides for a possibility to remove the defendant from the courtroom if the victim-witness refuses to give a statement in his/her presence, or if the circumstances indicate that victim-witness would not be speaking the truth in the presence of the defendant.**
- ⌘ **Questioning a witness through videoconference was done only in one case in the Republic of Macedonia.**
- ⌘ **The special method of questioning the witness in a room different from a courtroom (regulated by Article 270-a of the CPL) has not been used in any observed case so far.**
- ⌘ **In the basic courts in Macedonia, in spite of the sufficiently wide opportunities for compensating the trafficking in human beings victims provided by the law, there is still no established and developed practice to provide compensation for the non-material damage inflicted through the perpetration of the crime¹²⁶.**
- ⌘ **By stipulating a compulsory obligation for the court to decide on the claim for compensation in the criminal procedure by means of the sentence declaring the defendant guilty, either immediately or by passing an additional judgment, the legislator has created conditions for having quicker compensation of the victims of trafficking in human beings. Decision on awarding compensation for non-material damage to a victim of trafficking in human beings or forced prostitution was passed in only three situations in the Republic of Macedonia.**
- ⌘ **The provisions on confiscation of property or of property proceeds from crime, as well as the provisions on the temporary securing of property or assets that are associated with the respective crime, are very rarely applied in the practice of our courts.**

¹²⁶ The situation found in 2005 before our courts remained unchanged in 2006.

- ⊕ Neuropsychiatric expert witness investigation of the victim-witness was ordered in four cases only, which is more than unusual if account is taken of the total number of victims/injured parties in the procedures before the basic courts, as well as of the importance of this investigation for the meting out of the ground and the amount of the claim for civil compensation.
- ⊕ Given the fact that trafficking in human beings victims cannot be compensated otherwise but from the property of the perpetrator given the lack of state funds for compensation in Macedonia, the need for a more frequent use of the provisions of the Criminal Code on confiscation of property or property proceeds from crime, as well as of the provisions on temporary securing of property or assets associated with the respective crime, is more than obvious.
- ⊕ A tendency of a far too soft policy with regard to the judicial meting out of the penalty for the perpetrators of the crimes of trafficking in human beings and mediation in prostitution was protracting until the year 2004, when there was a sudden tightening of the effective prison sentences and when the situation of almost 100% sentencing below the legal minimum was replaced by a situation of pronouncing effective prison sentences within the legally determined limits.
- ⊕ Based upon the data from the observation process from January 2005 until September 2006, among the cases associated with the crime of "trafficking in human beings", it can be concluded that except for one case where the charge relates to Paragraph 4 of the Article 418 a, all other cases relate to Paragraph 1 (i.e. Paragraph 2 related to Paragraph 1) of the respective Article. The sentences range within the legally prescribed frames, but still with a tendency to be closer to the specific legal minimum.
- ⊕ In the observed cases associated with trafficking in human beings, the perpetrators include male persons of sound mind, for the most part recidivists and representatives of the Albanian ethnic community, who committed the crime with premeditation for the purpose of making profit.
- ⊕ In the crimes associated with trafficking in human beings, victims were often subjected to an especially humiliating treatment, to cruel mistreatment i.e. infliction of physical injuries in case of disobedience, as well as to rape by the perpetrator(s). These crimes were permanent criminal offences in most of the cases, with the victims being kept in the catering facilities 24 hours a day 7 days a week for a different period of time, without a chance to leave at all or allowed to leave the place of service provision under control.
- ⊕ Recidivism, which is an optional aggravating circumstance, appears the most in the cases related to "trafficking in human beings" (57% of the total number of defendants).

RECOMMENDATIONS:

- **There is a need to build a mechanism based on a law or by-law that would enable a fast access for all victims (not only foreign nationals) to adequate legal assistance in the procedure against the perpetrators of criminal offences¹²⁷.**
- **The submission of the claim for compensation by the injured party in the earliest stages, i.e. in the investigation, and a timely expert witness investigation of the psychophysical situation of the victim while she is still in the Republic of Macedonia, can have a vital importance for the achievement of adequate compensation of the victim.**
- **A more proactive role of the victim either directly, or through the legal representative, would strengthen the position of the victim in the criminal procedure.**
- **The compliance with the provisions of the Law on Criminal Procedure related to the claim for civil compensation is necessary in order to be able to protect the interest of the victim, i.e. to strengthen his/her position in the procedure before the court.**
- **The use of the provision of the Criminal Procedure Law whereby the court may decide to settle the claim for civil compensation from the money of the guarantee that was used as a measure to secure the presence of the defendant in the procedure, represents another opportunity for ensuring adequate compensation of the victim.**
- **The issue of a timely order for carrying out neuropsychiatric expert witness investigation of the victim has a vital importance for the determination of the amount of the injured party's claim for civil compensation in the procedure.**
- **It is necessary to comply consistently with the provision of Article 223 of the Criminal Procedure Law according to which the witness should be warned that she is not obliged to answer certain questions if there is likelihood that by doing that, she would expose herself or a relative of hers to severe disgrace, material damage or criminal prosecution¹²⁸.**
- **The witness should be informed of his/her right to refuse to provide personal data (name and surname, name of the father, occupation, place where one is staying, age, and relationship with the defendant), if there is likelihood that he/she would expose himself/herself or a close person to a serious threat to his/her life, health or physical integrity by doing that.**
- **If the witness refuses to provide the respective data, and if it is estimated that a danger exists, the provisions for the special method of questioning the witness in the procedure should be applied, and not just the provisions on the inclusion in the Witness Protection Program. The as-**

¹²⁷ The same recommendation is also included in the Coalition's report for 2005.

¹²⁸ This recommendation was part of the 2005 report: "Combating of trafficking in human beings through the practice of the domestic courts"; unfortunately, instead of improving the situation, the proportion of those that were not informed of this right of theirs has increased.

assessment of the level of danger and the method of protection needs to be made according to the specific situation.

- **There is a need for a more concrete legal elaboration of the special method of questioning and participation of the witnesses in the procedure when the circumstances stipulated in Article 270-a exist. This would provide for a quicker and more cost-effective protection of the victims of trafficking in human beings/witnesses in the procedure.**
- **The provision from the Law on Aliens, an alien for whom there are grounds for suspicion that he/she is a victim of trafficking in human beings is enabled a decision-making period of two months within which he/she should state whether he/she would cooperate with the competent state authorities in the detection of the crimes and perpetrators or would return to his/her country of origin, should be substantiated in Article 219 of the Criminal Procedure Law by way of adding to the list of situations specified by name where the witness may, but does not have to testify, the situation where the victim decides whether to appear as a witness in the procedure or not.**
- **Bearing in mind the particular vulnerability of juvenile witnesses in a court procedure against perpetrators of the criminal offence "trafficking in human beings", primarily the physical and psychological consequences resulting from brutal mistreatment committed for the most part over a long period of time, there should be insistence, in order to avoid secondary victimization, that the questioning of the juvenile at the main hearing take place in the presence of a pedagogue or another expert person.**

Remark: The majority of the recommendations with regard to trafficking in human beings, developed on the basis of the cases observed throughout the year 2005, were confirmed in 2006.

The reasons for the repetition of the recommendations lie primarily in the significantly reduced number of new cases associated with the criminal offence "trafficking in human beings" before the courts of first instance in Macedonia in 2006, on the one hand, as well as in the unchanged situation with regard to the implementation of these recommendations, on the other hand. Namely, while the first case is characterized by an unchanged situation of the phenomenon, which cannot lead to new conclusions, the second case is either about not having enough time for implementation of the changes (given that only one year has lapsed since their publication), or about unwillingness for acceptance thereof by the key actors who need to influence the situation towards improvement.

Notwithstanding that the changes with regard to the issue of providing compensation to the victims of trafficking in human beings are moving in a positive direction, the slowness of these changes deserves criticism.

If the cases which one came across in 2005 are compared with those initiated in the second half of 2005 and 2006, it can be noticed that the proportion of victims who filed a property claim during the procedure increased at the expense of those appearing only as witnesses. However, nothing has been changed with regard to the manner in which legal assistance is provided. Namely, the victims were in all cases represented by representatives engaged on the basis of foreign donations, since Macedonia is short of institutionalized method of providing legal assistance to such victims. Even though the number of additional sentences that are awaited in order

to decide on the issue of compensation for non-material damage of the victims has slightly increased, no additional sentence has been passed. The only three decisions on compensation for non-material damage of victims of trafficking in human beings passed in the last two years have not been executed yet.

While the first ordered measure of securing the property of the defendants in the cases associated with trafficking in human beings, with the view to provide for compensation of the victim from that same property, is to be much greeted, the fact that this measure is "lonely" in the practice of our courts is as much disturbing. The almost total absence of pronouncement of the property confiscation measure goes in this direction as well. The previous two legal practices gain additional importance especially in view of the fact that Macedonia still lacks a State Fund for compensation of the victims.

Even though the April 2005 case of witness questioning through a video link in the court of first instance in Tetovo was an innovation that attracted both the professional and the ordinary public, and was expected to pave the road for a more frequent use of this measure, especially in the cases with this kind of sensibility, the fact that a year and a half later this method of questioning has not been repeated is surprising.

In spite of the efforts for greater compliance with Article 223 of the Criminal Procedure Law, according to which the witness should be advised that he/she is not obliged to respond to certain questions if it is probable that by doing that the witness would expose himself/herself or a relative of his/hers to severe disgrace, material damage or criminal prosecution, the year 2006 was marked by a tendency of a mild increase in the proportion of witnesses that were not informed of this right of theirs.

All the above imposes the conclusion that outside the changes requiring a certain period of time in order to be implemented (this would include all the proposals for amending laws and bylaws), what still remains to be done are many activities that can and should be undertaken with view of coping more successfully with the phenomenon of trafficking in human beings. These activities depend primarily on the willingness and the will of certain actors to make use of all possibilities provided by the legislation.

Chapter IV

Smuggling of migrants in correlation with trafficking in human beings in the RM

IV.1 SOME CHARACTERISTICS OF SMUGGLING OF MIGRANTS

Even though trafficking in human beings and smuggling of migrants are two different criminal acts, they are often closely related.¹²⁹ They have the same socio-economic roots, and in practice they often appear parallel. Therefore, it is necessary to make a clear distinction between them¹³⁰.

According to the generally accepted view in the international theory and practice, the main difference is that the smuggled individuals have agreed to be smuggled, whereas the victims of trafficking in human beings have either never agreed or their initial consent was obtained by means of fraud or coercion.

Furthermore, the smuggling most often ends with arrival of the migrant at the place of destination, whereas in the case of trafficking in human beings – the exploitation of the victim begins upon the completion of the journey, and the former is actually the basic reason for undertaking the journey in the first place.

While trafficking in human beings may take place both within one country and by transporting the victim to other countries across borders (legally or not), smuggling of migrants involved illegal crossing of borders. This means that the first case is about brutal violation of the basic human rights, whereas in the second case the offence is aimed against the territorial integrity and the interests of the country that the person is illegally entering.¹³¹

¹²⁹ http://www.unodc.org/unodc/en/trafficking_victim_consent.html#how.

¹³⁰ Migration connected with trafficking in women and prostitution, 25 April 2003, Report, Committee on Equal Opportunities for Women and Men, Rapporteur: Ms Zwerver, Netherlands, SOC

¹³¹ 'Trafficking' and 'Smuggling' of Human Beings in Europe: Protection of Individual Rights or States' Interests? <http://webjcli.ncl.ac.uk/2001/issue5/obok5.html>

Although the impression got at first glance is that there is a clear line of distinction between these two phenomena, the practice is rich in examples where things intertwine. It happens that the migrant has to pay an enormous amount of money to the smuggler for the illegal transfer to the destination country, which has to be paid later because the migrant does not have it at the moment of transfer. Smugglers often take advantage of this situation. The migrant is often forced, due to the unlawful nature of his/her stay in the destination country, to work in conditions that are degrading, even coercive. At the same time, the smuggler acquired absolute "control" over the fate of the migrant during the transfer, which automatically puts the latter in a vulnerable situation (susceptibility to exploitation and violence).¹³² The migrant is often not informed about the way in which the transport will be executed, or about the itinerary (through which countries).

In a case observed before the basic court in Negotino (Neg 001) associated with the crime of smuggling of migrants, one of the three migrants testified as follows.....

