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**ASSESSMENT OF THE SENTENCING
POLICY FOR ORGANIZED CRIME
AND CORRUPTION**

Skopje, 2015

Purpose of the Study

This assessment provides an overview of the work of the Specialized Department of the Basic Court Skopje I Skopje (hereinafter “Specialized Department”) dealing with organized crime and corruption throughout the former Yugoslav Republic of Macedonia. The Specialized Department was created in 2007 under the Law on Courts, Article 32¹. The Specialized Department applies the Law on Courts, the national Criminal Code² and the Law on Criminal Procedure³ as related to organized crime and corruption. The analysis focuses on the work of the Specialized Department from 2007 until early 2014. The study seeks to evaluate the work of this Specialized Department regarding the types of cases adjudicated and the type and distribution of sentences related to these cases.

The first section describes the Specialized Department’s jurisdiction and the data collected for the analysis. The second section describes the sentencing practices of the Specialized Department. Here, the focus is on describing the crimes that have been adjudicated and the prescribed and actual sentences provided in the first and second instance. After this, the third section of the Assessment Report provides a comparative analysis of sentencing practices and comments on differences between sentencing practices in former Yugoslav Republic of Macedonia and other countries. The Assessment Report concludes with observations for sentencing organized crime and corruption in the country.

I. Relevant Law and Data

A. National Law on Organized Crime

The former Yugoslav Republic of Macedonia ratified the United Nations Convention against Transnational Organized Crime (hereinafter UNTOC)⁴ and the two Palermo Protocols dealing with Trafficking in Persons and Trafficking of Migrants on January 12, 2005. The country then incorporated the mandates of UNTOC and its protocols into its own domestic law. More specifically, the Law on Courts adopted in 2006 and amended through 2010, provides special provisions for combatting organized crime and corruption and the establishment of a specialized department within the Basic Court Skopje I Skopje to deal with such cases since 2007. Article 32 also lists the Specialized Department’s jurisdiction to hear specific cases dealing with organized crime and corruption including:

- Crimes committed by criminal organizations or structured groups comprised of three or more persons in which the underlying crime involves imprisonment of no less than 4 years

1 Law on Courts, Official Gazette of RM No. 58/2006, 62/2006, 35/2008 and 150/2010.

2 Criminal Code, Official Gazette of RM No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014 and 199/2014.

3 Including both, the old Law on Criminal Procedure, Official Gazette No. 15/1997, 44/2002, 74/2004, 83/2008, 67/2009 and 51/2011 and the new Law on Criminal Procedure, Official Gazette No. 150/2010 and 100/2012.

4 UNTOC entered into force on September 29, 2003. The former Yugoslav Republic of Macedonia’s ratification of UNTOC included a reservation to UNTOC Article 35(2) stating that “it does not consider itself bound” to this provision, which “stipulates that all disputes concerning the interpretation of or application of the Convention shall be referred to the International Court of Justice.”

- Abuse of official position and authorization
- Taking or giving a bribe
- The acceptance of a reward for unlawful influence
- Unauthorized production and release for trade of narcotics, psychotropic substances and precursors
- Money laundering and other income crimes
- Terrorist endangerment of the constitutional system and security
- Illegal influence on witnesses
- Criminal association
- Terrorist organization
- Terrorism
- Trafficking in persons
- Trafficking of migrants
- Trafficking of a child

For the first category of crimes involving those committed by a structured group in which the underlying sentence involves a minimum of four years, the sentences can be found in the Criminal Code for the underlying offenses. For all other crimes for which the Specialized Department has jurisdiction, Article 32 lists the specific provision of the Criminal Code which then further defines the underlying crime and lists the potential sentences for these crimes.

B. Data Collection

In order to assess the work of the Specialized Department, the Basic Court Skopje I Skopje with the support of the Rule of Law Unit of the OSCE Mission to Skopje undertook a statistical analysis of all finally adjudicated cases between 2007 and the first part of 2014. The Specialized Department within the Basic Court Skopje I Skopje adjudicates all cases in the area of organized crime and corruption for the entire country. Therefore, although the cases are processed by just one court, they occur throughout the entire state. All but one case in the data analysis applied the Law on Criminal Procedure prior to 2010 amendments allowing plea bargaining.

The data collection and analysis involved the joint work of the Basic Court Skopje I Skopje and the OSCE Mission to Skopje Rule of Law Unit. A team of two judges of the Basic Court Skopje I Skopje, previously working as judges that adjudicated cases in the area of organized crime and corruption, reviewed all of the Specialized Department's final judgements between 2007 and the early part of 2014. The review included 364 final judgements for 1,125 defendants. The team of judges filled out a previously prepared Questionnaire (Annex 1) for all of the defendants sentenced during the time frame regarding the type of crime, the sentence prescribed by law, the adjudicated sentence in the first and second instance, as well as the

aggravating and mitigating circumstances considered for each defendant. The Questionnaire was created in cooperation with the team of judges, the OSCE Mission to Skopje, and a consultancy agency that processed the data - the Rating Agency. It was designed to provide information that can be statistically processed and cross-referenced to give the overview regarding the sentencing policy applied in finally adjudicated cases related to organized crime and corruption. The Questionnaire is available at Annex 1.

II. Sentencing Practices within the Specialized Department for Organized Crime and Corruption of the Basic Court Skopje I Skopje

A. Cases over Time

As seen in Figure 1, the cases reviewed in this Assessment Report cover the years from 2007 until early 2014 and are all (with the exception of one case), decided under the Criminal Code and the Law on Criminal Procedure prior to the 2010 amendments that introduced plea bargaining.⁵ The Specialized Department reviewed 364 cases for the entire period. As shown in Figure 1, the number of cases reviewed is fairly evenly distributed by year, averaging about 60 cases per year for this period, although the sample has a smaller number of cases in 2007 and 2013/14.

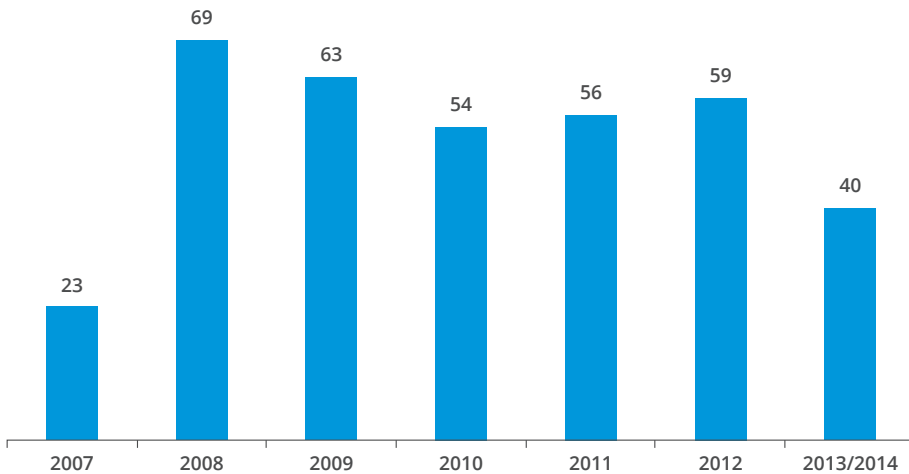


Figure 1: Number of Cases Adjudicated by the Specialized Department, 2007-2014

The 364 cases reviewed by the Specialized Department reflect convictions of 1,125 individual defendants. Table 1 provides a breakdown by Criminal Code provision for each year and is arranged in descending order of total frequency of defendants convicted of each crime. The total number of defendants in 2013 decreased to 65, almost one-fourth the amount in 2009 in which the Specialized Department made decisions for 231 defendants. Over the years of this analysis, a large number of defendants are consistently convicted of crimes involving smuggling of migrants (CC section 418-b).

⁵ In 2010 a new Law on Criminal Procedure were enacted, however its application in practice was prolonged and the Law entered into force on 1 December 2013.

Table 1: Number of Defendants, by Crime and Year

Article in the Criminal Code	2007	2008	2009	2010	2011	2012	2013	Total
418b/2	0	24	23	30	28	45	33	183
215/3	0	0	0	18	26	41	9	94
215/2	4	21	36	18	0	0	0	79
418v/2	0	9	4	2	8	21	3	47
418b/4	0	3	7	1	9	8	10	38
394/2, 353/5	0	0	0	38	0	0	0	38
353/5	10	5	1	15	4	0	0	35
4186/1	0	13	4	5	8	3	0	33
394/2, 357/2	0	0	30	0	0	0	0	30
418v/1, 418b/1	18	0	9	1	0	0	0	28
394/1, 357/1	0	0	1	0	25	0	0	26
353/3	8	2	13	3	0	0	0	26
418b/2, 418v/2	0	10	14	0	0	0	0	24
357/1	17	2	2	1	0	0	0	22
279/2	4	12	0	0	4	2	0	22
394/2, 396/2	0	20	0	0	0	0	0	20
394/1, 361/3	0	0	0	16	0	0	0	16
418g/2	0	5	0	2	9	0	0	16
418g/1	0	7	0	8	0	0	0	15
273/5, 253/3	0	0	0	14	0	0	0	14
394/2, 60, 285/1	0	0	14	0	0	0	0	14
258/2	0	8	0	4	1	0	0	13
394/2	0	2	2	0	8	0	0	12
273/5	0	0	0	1	11	0	0	12
394/2, 60	0	0	10	0	0	0	0	10
215/1	0	2	6	1	0	0	0	9
365/2	8	1	0	0	0	0	0	9
418d/3	0	0	0	0	0	5	3	8
273/1	1	6	1	0	0	0	0	8
359/1	0	0	5	3	0	0	0	8
276/1	0	0	0	7	0	0	0	7
418v/1	0	0	1	0	1	1	4	7
353/4	2	0	1	3	0	0	0	6
273/2	1	0	5	0	0	0	0	6
353v/3	0	0	0	0	6	0	0	6
357/2	3	0	3	0	0	0	0	6