....."I'm a University student of administration and international trade in the third year of studies, and I didn't have resources of my own for the studies, so my father was paying for them. Wanting to find a job, I wanted to go to France, to Paris, to my brother. I tried to take out a French visa by myself, but I was refused because of my age. Then I got a visa through an agency. I was told there that I should pay 5000 dollars, in the agency. I was supposed to leave for France by plane, but the travel was being adjourned. Then I was told by the agency that I would travel to Serbia and Prishtina and that I needed no visa for there. I traveled through Argentina-London-Prishtina. I got to know the second defendant on the plane. We were told in Lima that somebody would be waiting for us in Prishtina, but nobody was waiting for us there. So I called my brother in France in order for him to call the agency and see what the problem was. I had a reservation from the agency for the hotel "Grand" in Prishtina. Together with the second defendant we went to Uroshevac, to an address given to us by the agency, and then SS came with another Peruvian female national. Then we took our stuff and went to the house of NN, where we stayed 7-8 days. We were told in the agency in Peru that it was not possible to enter the European Union with Peruvian passports, so when we arrive in Kosovo we would be given Chilean passports, so we all paid additional 1000 EURO, since one could enter with those passports. The passports came by DHL, so we went to Kachanik with NN, to a person with the nickname of KK, who said that he would take us to Macedonia. He took us there through an illegal crossing, not through the border. When we arrived in Skopje, he took all three of us to DD, where we spent one night. Then KK took us to a hotel, where we spent two days. Then DD came who took us from there to hotel "Pelagonia", from where we were supposed to go to Greece. We spent 4-5 days in the hotel. We were told that we should give all our money, cards, mobile phones, all documents, because the Greek police would steal them from us. With a taxi from Tetovo they drove us in front of one restaurant and left us there. We called DD and told him that we were in Tetovo. I called again my brother in France and he sent me money. DD told us that we should pay the taxi driver 120 EURO, which we didn't pay because the Police caught us. Total money I spent from Peru 7-8 thousand dollars".....

¹³² Migration Connected With Trafficking In Women And Prostitution: An Overview <http://www.germanlawjournal.com/>

Sometimes, the conditions under which the smuggling takes place are inhumane, dangerous and might have severe implications on the health of the migrant, sometimes even causing death. This is how the migrant becomes a victim.¹³³

In a case observed before the basic court in Skopje (Sko 003) associated with the crime referred to in Article 418 c and 418 b of the Criminal Code, in which 28 persons were charged, migrants from the Republic of Albania had been transferred across the Macedonian-Greek border on multiple occasions, over a longer period of time, in groups of 8, 12 and even 16 people. The transfer was done for a fee of 1000 to 1500 EURO per migrant. The migrants had been placed in special bunkers above the chassis in cargo vehicles/trailers covered by planks and tarpaulin, and transported hundreds of kilometers in inhumane conditions. There were juvenile children and a pregnant woman among the migrants.

The Republic of Macedonia has regulated the issue of smuggling of migrants in Article 418 -b of the Criminal Code.

Notably, Paragraph 1 of this Article penalizes the one who uses force or serious threat that he/she assault the life or body, abduction, fraud, out of cupidity, by abusing one's own official position or by taking advantage of other person's powerlessness, to transfer migrants across the state border illegally, as well as the one making, procuring or possessing a fraudulent travel document for such a purpose.

What one cannot help noticing is the similarity with Article 418 a of the Criminal Code with regard to the method of perpetration of the criminal offence (in both offences there is use of force, serious threat, abduction, fraud, taking advantage of other person's powerlessness, and abuse of one's own position).

At the same time, the action referred to in Article 418 b Par.1 of the Criminal Code, which consists of illegal transfer of migrants across the state border, is one of the actions covered by Article 418 a Par.1 (slightly narrower aspect given that "migrants" can be sub-summarized under "persons").

The basic difference between these two crimes includes the premeditation of the perpetrator. While the intention of the perpetrator in the case of migrant trafficking includes only the illegal transfer through the state border and this is the end of his/her premeditation, with trafficking in human beings the perpetrator carried out the transfer with the intend of exploiting the trafficked person, establishing a slavery relationship, forced servitude etc.

Out of a total of 16 observed cases associated with the crime of "smuggling of migrants", only in two of them the persons were charged with the crime referred to in Article 418 b Paragraph 1.

In a case observed before the basic court in Bitola (Bit 006) associated with the crime of smuggling of migrants, the defendant agreed, out of cupidity¹³⁴ and for a compensations of 300 EURO, to organize the transfer of three migrants, two from Bangladesh and one from Turkey, through the Macedonian-Greek border in the village of Lazec near Bitola. The Border Police interrupted their intention.

¹³³ <http://www.interpol.int/Public/THB/PeopleSmuggling/Default.asp>.

¹³⁴ The basic court sentenced this person to 2,5 years in prison, even though this crime carries a prison sentence of at least 4 years.

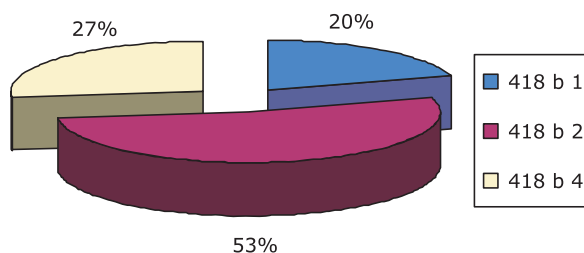
Paragraph 2 of Article 418 b of the Criminal Code, which penalizes the one who recruits, drives, transfers, buys, sells, hides or accepts migrants, stipulates a sentence that is milder than the one referred to in Paragraph 1 of the same Article (Paragraph 1 provides for a sentence of at least four years, whereas Paragraph 2 provides for a sentence of 1 to 5 years).

This situation most probably wants to emphasize the distinction between the perpetration of the offence by means of coercion, fraud, by taking advantage of other person's powerlessness etc. on the one hand, and the perpetration of the offence without any of those elements being present when it comes to transfer of the migrant.

What makes confusion are the verbs "buy" and "sell" migrants. In order for a person to be bought or sold, there needs to be some relationship of control over that person, no matter if this control is achieved by the use of coercion measures, fraud etc. This buying and selling is, of course, done for a specific purpose. If the purpose coincides with any of those purposes stipulated in Article 418 a Par. 1, that specific case is about trafficking in human beings. Even if this is not the case, the very establishment of "ownership" right over the person and the exercise of that right by way of buying and selling him/her are linked with the classical offence referred to in Article 418 of the Criminal Code "Establishing a slavery relationship and transportation of people while in slavery".

One interesting conclusion imposes itself. If someone transfers, let's say out of cupidity, a migrant across the border, that someone will be sentenced to a minimum of four years in prison, but if someone buys himself or sells a person, there is a possibility for him to be sentenced to only one year in prison. This does not fit into the criminal policy orientation of, *inter alia*, our country, whose priority is the protection of the individual freedoms and rights rather than the interest of the State.

In the majority of cases associated with the crime of "smuggling of migrants", the charge relates to Paragraph 2 of Article 418 b of the Criminal Code. In other words, 53 % of the total number of defendants was charged with the crime referred to in Paragraph 2.



If we start from the fact that the intention of the legislator regarding the introduction of the criminal offence "smuggling of migrants" was to harmonize the national legislation with the provisions of the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (CTOC), which states, *inter alia*, that: "smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident, one gets the feeling that things intertwine a little.

The Protocol¹³⁵ states, inter alia, that each State Party is obliged to adopt such legislative and other measures as may be necessary to establish as criminal offences the act of smuggling of migrants, as well as the acts committed for the purpose of enabling the smuggling of migrants, such as: "producing a fraudulent travel or identity document", and "procuring, providing or possessing such a document". In addition, each State Party is obliged to establish as aggravating circumstances those that endanger, or are likely to endanger, the lives or safety of the migrants concerned, and those that entail inhuman or degrading treatment of such migrants.

The Criminal Code provides for a more severe sentence in paragraphs 3 and 4 of Article 418 b if the migrant's life or health are endangered; if he/she is treated in a particularly inhuman or degrading treatment; if he/she is prevented to use the rights that belong to him/her according to the international law; and if the perpetrated crime involved a juvenile person.

In 17 situations was the crime referred to in Article 418 b committed against juvenile persons, described by Paragraph 4 in relation to Paragraph 1 and 2. Among the observed cases, the practice of our courts so far knew of no charge associated with Paragraph 3 of the respective Article.

Let us summarize: Article 418 b of the Criminal Code sub summarizes in itself the minimum provisions that every country that has signed the Protocol against the Smuggling of Migrants by Land, Air and Sea has to embed in its legislation.

Of importance for the abovementioned issues is Article 402 of the Criminal Code "illegal crossing of the state border".

Paragraph 2 of the respective Article specifies a penalty for a person engaged in illegal transfer of other persons across the border of the Republic of Macedonia.

The difference between this provision and the provision included in Paragraph 2 of Article 418 b when it comes to the transfer across state borders, besides the fact that in the first case this is done in the form of an occupation (which does not have to be in the second case), is also the fact that the transferred person referred to in Article 402 has an additional trait in Article 418-b (migrant).

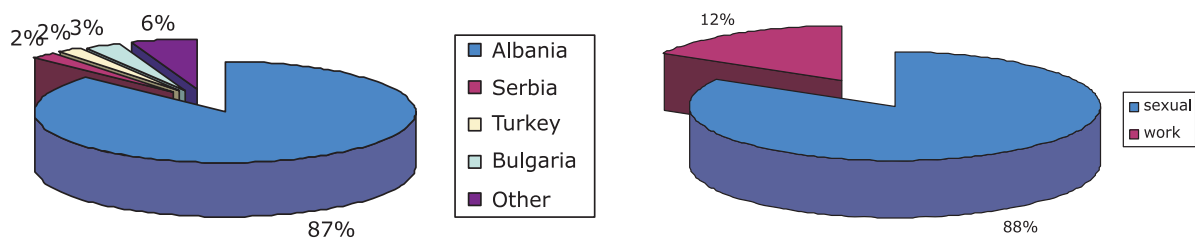
In a situation of multiple transfer of migrants across the border (in the form of an occupation), it is exactly this trait that puts the two legal beings in a specialty relationship thus activating the rules for a seeming concurrence of offence, stipulated in the criminal law theory. The person will be responsible according to the provision included in Article 418 b of the Criminal Code.

Smuggling of migrants in the Republic of Macedonia is increasing, which automatically brings an increase in the number of cases before the basic courts. In the majority of cases (87%), the migrants are Albanian nationals, although this does not exclude the possibility of having other country nationals in the criminal event, like for example from Peru or Bangladesh.¹³⁶

¹³⁵ Article 6 of the Protocol.

¹³⁶ During the first quarter of 2006, the MoI registered a total of 716 illegal crossings, which is an increase of 145% compared with the same period of last year. Most of the illegal crossings were done by Albanian nationals. Seven cases of migrant smuggling against 12 perpetrators have been reported. In these cases, transport was organized for 36 Albanian, 4 Indian, 1 Moldavian and 1 Serbian nationals.

Criminal Justice Responses to organized crime



Around 88% of the cases are about transfer of people who are willing to leave their country under any kind of conditions in their search for work and better living standard. All were detected in their attempt (i.e. on the way) to cross the Macedonian-Greek border.

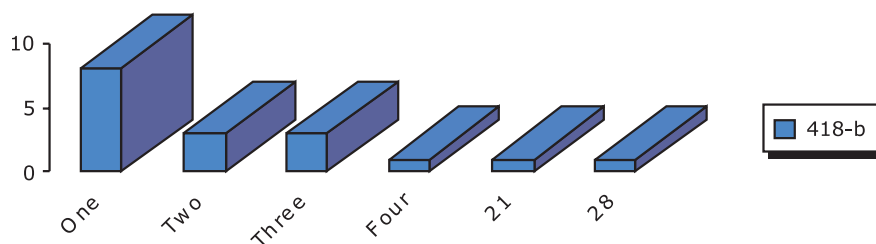
The average time that has lapsed since the moment of detection of the event until the bringing of the charge is around two months, which is indicative of the reaction of the prosecution authorities with regard to the detection of these crimes.

The remaining 12% of the cases were about migrants that were caught in provision of sexual or dancing services during the police raids on catering facilities in the Tetovo region.

The fee that migrants pay to the perpetrators of the crime for the transfer across the border varies drastically. Namely, it ranges from 400, 900 up to 6000¹³⁷ denars just for taxi services, 300 to 1500 EURO for organizing the overall transport and accommodation, all the way to 5000 EURO in those exceptional situations including the services for making a fraudulent passport.

Extend to which the criminal groups are organized

65 % of the cases associated with the crime of smuggling of migrants are cases with one (47 %) or two (18 %) defendants.



Albeit rarely, there are crimes of smuggling of migrants where *individual* taxi drivers provide transport to foreign nationals – migrants to the Macedonian – Greek border for a small fee (about 15-20 EURO). However,

¹³⁷ Around 7, 15 up to 100 EUR.

the majority of the cases are characterized by good connection and coordination of several people in the criminal event.

The picture about the number of people involved in the event obtained through the observation of the stories in the cases does not correspond to the number of defendants before the court. Very often an NN person from whom the migrants were taken is mentioned, as well as communication with an unknown person (for the court) about taking the migrants over on the other side of the border, use of a vehicle of a person not appearing in the group of people charged with the crime etc.