368a/1	0	0	0	0	3	1	2	6
394/2, 278/2	0	6	0	0	0	0	0	6
418v/1, 418g/2	0	0	0	6	0	0	0	6
249/2	0	0	0	0	5	0	0	5
353/3, 396/1	0	0	0	5	0	0	0	5
354/3	5	0	0	0	0	0	0	5
394/1	0	0	0	2	3	0	0	5
394/1, 261/3	0	0	0	5	0	0	0	5
394/1, 396/2	0	5	0	0	0	0	0	5
418b/1, 418b/4	0	1	0	0	0	4	0	5
357/1, 394/2	4	1	0	0	0	0	0	5
327/2	0	4	0	0	0	0	0	4
353/1	1	0	3	0	0	0	0	4
353/2	1	1	1	0	0	1	0	4
361/1	4	0	0	0	0	0	0	4
396/3	0	0	0	0	0	4	0	4
418b/2, 418b/1	0	0	0	0	0	4	0	4
418b/3, 418v/1	0	4	0	0	0	0	0	4
418b/1, 418v/2	0	0	2	2	0	0	0	4
123/2	0	0	3	0	0	0	0	3
141/2	0	0	0	0	3	0	0	3
378/3	1	2	0	0	0	0	0	3
394/1, 215/3	0	0	0	3	0	0	0	3
418/2	0	0	0	0	3	0	0	3
418a/1	0	0	0	0	1	2	0	3
418a/1, 2, 3	0	0	0	0	0	3	0	3
237/3, 292/1, 288/3	0	0	3	0	0	0	0	3
418b/1, 418v/1, 358/1	0	1	0	2	0	0	0	3
353/4, 273/2	0	0	2	1	0	0	0	3
418g3	0	3	0	0	0	0	0	3
215/2, 396/2	0	0	0	2	0	0	0	2
247/3	2	0	0	0	0	0	0	2
251/5	0	0	0	0	1	1	0	2
313	0	0	1	0	1	0	0	2
394/1, 60, 285/1	0	0	2	0	0	0	0	2
394/2, 357/1	0	0	2	0	0	0	0	2
378/3, 394/2	0	2	0	0	0	0	0	2
415b/2	0	2	0	0	0	0	0	2
418a/2	0	2	0	0	0	0	0	2

418b/4, 418v/2	0	0	2	0	0	0	0	2
394/2, 59, 60, 285/1	0	0	1	0	0	0	0	1
191/1	0	1	0	0	0	0	0	1
215/2, 215/1, 396/1	0	0	0	1	0	0	0	1
236/3	0	0	0	0	1	0	0	1
247/4	0	0	1	0	0	0	0	1
261/3	0	0	0	0	1	0	0	1
272/5	0	1	0	0	0	0	0	1
273/2, 247/4, 273/5	0	0	1	0	0	0	0	1
273/2, 249/1	0	0	1	0	0	0	0	1
273/3	0	0	0	0	1	0	0	1
278/3, 278/2	0	1	0	0	0	0	0	1
278/3, 358/1	0	1	0	0	0	0	0	1
279/2, 273/1	0	1	0	0	0	0	0	1
353/1, 353/5	0	1	0	0	0	0	0	1
353/4, 273/1	1	0	0	0	0	0	0	1
353/4, 273/5	1	0	0	0	0	0	0	1
353/4, 378/3	1	0	0	0	0	0	0	1
353/5, 353/3	0	0	1	0	0	0	0	1
3536/1	0	1	0	0	0	0	0	1
357/1, 396/2	0	0	1	0	0	0	0	1
358/1	0	0	1	0	0	0	0	1
359/2	0	0	1	0	0	0	0	1
363/2	0	0	1	0	0	0	0	1
364/2	0	0	1	0	0	0	0	1
378/1	0	0	1	0	0	0	0	1
394/1, 353/4, 285/1	0	0	1	0	0	0	0	1
394/1, 357/2	0	0	1	0	0	0	0	1
394/1, 288/1	0	1	0	0	0	0	0	1
394/2, 288/1	0	1	0	0	0	0	0	1
396	0	0	0	0	0	1	0	1
418b/2, 418v/2, 396/2	0	0	1	0	0	0	0	1
418b/4, 418v/1	0	0	1	0	0	0	0	1
418b/4, 418v/4	0	0	1	0	0	0	0	1
No answer	0	0	2	0	0	0	0	2
Total	97	195	231	220	171	147	64	1125

B. Convictions by Type of Criminal Act

The criminal acts reviewed are those found under the Law and Courts Article 32 and referenced in the Criminal Code. Table 2 shows the frequency and percent of defendants convicted of the most prevalent criminal acts processed by the Specialized Department. We define prevalent as any crime in which at least 2% of the defendants were convicted of the same crime. All other crimes in Table 2 refer to crimes that appear infrequently or involve less than 2% of the defendants in our data. Some defendants are convicted of more than one crime.

Table 2 shows that **trafficking in persons** is the most prevalent criminal act for which defendants in the sample are convicted. Specifically, 39.53% of defendants in the data have been convicted of human trafficking. Of this 39.53% or 444 defendants, the most prevalent type of trafficking is that of migrants under Article 418-b of the Criminal Code, which constitute 29.47% of convictions in the data. Convictions for trafficking under Article 418-v (organizing a group and instigating crimes of trafficking) constitute 4.81% of the defendants in the sample and convictions under Article 418-g (trafficking of children) constitute 3.56% of defendants.

The next two most prevalent crimes for which defendants are convicted, but unrelated to human trafficking, are for **criminal association** (Criminal Code, Article 394) consisting of 17.72% of defendants in the sample and **unauthorized production and trafficking of narcotics** (Criminal Code, Article 215) constituting 16.47% of the defendants in the data.

Convictions for offenses involving public corruption are more infrequent. For instance 8.46% of defendants in the data sample were convicted of abuse of position and authorization (Criminal Code, Article 353), 3.83% for money laundering (Criminal Code, Article 273) and 3.03% for taking a bribe (Criminal Code, Article 357). About 2% of defendants in the sample were convicted of tax evasion (Criminal Code, Article 279). Around 9% of the defendants in the sample were convicted of other crimes in which no more than 2% of the defendants were convicted of the same crime.

Table 2: Distribution of Criminal Convictions by Code Section⁶

Type of criminal act (Articles of the Criminal Code)	No. of defendants	% from the sample
Trafficking in Persons(article 418)	444	39.53%
Criminal Association (article 394)	199	17.72%
Unauthorized Production and Release for Trade of Narcotics, etc. (article 215)	185	16.47%
Abuse of Official Position and Authorization (article 353)	95	8.46%
Money Laundering (article 273)	43	3.83%
Taking a Bribe (article 357)	34	3.03%
Tax Evasion (article 279)	23	2.05%
All other crimes in which each charge constitutes no more than 2% of data sample	102	8.91%
Total	1125	100%⁶

A more specific breakdown of charges by subparagraphs for all crimes can be found in Annex 2.

⁶ Note that due to the rounding of decimals to just two points in this and other tables in this report, the percent does not always equal exactly 100 percent.

C. Prescribed Sentences: Mandatory Maximums and Minimums

This section provides the distribution of potential sentences that defendants *could have* faced based on the crime underlying their convictions as provided in Table 1 above. These are not the sentences that defendants actually received, but the sentences that they *could* have potentially received as stated in the law for each crime.

Tables 3 and 4 show the percent of defendants who were convicted of offenses that carried various minimum or maximum sentences. Mandatory minimums are a method that the legislators use to curtail judges’ discretion in sentencing and to signal that certain offenses are so serious that they require a certain minimum punishment. Only under certain limited circumstances, provided in the Criminal Code are judges allowed to sentence below the prescribed minimum. Legislators use mandatory maximum sentences to provide a limit on the severity of punishment for certain offenses. Not every offense has a mandatory maximum sentence.

Table 3 shows that 53.5% of defendants were convicted of a charge which carried a mandatory minimum of one year or less (21.86% of defendants faced less than a year and 31.64% of defendants faced a one year sentence). In other words, over half of the defendants faced relatively low mandatory minimums of one year or less. The next most prevalent minimum faced by defendants was 5 years constituting 15% of defendants. About 13% of defendants faced a potential minimum sentence of 4 years, while about 10% faced potential sentences of 8 years. Very few of the defendants (about 1.51%) faced the highest minimum sentence of 10 years. No answer was provided to the questionnaire or no mandatory minimum existed for 33 defendants or about 3% of the data.