In a case observed before the basic court in Tetovo (Tet 012) associated with the crime of smuggling of migrants, involving only one defendant, there were three raids on the night bar upon order of an investigative judge: the first raid took place in June 2004, when three girls from among the injured parties in the case were found in addition to ten other girls; during the second raid (September 2004) all five girls (injured parties in the case) were found, and during the last raid (December 2004) two girls were found. Upon all the raids the girls were deported back to Bulgaria, but every time, according to the statements of the girls, they would come back in the same way and organized by the same people (people from the Police have also been mentioned). The defendant was acquitted by means of an appealable sentence.

All these phenomena can be taken as indicators that often more people were involved in the event than those identified by the prosecution authorities.

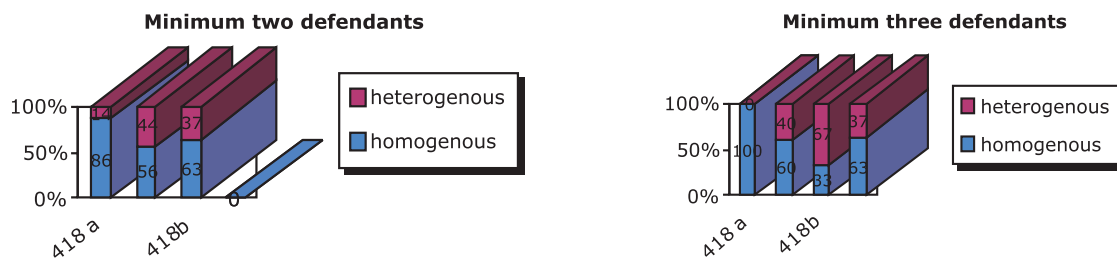
Most often (41%), perpetrators include individuals working as taxi drivers. Using services of taxi companies is also mentioned in the stories¹³⁸.

Concerning the homogeneity of the group perpetrating these crimes, it can be concluded that it is at a much lower level compared with the crime of "trafficking in human beings". However, it should not be underestimated that in 63% of the cases (with minimum two defendants) i.e. 33% (with minimum three defendants), the groups consisted of people of the same ethnic background.

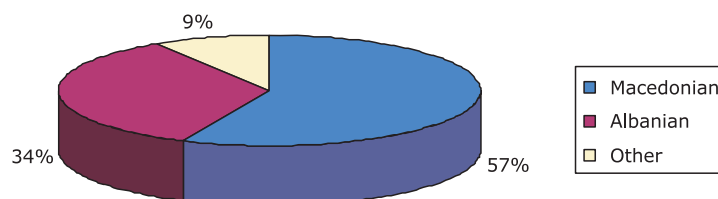
Smuggling of migrants	Ethnic homogeneity (%)	Ethnic homogeneity (%)
minimum two defendants	63	37
minimum three defendants	33	67
All crimes in the area of OC	Ethnic homogeneity (%)	Ethnic homogeneity (%)
minimum two defendants	65	35
minimum three defendants	63	37

Notwithstanding the clear and widespread stance that in order for one to be able to talk about a group it has to have minimum three members, analysis was made of the cases with only two defendants as well. This was done because of the assumption that even when two persons are charged as participants in the criminal event, in most of the cases there are more people participating in it. In the cases associated with the crime of "smuggling of migrants", the bigger the number of defendants in a case, the smaller the percentage of homogeneity of the group.

¹³⁸ In Macedonia, there has been no charge yet against a legal entity as a perpetrator of these crimes.



While the share of the representatives of the Albanian ethnic community is almost identical with the share of the ethnic Macedonians, the share of the representatives of the other communities is almost insignificant.



Criminal liability of migrants

The Protocol against the Smuggling of Migrants by Land, Air and Sea precludes in its Article 5 the criminal prosecution of migrants that have been the object of smuggling and of the acts committed with a view to enable the smuggling, such as: producing a fraudulent travel or identity document, and procuring and possessing such a document.

A problem that came up in the practice was the question if the migrant should be criminally liable in a situation when he/she uses as a valid one the fraudulent or the modified travel document, which means fulfillment of the legal being of the crime "falsifying a document" as referred to in Article 378 of the Criminal Code, or the provision of Article 5 of the Protocol (which represents a part of the Macedonia's national legislation as well) may be interpreted in a way that excludes the prosecution of the migrant.

According to the interpretation of Article 6 of the Protocol against smuggling of migrants done by the Committee¹³⁹ on the Elaboration of the UN Convention against Transnational Organized Crime, the acts of production, procurement, provision or possession of a fraudulent document will be established as criminal offences as required by the respective Article when they are committed with view of smuggling migrants by the person involved in the smuggling. In this respect, the migrant possessing a fraudulent document for the purpose of crossing the state border illegally will not be subjected to criminal prosecution.

¹³⁹ Report of the Ad Hoc Committee on the Elaboration of the UN Convention against Transnational Organized Crime on the work of its first to eleventh session, General Assembly, United Nation, 3rd of November.

In two of the observed cases associated with the crime of "smuggling of migrants, the migrants involved in the criminal event were charged i.e. convicted for the crime "Falsifying a document", in addition to the other persons charged and convicted for the crime referred to in Article 418 b of the Criminal Code.

In a case observed before the basic court in Negotino (Neg 001) associated with the crime referred to in Article 418 b of the Criminal Code, three migrants who had their passports taken and replaced with fraudulent ones by the smugglers under the explanation that they would not be able to enter the EU with those passports, were pronounced by the basic court the measure of "expulsion of an alien from the country for 10 years" and the suspended sentence of one year in prison for a period of two years for the crime "falsifying a document".

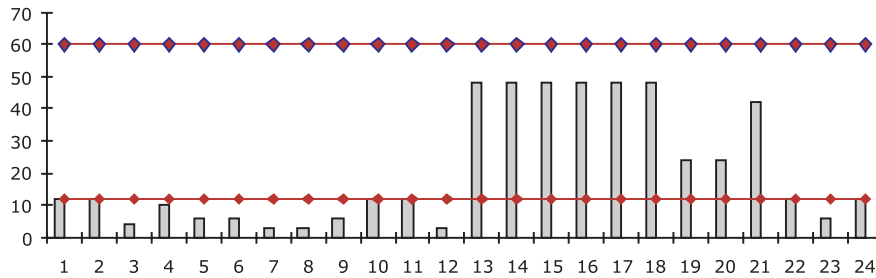
In a case observed before the basic court in Bitola (Bit 001), three migrants were convicted in addition to the three perpetrators convicted for smuggling of migrants. These three migrants were Turkish nationals who were caught with false passports on them during the attempt to cross the Macedonian-Greek border. Notably, they paid 4500 EURO in Istanbul for a transfer to Germany. However, instead of Germany, they were taken to Prishtina, and from there to Bitola via Skopje. In Bitola, their original passports were replaced with new, false ones. The basic court gave the migrants a suspended sentence of 3 months in prison for a period of one year.

Here comes the conclusion that the previously mentioned decisions contradict the provisions of the Convention against the Transnational Organized Crime, i.e. the provisions included in the additional Protocol against Smuggling of migrants.

IV.2 DETERMINING THE SENTENCE IN THE CASES RELATED TO SMUGGLING OF MIGRANTS

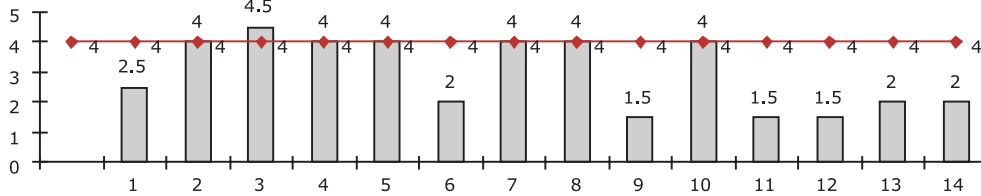
The situation in regard with the penalization of the crime of "smuggling of migrants" confirms the fact that there is a discrepancy between the judicial practice and the criminal law policy of the Republic of Macedonia, reflected in the penalty provisions of the Criminal Code. In almost half of the sentences pronounced in the period between January 2005 and December 2006, the length of the sentence was below the specific legal minimum. The sentences mainly refer to Paragraph 2 of Article 418 b, which provides for a prison sentence of one to five years. In less cases, the sentences passed were for crimes referred to Paragraph 1 of Article 418 b (minimum four years) and to Paragraph 4 of the respective Article, which relates to the penalization of the smuggling of juvenile persons that carries a prison sentence of minimum 8 years. Namely out of 24 convicted for the Paragraph 2 of Article 418 b, only 9 of them have been condemned to sentence above the specific legal minimum. It's interesting to note that all of them have appeared within only one case (JUG2). In all other cases, the sentences have been below legal minimum.

Art. 418 b Par. 2

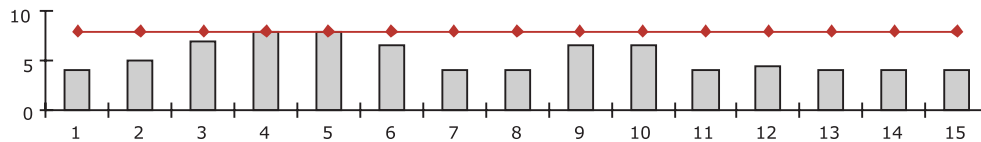


Situation is similar also with regard to the Paragraph 1 and Paragraph 4 of Article 418 b

Art. 418 b Par. 1

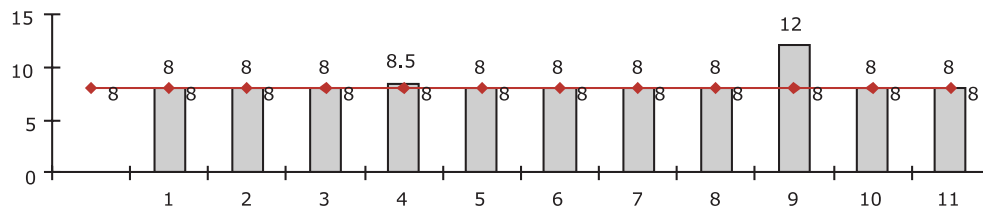


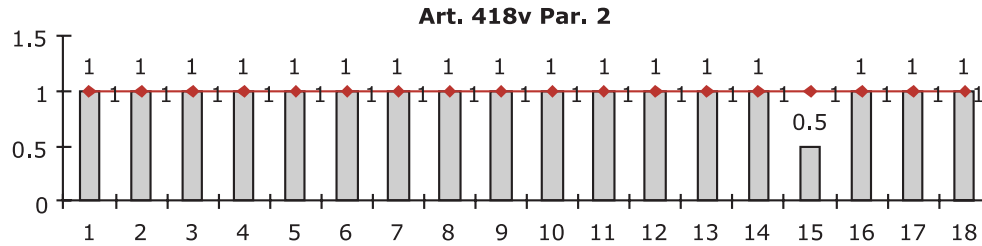
Art. 418 b Par. 4



Out of a total of 16 cases related to the crime “smuggling of migrants”, in two of them (JUG 1 and JUG 2), a number of persons were convicted of organizing a group and inciting to the perpetration of the crime “smuggling of migrants”. Twenty-nine persons were sentenced to prison at the lower legal limit. Only one person was punished above the legal minimum, and another one was punished with a prison sentence below the special legal minimum.

Art. 418v Par. 1





The need for a clear distinction between alleviating and especially alleviating circumstances under which the crime was committed

The law does not specify explicitly the circumstances the acceptance of which can lead to the pronouncement of a milder penalty, i.e. it does not determine any **especially** alleviating circumstances that can lead to the pronouncement of a sentence below the specific legal minimum. However, even though the court must, when determining the sentence, start from the position that these circumstances are of exceptional nature, it seems that a different tendency is prevailing in our practice.

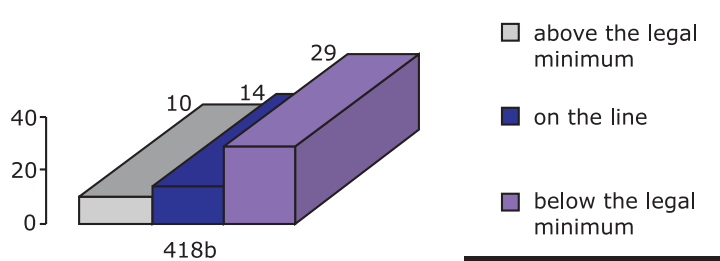
The establishment of distinction between the especially alleviating circumstances and the ordinary alleviating circumstances is necessary in order to establish a difference between the milder penalties within the legal boundaries of any specific criminal offence on the one hand, and the penalty under the legal minimum for that specific crime. Data from the practice lead us to the conclusion that sometimes exactly the same circumstances are considered alleviating circumstances in one case, and especially alleviating circumstances in another case. It has also happened that the same circumstances are treated both as alleviating and especially alleviating circumstances in the same criminal situation, even though the distinction between these two phenomena is factually a distinction between the penalty within the legal boundaries and the penalty outside them.

Circumstances that are most often treated as alleviating include the family situation and the status of having no prior convictions. In less number of cases these circumstances include the material situation, the personal circumstances as well as the age of the perpetrator, and one can find in exceptional cases that an alleviating circumstance was the recognition i.e. the fact that the defendant was chosen, and not an initiator to commit the crime.

The most common circumstance that is assessed as especially alleviating is the material situation, then the family situation and the young age, and in exceptional situations – the health status and the correct attitude towards the court.

As it can be noticed, one circumstance has been treated in different sentences both as alleviating and as especially alleviating circumstance. Notwithstanding that the evaluation of the circumstances should be made on a case by case basis and that the determination of the value thereof is a very complex exercise, it seems that there is a need for establishing some kind of uniformity of the judicial practice i.e. of the value criteria against which the circumstances in the criminal event are evaluated. At the same time, there is a need to define the meaning of the term “especially alleviating circumstances”, and to take a clear position as to what can be classified in that category and what those circumstances that could lead to mitigation of the penalty are.

What should make us concerned is the fact that in 14 out of a total of 16 cases related to the crime “smuggling of migrants”, no convicted person was sentenced to an effective prison sentence above the special legal minimum. Notwithstanding that the two big cases of smuggling of migrants (where 47 persons were convicted in a procedure before a court of first instance) are changing the overall statistics with regard to the severity of the prison sentences for this crime (thereby not reflecting the real situation) due to the more severe sentences for the perpetrators found guilty in these two cases, one should not underestimate the datum that 55% of the total number of convicted persons in the last two years were pronounced a prison sentence which is below the special legal minimum.



CONCLUSIONS AND RECOMMENDATIONS WITH REGARD TO SMUGGLING OF MIGRANTS

CONCLUSIONS:

- ⊕ **Rapid increase in the number of cases associated with the crime of “smuggling of migrants” has been noticed before the basic courts in Macedonia. Around 88% of the cases are about transfer of people (all of them were detected in their attempt to cross the Macedonian-Greek border) who are willing to leave their country under any kind of conditions in their search for work and better living standard. In the majority of cases (87%), the migrants are Albanian nationals, although this does not exclude the possibility of having other country nationals in the criminal event, like for example from Peru or Bangladesh.**
- ⊕ **The fee that migrants pay to the perpetrators of the crime for the transfer across the border varies drastically. It ranges from 400, 900 up to 6000 denars just for taxi services, 300 to 1500 EURO for organizing the overall transport and accommodation, all the way to 5000 EURO in those exceptional stories including the services for making a fraudulent passport.**

- ⌘ In 65% of the cases associated with the crime of “smuggling of migrants” there is either one (47%) or two (18%) defendants, which points to the conclusion that either (i) there is no group of minimum three persons as required by the definition of organized crime, or (ii) the prosecution authorities are not successful enough in identifying all the people involved in the criminal event. As regards the homogeneity of the group committing these acts, it can be concluded that in 40% of the cases, these are groups in which the involved persons are from the same ethnic background.
- ⌘ In two of the observed cases associated with the crime of “smuggling of migrants”, the migrants involved in the criminal event were charged i.e. convicted for the crime “Falsifying a document”, in addition to the other persons charged and convicted for the crime referred to in Article 418 b of the Criminal Code, in spite of the stance from the Protocol of the CTOC that the migrant possessing a false document for the purpose of crossing the state border illegally will not be subjected to criminal prosecution.
- ⌘ There is a discrepancy between the softness of the courts when meting out the penalties in the cases associated with the crime of “smuggling of migrants” on the one hand, and the concept of the criminal law policy of the Republic of Macedonia reflected in the provisions of the Criminal Code on the magnitude of the sentences for criminal offences in the area of trafficking in human beings. Notably, the effective prison sentence for the respective crime ranges below the specific legal minimum in 55% of the cases.

RECOMMENDATIONS:

- It is necessary to harmonize the practice of our basic courts with the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime with regard to the exclusion of the criminal prosecution of migrants that were subject of smuggling for acts committed with view of enabling the smuggling, such as: producing a fraudulent document and procuring and possessing such a document.
- The broad authorizations that courts have with regard to the determining the sentence, especially those involving the use of the practice of “penalty mitigation”, must not assault the basic model of legal meting out of the penalty, nor must they contradict the criminal law policy of Macedonia reflected through the provisions on the magnitude of the penalty, concretely for the offences associated with trafficking in human beings¹⁴⁰.
- The discretionary right of the judges when determining the sentence should range within the boundaries of the specific legal minimum and maximum.

¹⁴⁰ The tendency of far too mild sentencing of the perpetrators of the crime of “migrant smuggling” has protracted in 2006 as well as in 2005. The recommendations of the report about the situation in 2005 automatically apply for the following year as well.

- **The practice of “penalty mitigation” should be applied in extremely exceptional cases.**
- **It is desired that the higher instance courts develop general standpoints or guidelines to guide the determination of the penalty by the lower instance courts for the crimes associated with “trafficking in human beings”. These guidelines should clarify the distinction between the especially alleviating and the ordinary alleviating circumstances, the acceptance of which plays a role in the determination of the duration of the sentence for the perpetrator that has been found guilty.¹⁴¹**
- **Same circumstances must not be treated both as alleviating and especially alleviating in the same criminal situation, since the distinction between these two phenomena is actually a distinction between punishment within the legal boundaries and punishment outside of them.**

¹⁴¹ These recommendations were part of the report “Combating trafficking in human beings through the practice of the domestic courts”, relating to the following three criminal offences: trafficking in human beings, mediation in prostitution and smuggling of migrants. While tightening of the penalties has been noticed in the last couple of years with the first two crimes, the situation with the third crime of “smuggling of migrants” is such that the courts have persisted in using the practice of “penalty mitigation” in almost all cases that ended in a sentence (exceptions are the two big cases observed before the Basic Court in Skopje) .

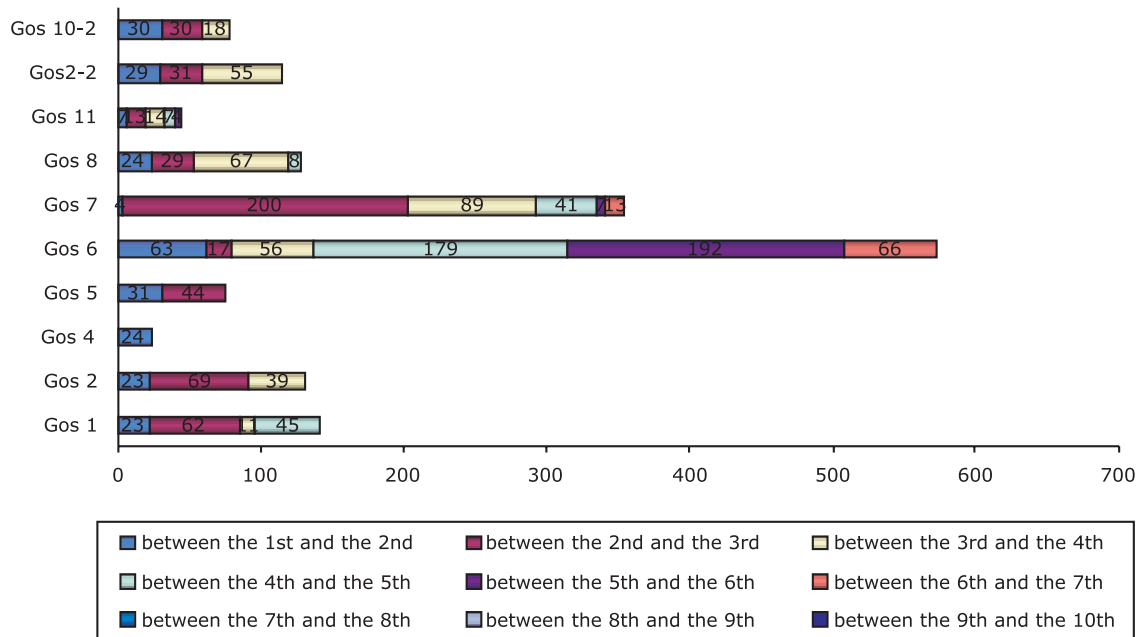
Chapter V

Duration of the procedure

V1. POSTPONEMENT OF THE MAIN HEARING (REVIEW BY COURT AND BY CRIME)

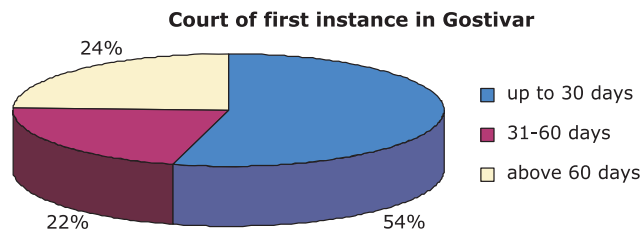
The analysis of the hearing postponement periods should indicate the speed of the trials as well as the frequency of postponements within the trials.

Hearing delay period in the first instance court in Gostivar

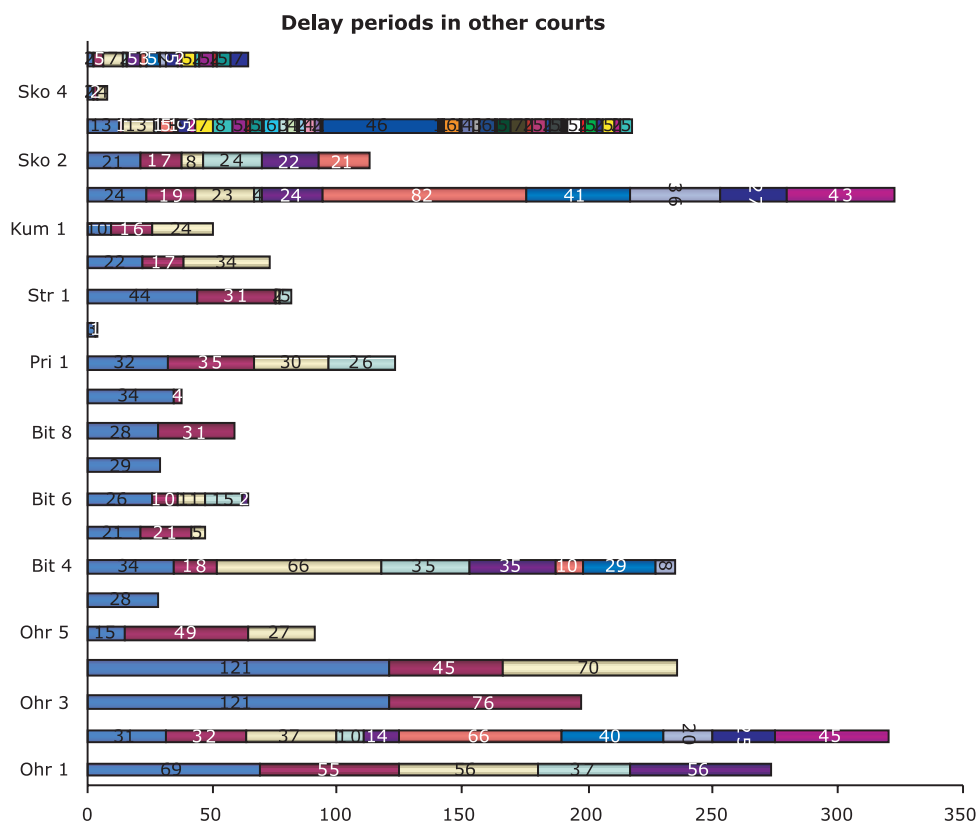


Criminal Justice Responses to organized crime

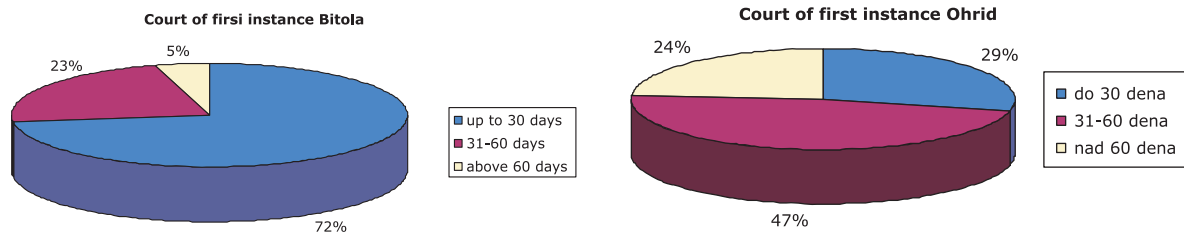
In the cases observed before the basic court in Gostivar from January 2005 until September 2006, the postponement of the hearings was for a period of up to 30 days in half of the cases.