Table 3: Distribution of Prescribed Mandatory Minimum Sentences Faced by Defendants in the Data Sample

Prescribed mandatory minimum in the law Minimum was:	Number of Defendants	Percent of defendants sentenced to crimes with a potential prison sentence with a prescribed minimum	
Less than 1 year	246	21.88%	53.50%
1 year	356	31.64%	
3 years	55	4.89%	
4 years	141	12.53%	
5 years	170	15.11%	
8 years	107	9.51%	
10 years	17	1.51%	
No answer or no mandatory minimum provided	33	2.93%	
Total	1125	100%	

For mandatory maximum sentences, provided in Table 4, the largest proportion of defendants in the data, 36.62%, were convicted of a charge which carried a mandatory maximum sentence of 15 years. The next most prevalent maximum encountered by defendants was

5 years (26.67%) and then 3 years (19.47%). A ten year maximum sentence underlying the convictions occurred for about 8.44% of the defendants. One and eight year maximums are quite infrequent in the sample, just occurring 0.62% and 0.36% respectively. No answer was provided in the questionnaires or the underlying convictions had no maximum for about 7% of the defendants analysed.

Table 4: Distribution of Prescribed Mandatory Maximum Sentences Faced by Defendants in the Data Sample

Prescribed mandatory maximum in the law Maximum was:	Number of Defendants	Percent of defendants sentenced to crimes with a potential prison sentence with a prescribed maximum
1 year	7	0.62%
3 years	219	19.47%
5 years	300	26.67%
8 years	4	0.36%
10 years	95	8.44%
15 years	412	36.62%
Life imprisonment	8	0.71%
No answer provided/ or no maximum	80	7.11%
Total	1125	100%

While Tables 3 and 4 provide a snapshot of prescribed sentences based on mandatory minimums and maximums, Table 5 shows the most common *ranges* of sentences (minimum and maximum combinations) which defendants could have faced based on the charges underlying their conviction.

While Table 5 is quite comprehensive as to the percent of defendants in the sample who could have received a certain sentence range, the information is broken down to a very detailed level. It should be noted, however, that 69% of the defendants or the vast majority analysed were charged with crimes that had just 6 punishment ranges found in the first 6 rows of the table. Also, 23% of the defendants faced a prison sentence of 1 to 5 years.

Table 5: Prescribed Sentence Ranges by Law Faced by Convicted Defendants

Sentence range prescribed in the Criminal Code	Number of defendants	% of the defendants	69.10% of all defendants in the analysed cases
Imprisonment from 1 year up to five years	260	23.1%	
At least five years of imprisonment up to 15 years	165	14.7%	
Imprisonment from three months up to three yrs.	100	8.9%	
At least eight years of imprisonment up to 15 years	91	8.1%	
Imprisonment from six months up to three years	84	7.5%	
At least four years of imprisonment up to 15 years	77	6.8%	
At least three years of imprisonment up to 15 years	36	3.2%	
At least one year of imprisonment up to 15 years	34	3.0%	
Imprisonment from one year up to ten years	22	2.0%	
Fine or imprisonment of up to three years	17	1.5%	
Fine and imprisonment of at least four years	16	1.4%	
Imprisonment from three years up to ten years	12	1.1%	
Imprisonment from six months up to five years	10	0.9%	
Imprisonment from three months up to five years	9	0.8%	
At least ten years of imprisonment up to 15 years	9	0.8%	
At least ten years or life of imprisonment	8	0.7%	
Fine or imprisonment of three months up to 1 year	7	0.6%	
Imprisonment from three years up to eight years	1	0.1%	
Imprisonment from five years up to ten years	1	0.1%	
Fine or imprisonment of six months up to five years	1	0.1%	
Other	146	13%	
No answer	19	1.6%	
Total	1125	100%	

D. Sentencing Practices in the First Instance

The Specialized Department may reprimand defendants using a variety of sanctions ranging from no punishment to imprisonment. Between these two extremes, the court may also sentence defendants to fines or alternative measures. Figure 2 below provides the percent of defendants by punishment type. This percent is based on the information available in the completed questionnaires regarding the number of defendants that received the respective sanction. The percentage does not refer to the total number of defendants (1125), as almost 150 questionnaires did not provide answers to the question on the first instance sentence (Question 3 of the Questionnaire in Annex 1). Including missing data in such calculations will lead to misleading results.

Figure 2 shows clearly that the majority of defendants for which information was provided in the questionnaire, were sentenced to prison time. In other words 84.45% of defendants for which we received answers to the questionnaire were given prison time. This is in stark contrast to all other types of punishment. Fines were given to about 3% of the defendants where answers to the questionnaire were provided and alternative measures to 8.5% of defendants. 3.7% defendants were acquitted and 1.5% refused judgment. These results indicate that the type of crimes adjudicated by the Specialized Department are for the most part rather serious and lead to imprisonment.