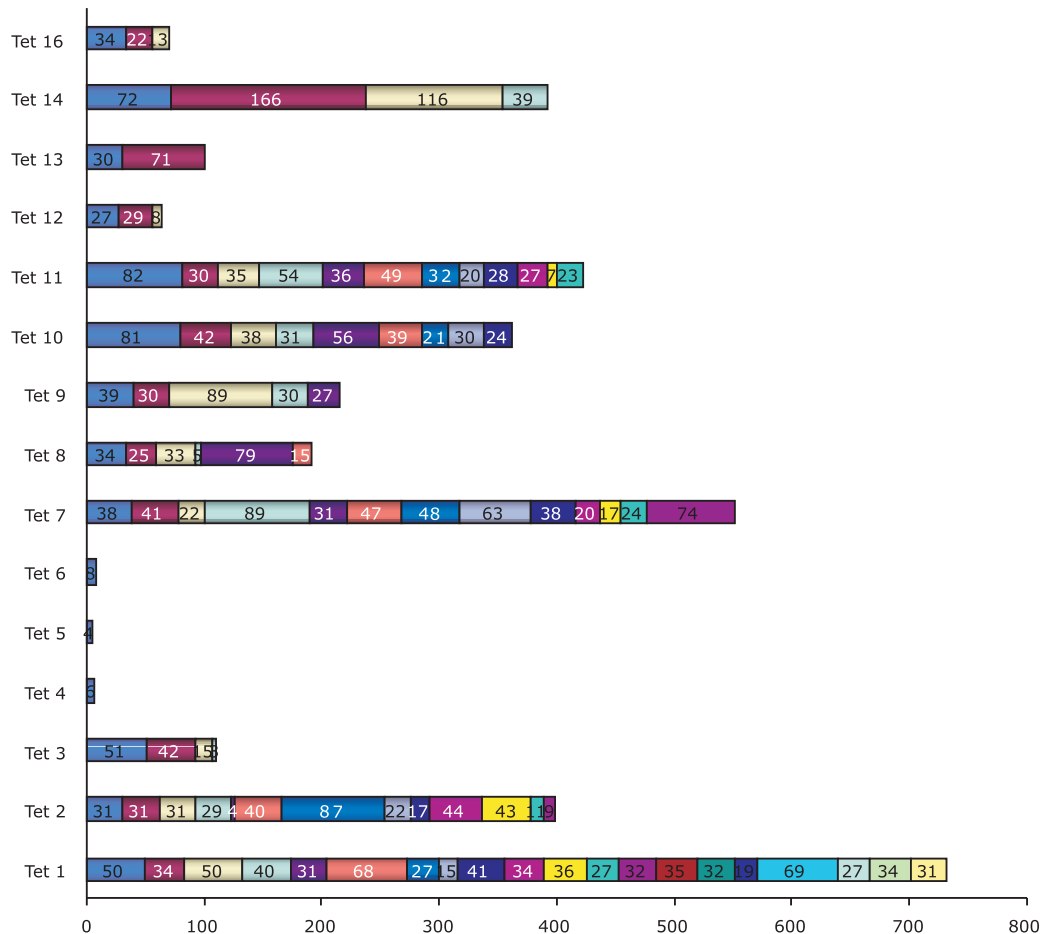
The situation is drastically different in the cases observed before the basic courts in Bitola and Ohrid.



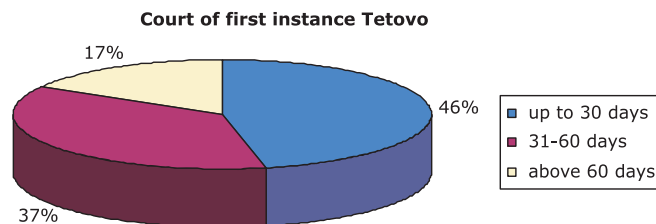
The proportion of cases before the basic court in Bitola adjourned for a period of up to 30 days is higher and amounts to 72% of the total number of observed cases. In the basic court in Ohrid, this number is almost three times smaller (29%).



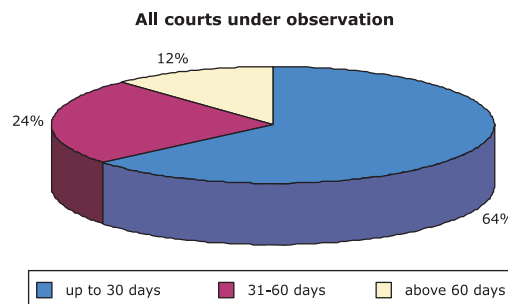
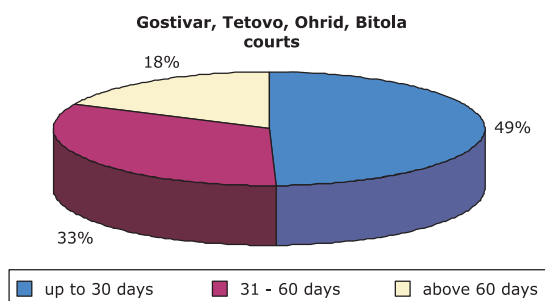
Hearing delay time in the first instance court in Tetovo



Regarding the postponement of up to 30 days, the situation in the basic court in Tetovo is similar to the one in the basic court in Gostivar. Here comes the question if this variety is due to the factor: "observation before different courts" (different working conditions, different human resources, different caseload, different effectiveness etc.), or maybe the postponement period could be put into correlation with other factors such as "type of criminal offence", "number of pronounced measures of detention pending trial", etc.



If joint analysis is made of the data on all the postponements in the previously mentioned individual courts, which are the courts where the crimes of "trafficking in human beings", "mediation in prostitution" and "smuggling of migrants" appear the most, the conclusion is that the postponement period was up to 30 days in 49% of the total number of postponements. If data on the other courts are inserted in the overall picture,¹⁴² a somewhat different picture is obtained.



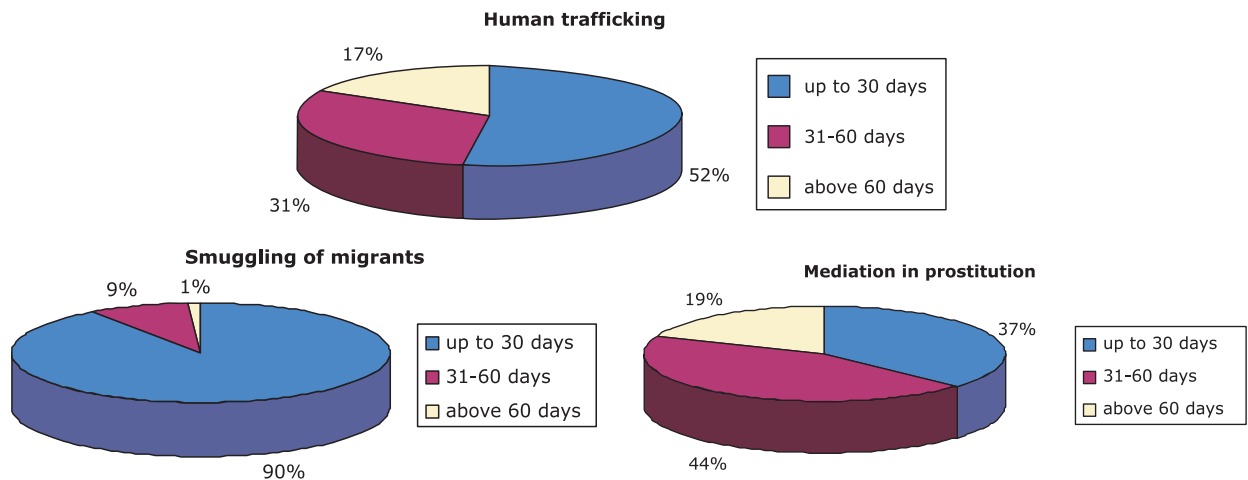
Postponement of the hearings for a period over 60 days

Article 297 (Par. 5) of the Criminal Procedure Law stipulates an obligation whereby the trial has to start all over again if the postponement thereof lasted for more than 60 days (different from the previous legal solution of 30 days).

¹⁴² By adding the data in the postponements in the basic courts Skopje 1 and 2, Prilep, Shtip, Negotino and Kumanovo, somewhat different situation will be obtained primarily because of the case Jug 1 within which the Coalition observed at least 35 hearings that have been adjourned/interrupted between 1 and 10 days.

The analysis of the cases that were adjourned for more than 60 days, thereby consciously doomed to start again, showed that around one fourth of the total number of observed cases (24%) before the basic court in Gostivar was adjourned for more than 60 days. Such situation is characteristic of only 5% of the cases before the basic court in Bitola, 24% before the basic court in Ohrid, and 17% before the basic court in Tetovo.

In most of the cases associated with the crime of trafficking in human beings, the victims were not citizens of the Republic of Macedonia, and they were returned to their countries of origin¹⁴³ at the time of the main hearing. This automatically involves activation of the international instruments for securing the presence of the victim and is time consuming. In 17% of the cases associated with the crime of "trafficking in human beings", there was a postponement of more than 60 days. There was a similar situation with the crime of "mediation in prostitution" (19%). However, the proportion of cases associated with the crime of "smuggling of migrants", which were adjourned for more than 60 days, is significantly lower and amounts to 1%¹⁴⁴.



To what extent the above explained situation in the domain of trafficking in human beings can and should justify the far too long postponement of some of the cases, can be seen through the analyses of the frequency of postponements lasting for more than 60 days within one case and of the reasons why this was done.

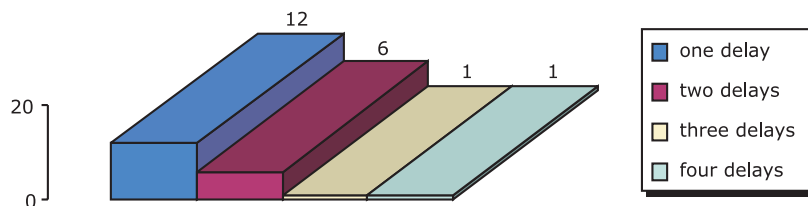
In most of the cases (12), it happened only once that the postponement lasted longer than 60 days within one case. In 60% of the cases the postponement was due to the judicial vacations, i.e. the cases were postponed from June and July to September or October.

The postponement happened in two situations in 30% of the cases, for a period longer than 60 days. It was very rare to have within one case three or four postponements for a period longer than 60 days.

¹⁴³ In how many cases presence was secured

¹⁴⁴ If the data on the Jug case are taken out, the percentage changes to significant 4% for a period longer than 60 days, 79% up to 30 days and 17% between 31 and 60 days.

Number of delays for a period longer than 60 days within one case

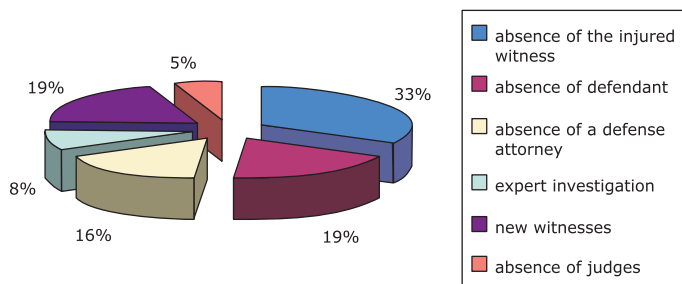


The most common reason (33%) for the postponements for longer than 60 days includes the absence of the injured party-witness in the procedure under the cases associated with the crimes of “trafficking in human beings” and “mediation in prostitution”.

In a case observed before the basic court in Gostivar (Gos 007) associated with the crime referred to in Article 191 of the Criminal Code, decision was taken to postponement the case for an indefinite time at the hearing held in March 2005, with a view to provide for direct questioning of two injured parties (out of 4 in total). After 200 days, the trial resumed in September and was adjourned again for further 89 days. The trial continued at the end of December 2005, when information was obtained that one of injured parties could not be found, whereas the other one had agreed to testify. However, due to health problems and the impossibility to travel with a young child, the Moldavian services suggested that the injured party should be questioned via videoconferencing. Due to the lack of technical facilities in the Gostivar court, decision was taken to read the statement that the injured party gave to the investigative judge. The case was adjourned for additional 40 days due to the absence of the defendant at the main hearing.

On the other hand, of surprise is the number of postponements for a period of more than 60 days that are result of the absence of the defendant and of the lawyer thereof. Postponements due to these two reasons together appear in a somewhat bigger number than the postponements due to absence of the injured witnesses – foreign nationals.

Reasons for delays over 60 days



With the first reason for postponements, the court depends on the efficiency of the authorities responsible for contacting and securing the presence of the injured witnesses in the procedure, and the solution to the problem should be sought in making an attempt to increase this efficiency.

A case observed in September 2005 before the basic court in Tetovo (Tet 014), associated with the crime of “trafficking in human beings”, was postponed for 72 days due to the absence of the injured parties and of their legal representative. Given that injured parties are summoned via the diplomatic channels, and with a view to provide for sufficient time to secure their presence, the next hearing was postponed for additional 166 days. Unfortunately, their presence was not secured even after the expiration of this period, and the main hearing was postponed again for additional 116 days.