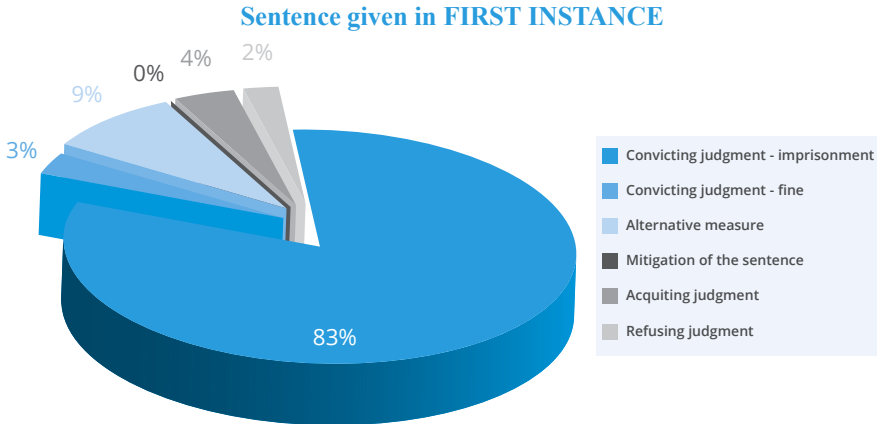


Figure 2: Types of Criminal Sanctions in the First Instance

Imprisonment in the first instance

As stated above, the majority of defendants received prison sentences for the crimes adjudicated by this Specialized Department. Table 6 provides a breakdown of the *actual* prison sentences received by defendants in the first instance, organized by length of imprisonment.

Table 6: Sentences Adjudicated in the First Instance by Sentence Length

Prison time received in the first instance	Defendants	% of convicted defendants	Aggregated %	
			0 to 1 year	0 to ≤2 years
0 prison time	177	15.73%	35.64%	50.04%
≤ 1 year	224	19.91%		
>1 year, but ≤ 2 years	162	14.40%	41.24%	
>2 years, but ≤ 3 years	125	11.11%		
>3 years, but ≤ 5 years	188	16.71%		
>5 years, but ≤ 8 years	151	13.42%	6.14%	
>8 years, but ≤ 10 years	36	3.20%		
>10 years, but ≤ 15	30	2.67%		
Life imprisonment	3	0.27%	2.58%	
No answer	29	2.58%		
Total	1125	100%	100%	

As shown by Table 6, the majority of sentences actually received by defendants in the sample average less than or equal to 2 years. In other words, about 50% of the sample received a sentence ranging from 0 to 2 years. This is not at all surprising when one considers that the mandatory minimums faced by over 50% of the defendants analysed were for one year or less as shown in prior Table 3. Sentences ranging from 2 years to up to 8 years were the next most prevalent constituting 41.24% of the dataset.

When comparing the sentences received to the mandatory maximums, these maximums are rarely part of the judgement. For example, 15 years is the most common maximum prescribed by law in the analysed data, constituting 36.62% of the defendants' potential sentences (See Table 4). Despite this, only about 3% of the defendants actually received a sentence of greater than 10 years.

A more specific breakdown of these prison sentences received by defendants is found in Annex 2.

In Table 7, we look more closely at the sentencing practices for the most prevalent crimes listed in Table 2. Here, the analysis includes the average sentence received by defendants for each crime type, the standard deviation (s.d), and the number of defendants from the analysed data that were included in the average calculations, denoted N. The average actual sentences are then compared to the average mandatory minimums and maximums faced by defendants for the crimes underlying their ultimate convictions. The N varies for each of the average calculations as some of the information for a particular defendant's case is missing. We also note in footnotes the three instances in which defendants received life sentences. Life sentences are not included in the average of sentences received as it is impossible to list a numerical value for a life sentence as this depends on defendant's age and health and even a small number of life sentences would skew the average upward.

Table 7 is meant to provide a snapshot of the average sentences received by defendants in comparison to the mandatory minimums and maximums. As the table only reports averages across all sentences in a given crime category, any generalization of the results should be approached with caution. Table 7 does not summarize about 9% of the defendants who were charged with individual crimes which constituted less than 2% of the total data sample.

In general, Table 7 shows that **the average sentences given for most crimes are close to or greater than the average minimum sentences prescribed by law** and lower than the average maximum sentences. In other words, the average sentences provided by the Specialized Department generally fall squarely within the ranges set by the law. However, for some of the crimes the average sentence was slightly below the average prescribed minimum.

Offenses involving **human trafficking**, appearing in the first row, constitute the most prevalent convictions before the Specialized Department making up about 40% of all defendants. The Specialized Department sentenced defendants for all types of trafficking in persons crimes to an average of 2.62 years in prison although the actual sentences ranged from 0 to 13 years. The average actual sentence is only 0.63 years below the average minimum sentence for defendants convicted of this crime in the data set of 3.25 years in prison.

Besides trafficking in persons crimes, the Specialized Department had average sentences slightly below the average prescribed minimum for three other crimes: Abuse of Official

Position; Taking a Bribe and Tax Evasion. For **Abuse of Official Position**, the actual average sentence for defendants sentenced to this crime was 3.23 years. This is 0.11 years below the average mandatory minimum for this crime of 3.34. The average prescribed maximum is 13.10 years. For **Taking a Bribe**, the average sentence given to defendants convicted of this crime was 1.64 years. This is about 1 year lower than the prescribed minimum of 2.69 years and is 7.62 years below the prescribed average maximum of 9.26 years. Finally, the Specialized Department sentenced defendants for **Tax Evasion** to 3.38 years on average. This is about 6 months lower than the average mandatory minimum of 3.87 years and almost 10 years below the pertinent average mandatory maximum of 13.33 years.

While the above average sentences were slightly below the average minimums, *all* the other average sentences for prevalent crimes were close to or slightly above the average prescribed minimum. For crimes involving **Criminal Association**, the next most prevalent crime for which about 18% of defendants were sentenced, Table 7, Column 1, Row 2 shows that the Specialized Department gave sentences that ranged from 0 to 15 years for 195 defendants. The average of all sentences for this category of crimes was 3.65 years, well above the average minimum prescribed for this offense of 1.41 years and below the average maximum of 6.30.

For **Unauthorized Production and Trade of Narcotics** the average sentence was 3.81 or almost 4 years although the average mandatory minimum was about 3 years. For **Money Laundering** the average sentence was 2.78 years compared to the average mandatory minimum of 2.51 years.

Table 7 reveals that the Specialized Departments' sentences are generally within the prescribed sentencing ranges (mandatory minimums and maximums). For the crimes where the average sentence is below the average minimum, the divergence below is generally about 6 months to 1 year.

Interestingly most of the crimes listed in Table 7 have similar average sentences ranging from a low of 1.64 years in prison for taking a bribe to 3.81 for drug offenses. In other words, despite the range of crimes heard by the Department, average sentences by category of the most prevalent crimes are below 4 year prison terms.

Table 7: Sentences of Imprisonment received compared to possible mandatory minimums and maximums for most prevalent crime categories⁷

(1) TYPE OF CRIMINAL ACT (Articles of the Criminal Code)	(2) SENTENCE RECEIVED				(3) AVERAGE MANDATORY MINIMUM				(4) AVERAGE MANDATORY MAXIMUM			
	RANGE (years)	AVERAGE (years)	(s.d)	N (defendants)	RANGE (years)	AVERAGE (years)	(s.d)	N (defendants)	RANGE (years)	AVERAGE (years)	(s.d)	N (defendants)
Trafficking in persons(all article 418-related) (39.53% of adjudicated cases)	0-13	2.62	2.45	431	0.5-10	3.25	3.04	437	5-15	9.44	4.96	405
Criminal Association (article 394) (17.72% of adjudicated cases)	0-15	3.65	3.63	195 ⁸	0-5	1.41	1.75	196	3-15	6.30	4.29	188
Unauthorized Production and Release for Trade of Narcotics, etc. (article 215) (16.47% of adjudicated cases)	0-15	3.81	3.34	179 ⁹	0.5-5	2.96	2.17	184	3-15	9.59	5.79	184
Abuse of Official Position and Authorization (article 353) (8.46% of adjudicated cases)	0-15	3.23	3.34	92	0.25-5	3.34	1.56	83	3-15	13.10	3.98	81
Money Laundering (article 273) (3.83% of adjudicated cases)	0-13	2.78	3.08	40	1 - 5	2.51	1.94	41	3-15	9.60	4.74	37

7 Range refers to range of prescribed by law minimum and maximums of the sanction; Average refers to the average sanction adjudicated by the Specialized Department; (s.d) refers to standard deviation; and N refers to the number of defendants from the total number of 1125 defendants included in the assessment.

8 One defendant received a life sentence for criminal association and is not included in the average.

9 Two defendants received a life sentence for unauthorized production and trade of narcotics and are not included in the average.

Taking a Bribe (article 357) (3.03% of adjudicated cases)	0-5.5	1.64	1.35	34	0.25-5	2.69	1.69	29	5-15	9.26	2.18	34
Tax Evasion (article 279) (2.05% of adjudicated cases)	0-7	3.38	2.62	22	1-4	3.87	0.63	23	10-15	13.33	2.58	6

Fines and Alternative Sentences in First Instance

As stated before, most defendants before the Specialized Department received imprisonment as a sentence. **Just 3% or 34 defendants in the sample where information was reported received only a fine as punishment.**

Of those receiving the fine, most (i.e. 47%) were in the range of 100,000 to 200,000 denars. Lesser and greater fines than this range constituted a much smaller amount of the data set as shown in Table 8. About 18% of defendants in the data set provided no answer regarding the amount of fines.