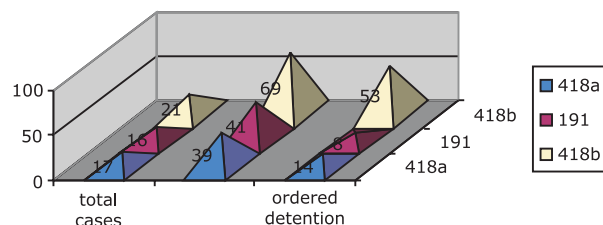
With the second reason, if account is taken of the fact that preventive measures as well as “other preventive measures” for securing the presence of the defendant are very rarely used in the practice of our courts, maybe the court should be reproached for its insufficiently proactive role, i.e. for the far too long postponements with view of enabling conditions for the main hearing to take place.

The observers of the Coalition began in February 2005 to observe a case before the basic court in Tetovo (Tet 001) associated with the criminal offence referred to in Article 191 of the Criminal Code, in which the charge was brought in 2003. After 20 hearings observed, the case is still ongoing. The reasons for the postponements include:

Hearing	Reasons for postponement	Hearing	Reasons for postponement
1	One of the defendants had not received an accusation translated in Albanian	11	Absence of the defense attorney Z.T.
2	Securing the presence of the injured party and obtaining medical documentation on the defendant	12	Official absence of the Deputy Public Prosecutor
3	Obtaining medical documentation on the defendant and on the injuries of the injured party	13	Absence of the defense attorney Lj.K.
4	Obtaining medical documentation on the defendant and IOM report on the injuries of the injured party	14	Official absence of the Deputy Public Prosecutor due to case of death
5	Absence of the defense attorney and obtaining medical documentation on the defendant and on the injuries of the injured party (translated into Macedonian, since it was submitted in English)	15	Summoning a witness
6	Medical documentation on the injuries of the injured party (intervention sent to the IOM)	16	Absent witness; the lawyer of the defendant Lj.K. is too busy; obtaining a notification from a firefighting unit
7	Medical documentation on the injuries of the injured party	17	Absence of witness and of the lawyer Z.T. of the defendant
8	Absence of a judge due to attendance at a seminar	18	Absent witness and absent accused
9	Expert opinion of a neuropsychiatrist for the purposes of having an insight in the medical documentation on the injuries of the injured party	19	obtaining a notification from a firefighting unit
10	Obtaining evidence on ownership of a night bar	20	absent accused and absence of the defense attorneys

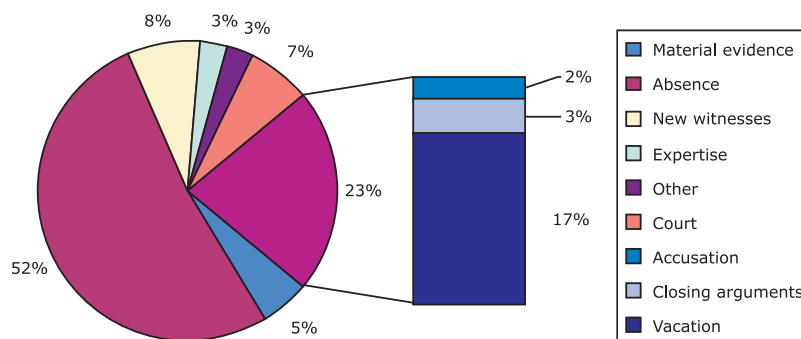
In a case observed before the basic court in Tetovo (Tet 013), which the second instance court returned for reconsideration, the hearing was adjourned for 70 days with a view to secure the presence of the defendant i.e. of the witness in the procedure. Notably, it was noted down in the record that it was necessary to find the she-defendant and to try her in the presence thereof, because previously she had been tried in absence. Upon the intervention by the public prosecutor, it was established that "the defendant" had in fact the status of a witness in the procedure and that an oversight was made.

The greater speed of solving the cases associated with the crime of "smuggling of migrants", mainly before the basic court in Bitola, compared with the cases associated with the crimes of "trafficking in human beings" and "mediation in prostitution", can be linked with the practice of pronouncing the majority of the measures of "detention pending trial"¹⁴⁵ exactly against the smugglers of migrants. Notably, for 77% of the total accused for the crime "smuggling of migrants" the measure of "detention pending trial" was pronounced. This percent for the "Trafficking in Human Beings" crime is 36% and for the "Mediation in Prostitution" crime is 19 %.



V.2 REASONS FOR POSTPONEMENT THE MAIN HEARING

While making the analysis, each of the reasons for adjourning (interrupting) the court procedure, regardless of whether it appears individually or cumulatively with other relevant reasons within one case (one hearing), was counted as an independent unit.



¹⁴⁵ This is an emergency procedure.

The most frequent reason for postponement includes the absence of one or more of the relevant actors in the procedure. Less number of cases are adjourned for the purpose of securing new witnesses, for reasons on the side of the court, for the purpose of providing material evidence, as well as for further clarification or translation of the accusation.

Very rarely the reasons include expert witness testimony as well as some other reasons such as inability of the defendant to give a statement as a result of weakness or effect of sedatives, mistake in the procedure in terms of having the main hearing scheduled without having questioned the defendant during the investigation etc.

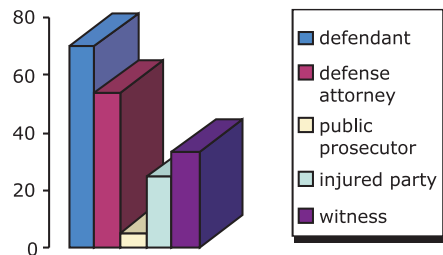
Interruption of the main hearing is mostly done for vacation purposes, and less for preparation of the closing arguments¹⁴⁶.

Presence of the participants in the procedure

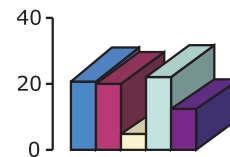
The absence of the participants from the procedure appears in 52% of the total number of cases as a reason for postponement. In this respect, the defendant is absent in most of the cases, even though the absence of the lawyers of the defendants ranks high on this list of reasons. There have been very few cases where the public prosecutor was absent from the trial.¹⁴⁷

The injured party as a witness is separated from the other witnesses in a special category as a result of the importance he/she has for the topic of observation.

Absence from the main hearing as a reason for adjournment in 2005 and 2006



Absence from the main hearing as a reason for adjournment in 2005



If we compare the data after two years of observation with the data obtained within the 2005 observation process, it can be noticed that the number of postponements caused by the absence of the injured party-witness in the procedure has decreased, which is understandable if account is taken of the fact that in 2006, the number of cases associated with the crimes of "trafficking in human beings" and "mediation in prostitu-

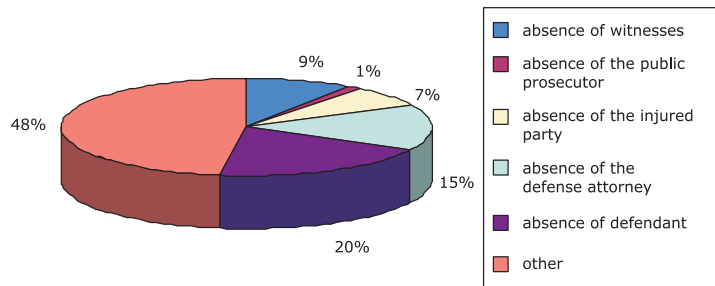
¹⁴⁶ According to Art. 298, the Chairman of the Chamber may interrupt the trial for vacation purposes, for providing certain evidence within short time, or for preparing the accusation or the defense.

¹⁴⁷Article 291 Par. 1: If the public prosecutor or the person replacing him/her fails to show up at the main hearing, which had been scheduled based upon the accusation brought by the public prosecutor, the main hearing will be postponed.

Criminal Justice Responses to organized crime

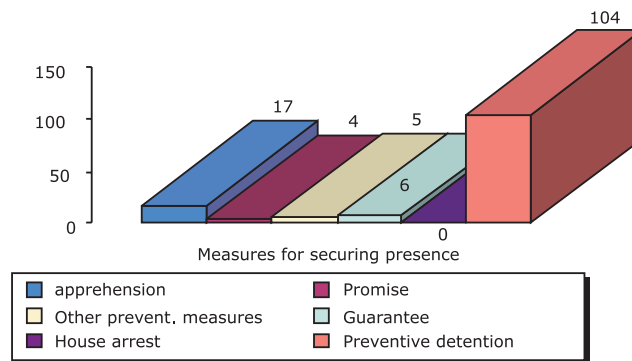
tion” remained almost the same (the number of new cases is very small). Unlike this, there has been an increased number of cases associated with the crime of “smuggling of migrants” and with other forms of organized crime.

At the same time, there has been a rapid increase in the number of cases of postponement due to the absence of the defendant and of his/her lawyer from the hearing.



The absence of the defendant was a reason for adjourning 20% of the total number of hearings.

The following data show how frequently the court had undertaken measures for securing the presence of the defendant at the hearing¹⁴⁸.



Obviously, the most frequently ordered measure for securing the presence of the defendant was preventive detention. This measure was ordered in 65% of the total number of cases¹⁴⁹. In most of the cases, preven-

¹⁴⁸ In 12 situations one measure for securing the presence of the defendant has been replaced with other one. Namely, 9 times preventive detention has been replaced with (6 cases) guarantee and (3 cases) with “taking the passport away” measure. Two accused after apprehension have been put in the preventive detention and one person after penal servitude has been set free and apprehend for the needs of the ongoing trial.

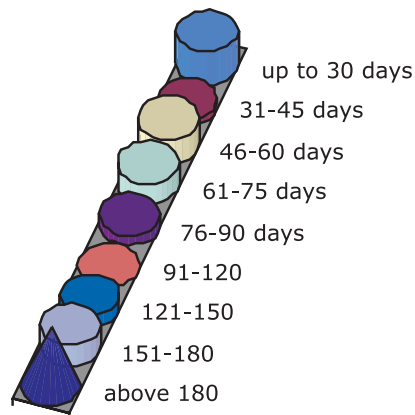
¹⁴⁹ The percentage has been established from the total number of defendants without the number of persons that are already in prison (17 persons), because their presence is automatically secured by bringing them to the trial.

tive detention was ordered with regard to the crime of "smuggling of migrants", i.e. "organizing a group and incitement to the commission of the crime of smuggling of migrants". What is surprising is the low number of ordered preventive detentions with the crimes of "trafficking in human beings" and "mediation in prostitution".

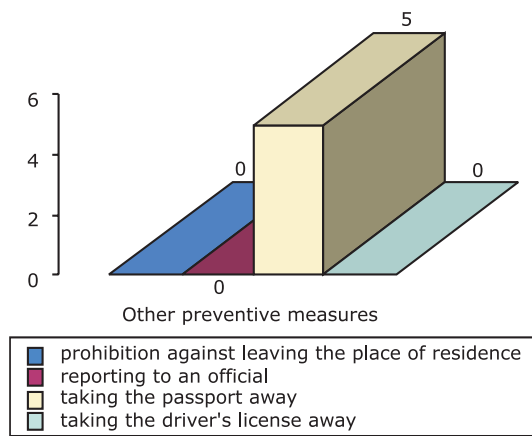
Type of criminal offence	Number of ordered preventive detentions In all observed cases
418 Trafficking in human beings	14
191 Mediation in prostitution	8
418 b Smuggling of migrants	19
215 Unauthorized production and putting on sale of narcotic drugs	3
357 Taking bribes	1
418 c "organized form"	34
279 Money laundering	1
140 Un lawful deprivation of freedom	1
353 Abuse of one's own official position and authorization	1
378 Falsification of a document	1
278 Smuggling	10
60 Excise law	7
Robbery	4
Total	104

The duration of the preventive detention mostly ranges above 180 days. In a less number of cases, it lasted up to 30 days or from 46 to 60 days.

Duration of preventive detention



Bringing the defendant in the court for the main hearing was ordered in 17 situations, whereas the other preventive measures were activated in only 5¹⁵⁰ cases.



The lawyer of the defendant was not present in 15% of the cases. It happens sometimes that the trial gets adjourned many times due to alternate absences of both the defendant and of his/her lawyer.

In a case observed before the basic court in Tetovo (Tet 007) with regard to the crime of "trafficking in human beings", ten persons appear as defendants. Seven defendants were present at the first observed hearing, for two there was no evidence of proper summoning, whereas one person was properly summoned, but was absent. Part of the lawyers of these persons was absent as well. The following hearing was missed by four of the ten defendants and one lawyer. The situation remained unchanged at the third observed hearing within this case (one person was on the run¹⁵¹), after which the court passed a decision to bring two defendants in. Finally, the presence of nine out of ten persons was secured at the next hearing (one person was still on the run), but this time the reason for the postponement was the absence of one of the defense attorneys, and it was a matter of compulsory defense. Three defendants and two lawyers were absent from the following hearing. The postponement of the following hearing was due to the absence of one of the defense attorneys. What followed next was the absence of one of the defendants who was not brought in from the prison "Idrizovo", as well as of three lawyers. The defendants were questioned as late as at the eighth observed hearing, when the presence of all defendants and of their lawyers was secured. However, at the next hearing, two defendants were absent again, one of whom was not brought in from the prison "Idrizovo" by guards. Three defendants and two lawyers missed the next hearing. In addition to the absence of one of the defendants at two consecutive hearings (for one of them, order was issued to bring him in, but this order was not complied with for unknown reasons), the last observed hearing was missed by another defendant as well.

¹⁵⁰To find more about the other preventive measures for securing the presence and about the situation in 2005, please see the report: "Combating trafficking in human beings through the practice of the domestic courts" p. 58

¹⁵¹ The person on the run shall be tried in his absence and he was not taken into consideration in the explication of the reasons for postponements.

What is perhaps surprising is the fact that the provision of Article 293, whereby the court council will decide by means of a Decision act that the defense attorney should bear the expenses incurred as a result of the postponement provided that the postponement can be attributed to his/her fault, has been very rarely used so far. Notably, only in two cases, i.e. only at two hearings out of a total of 334, the judge passed a Decision on charging the lawyer of the defendant the expenses¹⁵² incurred as a result of the adjourned main hearing.

In a case observed before the basic court in Gostivar (Gos 011) associated with the crime of “trafficking in human beings”, given that the main hearing was adjourned as a result of the absence of the lawyer of the defendant who failed to submit evidence that he had been engaged with another case, the lawyer was obligated to cover the expenses.

The absence of the witnesses was the reason for 9% of the total number of postponements. In 7 situations when the witness has not appeared at the main hearing, the order to compel by force has been issued.

No witness has been fined within the observed cases.¹⁵³

Expert witness testimony

Expert witness testimony was a reason for postponement in ten situations. Only in four of them neuropsychiatric expert witness investigation of the injured witness was ordered. All other situations were about expert witness investigation of the health status of the defendant or of documentation.

In a case observed before the basic court in Tetovo (Tet 008) associated with the crime referred to in Article 418-a of the Criminal Code (trafficking in human beings), the judge interrupted the trial until the arrival of a neuropsychiatrist from the Clinical Center in Tetovo with a view to assess the ability of one of the three defendants to give a statement. At the same time, the judge said for the records that the behavior of the defendant was a simulation in his opinion, but that he interrupted the trial in order to protect the right to defense and to provide for a fair trial. Because of the impossibility for the defense attorneys to wait for the arrival of the neuropsychiatrist, the hearing was adjourned. The next hearing at which the expert witness – neuropsychiatrist was present was adjourned as a result of the absence of one of the defendants¹⁵⁴. Following another postponement of the hearing, due to the impossibility for one of the defense attorneys to attend the hearing, a new postponement followed, since this time the expert witness, properly summoned, failed to appear in the court.

¹⁵² In one of the cases the amount charged was 500 EUR.

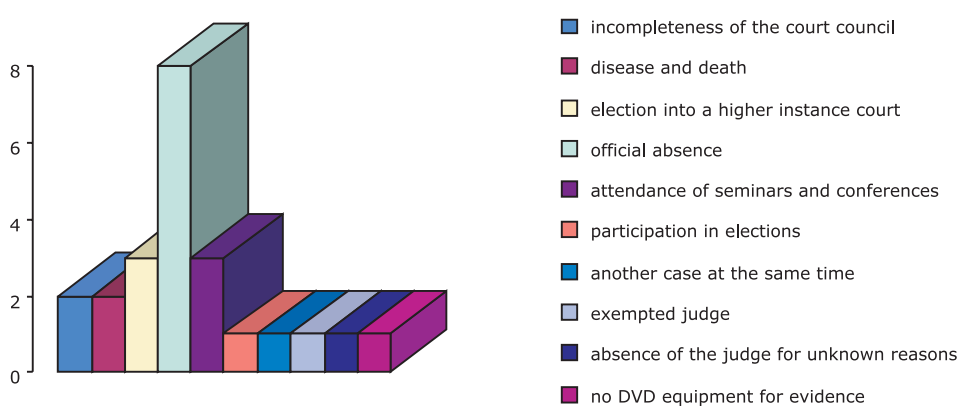
¹⁵³... If a witness or an expert witness is unjustifiably absent in spite of the proper summoning, the court council may order that he/she be brought in by force immediately...The witness or the expert witness, who was properly summoned and failed to justify the absence, may be punished by the council with a fine as specified in Article 74 Paragraph 1 (100-1000 EURO) of this law. In addition, the council may order that the witness or the expert witness be brought by force to the following main hearing...Article 295 of the Criminal Procedure Law.

¹⁵⁴ The hearing was not noted down on a record. The judge stated that the record would be developed later.

The court as a reason for postponement

Pursuant to Article 277 of the Criminal Procedure Law, the main hearing may also be adjourned ex officio due to health reasons or other justified reasons.

The reasons for adjourning the hearing were on the side of the court in 7% (23 situations) of the total number of cases. In this group of reasons, the postponement happened for the most part as a result of attendance of seminars or conferences, business trips, other official events (reading of the annual report), as well as election of the judge in a higher instance court.



Coordination between the court and the prison "Idrizovo"

Starting from the fact that 10% of all defendants in the observed cases are already serving prison sentences in the "Idrizovo" prison for some other crime, the communication and coordination between the prison facility and the court are of great importance for unhindered course of the main hearing. Out of a total of 334 observed hearings, in 11 of them the defendant(s) were not brought in from the "Idrizovo" prison for unknown reasons, which automatically resulted in postponement of the trial¹⁵⁵.

In a case observed before the Basic Court in Gostivar (Gos 007) associated with the crime of "mediation in prostitution", the court sent on 5 October 2005 a request to the Director of the "Idrizovo" prison to bring in the defendant. Since this request was not complied with, at the hearing held on 28 December 2005, the judge contacted by phone the responsible person in the prison so as to obtain an explanation of the absence of the defendant. The feedback was that the defendant was freed from prison on 28 October 2005. Due to the lack of this information, summons was not delivered to the home address of the defendant, so the trial was postponed because of his absence.

¹⁵⁵ In addition to this, the witness in the procedure was not brought in from the "Idrizovo" prison in only one case.

In a case observed before the basic court in Tetovo (Tet 008) associated with the crime of "trafficking in human beings", the Tetovo police authority notified the judge of the impossibility to find a particular defendant for whom the judge had issued an order to bring him in. However, the defendant did show up at the hearing, and his lawyer submitted a certificate proving that his client was in a hospital in Ohrid for rehabilitation and that this was the reason for him not appearing at the previous hearing. Since the judge failed to send summons for bringing in the second defendant in the same case, who was serving time in the "Idrizovo" prison, under the assumption that the respective hearing was going to be adjourned, and with a view to avoid unnecessary travel expenses, this hearing was finally adjourned due to the absence of the second defendant. At one of the following hearings, the second defendant was not brought in again.

The authorities under the Ministry of Interior have failed to comply with issued orders for detaining the defendant in 11 cases altogether. The reasons for this are unknown to the court.

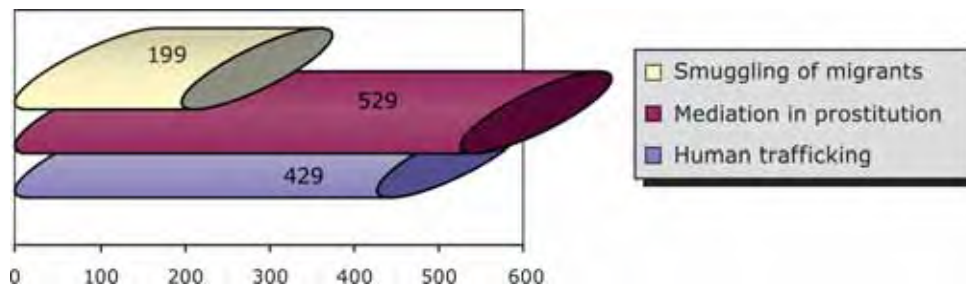
In a case observed before the basic court in Tetovo (Tet 011) associated with the crime of "trafficking in human beings", after multiple failures of the defendant to appear in court (he was both properly and improperly summoned alternately), the court ordered that he be brought in by force. At six subsequent hearings, his presence was not secured without any explanation being provided, and at the seventh hearing a notification was received from the Tetovo Police authority that the defendant was accessible for the state authorities i.e. he was in the Republic of Macedonia, but could not be detained. The same explanation appeared at the following two hearings, which the defendant absented from as well.

There are rare situations where the summons for the defendants was returned to the court with a notice "in-accessible area" or "not coming".

V.3 TOTAL DURATION OF THE FIRST INSTANCE PROCEDURE

The average duration of the procedure (from bringing the accusation until the passage of the appealable sentence) in the cases within the area of organized crime observed in the period January 2005 - December 2006 amounts to 386 days¹⁵⁶. This number is 529 days for the cases of "mediation in prostitution", and 429 days for "trafficking in human beings". "Smuggling of migrants" cases are tried for an average time of 199 days.

¹⁵⁶ In order to obtain a more precise picture about the average duration of the majority of the cases, the four extreme numbers, i.e. the cases returned for retrial, were excluded. If we add them, the average duration of the trafficking in Human Beings cases would be 489 days, while Mediation in Prostitution cases would be 680 days. The average duration of the Smuggling of migrants cases is the same since there is no observed cases that were retrial.



CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS:

- ☞ In the basic courts in Gostivar, Tetovo, Bitola and Ohrid, where the crimes of “trafficking in human beings”, “mediation in prostitution” and “smuggling of migrants” are most often tried, half of the total number of postponements have been for a period of up to 30 days.
- ☞ The proportion of cases that were adjourned for more than 60 days, thereby consciously doomed to start again, amounted to 24% of the total number of postponements in the basic court in Gostivar, only 5% in the basic court in Bitola, 24% in the basic court in Ohrid, and 17% in the basic court in Tetovo.
- ☞ The analysis of the period of postponement vis-à-vis the type of crime shows that 17% of the cases associated with the crime of “trafficking in human beings” were adjourned for a period of more than 60 days. This proportion is 19% for the crime of “mediation in prostitution”, and only 1% for the crime of “smuggling of migrants”.
- ☞ The most common reason for postponements (52%) includes the absence of the participants in the procedure whose presence is necessary for the conduct of the main hearing. Most of the absences are related to the defendant (20%) and to the lawyer thereof (15%).
- ☞ When analyzing the reasons for postponements for a period of more than 60 days, the conclusion that came up was that there is almost equal share of the following two reasons: absence of the injured party-witness in the procedure (33%), and absence of the defendant and of the lawyer thereof together (35%).
- ☞ In 60% of the cases the postponement was due to the judicial vacations, i.e. the cases were postponed from June and July to September or October.

- ⌘ **Three or four postponements for a period of more than 60 days happened very rarely within one observed case.**

RECOMMENDATIONS:

- ⌘ **The courts must take all possible measures to reduce the postponement periods in the cases within the area of organized crime. Special attention should be paid in order not to allow exceeding of the 60 days time limits, upon the expiration of which the procedure before the court should start all over again.¹⁵⁷**
- ⌘ **Judicial vacations must not be a reason for restart of the procedure due to a postponement of more than 60 days. There is a need for a better management of the rescheduling of cases in the period before and after the summer holidays.**

¹⁵⁷ The situation with regard to the proportion of postponements that was found in 2005 remained unchanged in 2006 as well, which makes the recommendation formulated on the basis of the data included in the report "Elimination of trafficking in human beings through the practice of the domestic courts" unchanged too.

Chapter VI

Conclusions and recommendations

GENERAL CONCLUSIONS

One went to another extreme in the efforts to avoid a too narrow definition in the domestic legislation of what belongs to the notion of organized crime (trying to make sure that all forms of this crime are included). This other extreme is that the jurisdiction of the prosecution authorities became far too wide. The implication of this arrangement is the danger that the people working in the Unit would not be able to respond to their obligations.

Attempting to respond in an appropriate manner to the increasing expansion of organized crime, and at the same time to keep up with the international initiatives and to fulfill the obligations she has undertaken, the Republic of Macedonia made a huge number of normative and institutional changes in the last couple of years. All of them provide a sufficient basis for coping with the phenomenon of organized crime successfully, provided that there is will for that.

The number of cases associated with the criminal offences of "trafficking in human beings" and "mediation in prostitution" before the basic courts in Macedonia is declining, whilst the number of new cases associated with the crime of "smuggling of migrants" is increasing.

Among the persons accused of crimes in the area of organized crime, predominant are those with secondary school degree (59% of the total number of defendants). While the number of persons without education and of those with a University degree is minor, the number of defendants with completed primary education is also high (34%). In the cases associated with the crime of "Trafficking in human beings", most of the defendants are people with completed primary education, whereas those with secondary school degree are the most represented in the cases associated with the crimes of "mediation in prostitution" and "smuggling of migrants".

The analysis of the number of recidivists by the criminal offence they have been charged with shows that 20% of the defendants were recidivists in the cases related "smuggling of migrants".

In spite of the obligation of the court to pronounce and announce the sentence immediately (or if the court is unable to do it on the same day upon the completion of the main hearing, it will postpone the announcement of the sentence for a maximum of three days and will designate the time and the place of announcement of the sentence), in 28% of the cases related to the criminal offences of "trafficking in human beings", "mediation in prostitution" and "smuggling of migrants", the sentence was announced within a time limit longer than 3 days, or the parties were only informed, after the completion of the main hearing, that the sentence would be delivered to them in writing.

In 2006 as well as in the previous year, there was protraction of the tendency of using mostly the measures of preventive detention and forceful bringing to the court in the practice, in spite of the variety of options (other preventive measures) for securing the presence of the defendant at the trial that is available to the court.

The measure of preventive detention, which makes up 65% of the total number of ordered measures for securing the presence of the defendant, has most often been pronounced in the cases associated with the crime of "smuggling of migrants", i.e. "organizing a group and incitement to the commission of the crime of "smuggling of migrants". The duration of the preventive detention mainly ranged above 180 days.

Extremely rarely was a Decision passed that the defense attorney should bear the expenses incurred as a result of the postponement provided that the postponement can be attributed to his/her fault, notwithstanding that the defense attorney was a reason for postponement in almost one fifth of the total number of cases.

The reasons for adjourning the hearing were on the side of the court in 7% of the total number of postponements.

Out of a total of 334 observed hearings, the defendant(s) were not brought to the court from the "Idrizovo" prison at 11 of them for unknown reasons, which automatically resulted in a postponement of the hearing.

The average duration of the procedure (from bringing the accusation until the passage of the appealable sentence) in the THB, Smuggling of migrants and Mediation in Prostitution related cases in the period January 2005 - December 2006 amounts to 386 days.

GENERAL RECOMMENDATIONS

There is a need for more precise definition of the competencies of the Unit for prosecution of the perpetrators of criminal offences in the area of organized crime, and first and foremost to harmonize the provision of Article 29 of the Law on the Public Prosecutor's Office with Article 2 of the Rulebook on

the organization and composition of the Unit. Notably, the competencies stipulated in the Rulebook must not exceed the boundaries established by the Law on the Public Prosecutor's Office.

Having in mind the importance and the communication and coordination between the prison facility and the court for unhindered course of the main hearing, there is a need for their improvement.

Bearing in mind the high rate of postponements of the hearings due to the absence of the defendant, as well as the large number of measures that are available to the court for securing the presence of the defendant and for successful conduct of the criminal procedure, it is 7recommendable that our courts make efforts to use those measures more in their practice. In situations where it is not necessary to pronounce the measure of preventive detention, a more frequent use of "the other preventive measures" introduced with the amendment of the Criminal Procedure Law, may lead to a reduced duration of the procedure.



Chapter VII

Annexes

1. CONCLUSIONS: ROUND TABLE ON THE TOPIC: IMPLEMENTATION OF THE OF THE RECOMMENDATIONS OF THE FINAL REPORT BASED ON THE OBSERVATION OF TRAFFICKING IN HUMAN BEINGS RELATED TRIALS

On 01.06.2006 the Coalition "All for Fair trials" with the support of the OSCE Spillover Mission to Skopje, organized a Round table on the implementation of the recommendations from the Final report: "Trafficking in human beings through the practice of the domestic courts". The report was a result of the trial monitoring of trafficking in human beings related cases before the Basic Courts, conducted by the Coalition from January to September 2005.

At the Round table, the judiciary, police representatives, the National Commission to Combat Trafficking in Human Beings, the Association of Judges, the Public Prosecutor's office, representatives from the Coalition and the OSCE Mission in Skopje, as well as the representatives from international and civil society organizations shared their views on the recommendations and reflected on the degree to which they have been implemented. As a result of the discussion the following conclusions were made:

- In 2004 several amendments were made to the Law on Criminal Procedure and in order to improve the position of the victim in the procedure. Some of them are related to compensation of victim, the special manner of examination of the witness-victim, the right not to reveal something when there is a serious life treat, danger to his health or physical integrity etc.
The implementation of these amendments is still very rare and therefore an exception in the court practice in the cases related to trafficking in human beings.
- **The provisions for confiscation of property and material profits and for temporary securing the property of the accused** which are rarely implemented into practice in the cases related to trafficking in human beings **are actually the most efficient measures** for providing confiscation of the victim, especially in a situation like the one in the Republic of Macedonia where a Public Fund for compensation of victims does not exist.

- **The establishment of a Public Fund for compensation of victims of trafficking in human beings is recommended in order to provide** a successful protection of the rights and interests of the victim in the criminal procedure
- **The investigative judge and the public prosecutor have a crucial role in the investigative phase of the procedure and especially in the process of securing evidence**, in providing timely expertise on the psycho-physical condition of the victim while in the country, providing data for the property of the accused and securing the assets of that person in order to provide conditions for adequate compensation of the victim. Therefore a more proactive role of these key actors might lead to a more efficient prosecution of these types of cases.
- With setting **an obligation for the judge to decide upon the claim for civil compensation during the criminal procedure** when reaching the verdict, the legislator made an attempt to overcome the practice of referring the victims to claim this right in the civil procedure. However this still remains to be an exemption and not practice before the courts and especially in the cases related to trafficking in human beings.
- **The frequent implementation of the institute "mitigation of punishment" for the perpetrators in the cases related to trafficking in human beings results with significant number of sentences below the legally proscribed minimum.**
In order to avoid this, there is a need for unifying the judicial practice when determining which circumstances are mitigating, and which especially mitigating and in order to build firm standpoints by the judge on the usage of this institute.
- **The work of the Coalition was recognized as positive and received support** from the participants at the Round table who agreed that the Final report presents a real picture of the present situation in the judiciary and in regard with trafficking in human beings. It is also a reliable basis for the science, the legislators and above all the judiciary for locating the problems of combating and sanctioning trafficking in human beings in the Republic of Macedonia There is a continuous need for conducting this kind of trial monitoring reports.

2. CASE STUDY

In the case observed by the observers of the Coalition "All for Fair Trial" in the Court of First Instance in Bitola, which after 51 days ended in a first instance sentence on 13 January 2005, three persons were convicted of the criminal offence "smuggling of migrants" referred to in Article 418 b Paragraph 2, and another three for the criminal offence "forgery of an identity document" referred to in Article 378 Paragraph 3 in connection with Paragraph 1 of the Criminal Code.

Namely, on 28 October 2004, the convicted ND and OS accepted in Bitola the accused MC, MS, GM – migrants and citizens of Turkey, while the accused DM drove them to the exit of the village of Greshnica, from where they were supposed to cross the Macedonian-Greek border with forged identity documents, but they failed to do so because the Border Police of the Republic of Macedonia caught them.

The convicted migrants, who paid 4500 Euro to be transferred to Germany in search of a job, left Istanbul by plane, but instead of Germany as they were promised for the given money, they arrived in Prishtina, Kosovo. At the Prishtina airport, they were accepted by somebody they did not know, who accommodated them in a motel for the following three days, after which she transferred them by taxi to the Republic of Macedonia, i.e. to Skopje. In Skopje, they were accepted by another unknown person who provided them with transportation

to Bitola, from where the abovementioned, now convicted persons (ND, OS and DM), took them over in order to transfer them over the Macedonian-Greek border. In Bitola, the migrants were taken away their original travel documents and given new ones by the person who transferred them to Bitola. When the Border Police intercepted them, the convicted migrants used the forged documents as real. All six persons were imposed a preventive detention measure.

The three persons that committed the crime "smuggling of migrants" were sentenced to 1 year in prison (ND and OS) and to 4 months in prison (DM), whereas the migrants were imposed an alternative measure "probationary sentence", i.e. they got each a prison sentence of three months provided they do not commit a new crime within one year.

The penalization of these migrants, who appeared as subjects in the network of the perpetrators of the crime "smuggling of migrants", for the use of illegal documents obtained by the smugglers, is not an isolated case in our judicial practice¹⁵⁸. Namely, those persons (including migrants) who use a false or modified identity document as a real one, pursuant to Article 378 of the Criminal Code, may be fined or sentenced to 3 years in prison. However, interesting issues emerge when this situation is put in correlation with Article 5 (Criminal liability of migrants) of the **Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime**.¹⁵⁹ According to this Article, migrants shall not become liable to criminal prosecution for the fact of having been the object of conduct criminalized in the following article (6), and this would include smuggling of migrants, enabling the smuggling of migrants, producing a fraudulent travel or identity document, and procuring, providing and *possessing such a document*.

According to the "Legislative Guide for the Implementation of the Protocol against Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime: ...in general, the purpose of this Protocol is to prevent and combat the smuggling of migrants as a form of transnational organized crime, whereas at the same time not to criminalize the migration even when it is illegal according to the domestic laws....for example, the migrant caught to possess illegal documents should not become liable to criminal prosecution for actions committed with view of enabling the smuggling of migrants even when they are punishable pursuant to the domestic law, whereas the smuggler who possesses such documents with view of enabling the migration of another person should be criminalized..."¹⁶⁰

Even though according to the Protocol itself (Article 6 Paragraph 4), nothing in it shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law (such as Article 378 of the Criminal Code), there is a clear intention for further non-penalization of the migrants who in the search for better life bring themselves in a particularly vulnerable situation in relation to the smugglers, thus in the role of victims.

¹⁵⁸ Namely, three migrants whose passports were taken away and replaced with false ones by the smugglers, with an explanation that they wouldn't be able to enter the EU countries with their real passports, were sentenced by the Court of First Instance in Negotino to the punishment of expulsion of a foreigner from the country for a period of 10 years, as well as to a probationary prison sentence of one year over a period of two years for the crime "forging of identity documents".

¹⁵⁹ The Convention with the protocols was signed and ratified by the Republic of Macedonia.

¹⁶⁰ t. 54, (d) purpose of the articles, Part three, Legislative Guide for the implementation of the Protocol against Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime, page 349

Bibliography

Владо Камбовски, Организиран криминал, Скопје, 2005,

Владо Камбовски, Петар Наумовски, “Корупцијата, најголемото општествено зло и закана за правната држава”, Коментар на Законот за спречување на корупцијата и на Законот за спречување на перење на пари, Скопје, 2002,

Владо Камбовски, Казненоправна реформа пред предизвиците на XXI век, Скопје, 2002

Г. Станковска, Б. Жадиковски, П. Кировски, В. Дуковска, И. Митковска, В. Дивјак, Форензичко-психијатриско значење на стравот, Македонска ревија за казнено право и криминологија, 1998, бр. 1,

Елизабета Илиева, “Иницијатива за соработка на земјите од југоисточна Европа-СЕКИ”, Судиска Ревија, бр. 2. септември 2006 год.

Лилјана Ингилизова - Ристова, Конвенција на Обединетите нации против транснационалниот организиран криминал и казната конфискација на имотот, Судиска ревија, 2002, бр. 4,

Љ. Новотни, Судска психијатрија,

Михајло Маневски, Корупцијата во Република Македонија, Превентивни и казнени мерки за спречување, Скопје 2005

С. Пејковска, Д. Мирчевска, М. Кујунџиска, П. Кировски, В. Филоvsка, Силување и нематеријална штета, Македонска ревија за казнено право и криминологија, 1998, бр. 1

Т. Витларев. Г. Калаџиџев, М. Лабович, Т. Стојановски „Системска анализа на законската рамка и соработката меѓу надлежните институции во борбата против организираниот криминал”, Скопје, 2005,

Чадиковски, П. Кировски, М. Левенски, Надомест за стравот, болката и психичкото страдање, Македонска ревија за казнено право и криминологијата, 1998, бр. 1.

Changing patterns and trends of trafficking in persons in the Balkan region, IOM Report 2004

Definitions of Organized Crime, Klaus von Lampe, <http://people.freenet.de/kvllampe/OCDEF1.htm>

EU Organized Crime Threat Assessment 2006, EUPOL, 5.1.2 OC Group Structures,
Forum on Crime and Society, UNODC, Volume 3, Numbers 1 and 2, December 2003

Legislative Guide for the implementation of the Protocol against Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime, t. 54, (d) purpose of the articles, Part three,

Migration connected with trafficking in women and prostitution, 25 April 2003, **Report**, Committee on Equal Opportunities for Women and Men, Rapporteur: Ms Zwerver, Netherlands, SOC

Migration Connected With Trafficking In Women And Prostitution: An Overview <http://www.germanlawjournal.com/>

Report of the Ad Hoc Committee in the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh session, General Assembly, United Nations, 3rd of November

‘Trafficking’ and ‘Smuggling’ of Human Beings in Europe: Protection of Individual Rights or States’ Interests? <http://webjcli.ncl.ac.uk/2001/issue5/obok5.html>

The 2005 Transparency International Corruption Perceptions Index, Transparency International <http://www.infoplease.com/ipa/A0781359.html>

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

Trafficking in Person Report” June 2005, <http://www.state.gov/g/tip/rls/tiprpt/2005/>

U.S. Department of State, Trafficking in Persons Report, June 2004

U.S. Department of State, Trafficking in Persons Report, 2005

“Women in an insecure world-Violence against Women, Facts, Figures and Analysis”,

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

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