Table 8: Fines as Sentence Adjudicated in First Instance

Fine range	%	Number of cases
From 50.000 up to 100.000 denars	11.8%	4
From 100.000 up to 200.000 denars	47.1%	16
From 200.000 up to 300.000 denars	2.9%	1
From 300.000 up to 400.000 denars	8.8%	3
Over 500.000 denars	11.8%	4
No answer	17.6%	6
Total	100%	34

About eight percent of defendants in the analysed data (or a total of 93 defendants), where information was reported, received alternative sentences to imprisonment and fines in first instance. All of these alternative measures involved suspending the actual prison time. Further, diagnosis of the types of suspended sentences is provided in Table 9 below. In only one case was a defendant given a sentence that involved suspending the imprisonment *and* expelling the individual from the country permanently due to their status as a foreigner.

Table 9: Alternative Sentences in First Instance

	%	Number of defendants
suspended sentence	81.0%	75
suspended sentence 2 years from 5 years	4.2%	4
suspended sentence 2 from 5 years and 100.000 denars	3.1%	3
suspended sentence 1 year from 3 years	3.1%	3
suspended sentence 1 year from 2 years	2.2%	2
suspended sentence 6 months from 2 years	2.2%	2
suspended sentence 1 year and 6 months from 3 years	1.1%	1
suspended sentence 2 years from 4 years	1.1%	1
suspended sentence 2 years from 3 years	1.1%	1
suspended sentence/expulsion of a foreigner from the country forever	1.1%	1
Total	100%	93

Other sentences in the first instance

Besides imprisonment, fines and alternative measures, the Specialized Department adjudicated a few other variations in sanctioning. In a very few cases where information was provided, the Specialized Department mitigated the sentence. However, in no cases was mitigation specifically emphasized in the questionnaires used to evaluate each defendant's case.

As with mitigation, acquittal occurred very infrequently. Forty-one defendants or 3.7% of the analysed cases were acquitted in the first instance. Likewise, only 17 defendants or 1.5% were refused judgment in the first instance due to legal obstacles for hearing the case on the merits.

Finally, it should be noted that for the analysed defendants' cases, the 2010 Law on Criminal Procedure involving plea bargaining was not yet in force, except for one defendant in all analysed cases.

The questionnaire used to code the data (i.e. Annex 1) allowed a space for some narrative descriptions about the cases. Only 3 questionnaires, from a total of 1125, included narrative excerpts from judgments enacted by the first instance courts. In one judgment a measure "under stronger supervision" is given, and in two other cases the judgments were refused due to the underlying crimes in relation to other cases.

E. Sentencing Practices in the Second Instance

In this section, we review whether the different types of punishments were confirmed in the second instance and what if any changes were made. However it is important to stress that, although all the analysed cases were final, the court provided the information on the second instance sentence in only half of the assessed cases, i.e. from total 1125 processed questionnaire, only half of them or 512 questionnaires included information on the second instance adjudication. Regardless of the missing data, the sample of 512 questionnaires or 45.52% of all adjudicated cases is considered as a representative sample in determining the sentencing policy in cases related to organized crime and corruption. The information provided below reflects the findings of this representative sample.

Imprisonment in the second instance

The majority of sentences involving *imprisonment* in the first instance appear to be confirmed in the second instance. In Table 10, we list the percent of defendants alongside the percent of cases which received confirmation, amendment or repudiation of decisions in the first instance. Of all the cases, in the second instance, 87.11% of the cases from the first instance were confirmed and 2.73% of defendants' sentences were repealed. In other words, from the total of 512 questionnaires providing information on the second instance, **the vast majority of the sentences in the first instance were confirmed** indicating that there is no great deference to the first instance review process. Of the cases that were neither confirmed nor repealed, the remaining cases were amended in some manner. Each specific amendment occurred quite infrequently. These specific amendments and their frequencies are provided in Table 10.

Table 10. Imprisonment in the Second Instance

Imprisonment sentence adjudicated in second instance	%	Number of defendants
Confirmed		446
repealed		14
amended 1 year		7
amended 1 year and 6 months		7
amended 3 years		7
amended 2 years		4
amended 10 months		4
amended 5 years and 6 months		4
amended 2 years and 10 months		2
amended 7 months		2
amended 4 years		2
amended partially 5 years		1

amended 1 year and 7 months	1
amended 2 years and 6 months	1
amended 3 years and 6 months	1
amended 5 years	1
amended 6 years and 6 months	1
amended 6 months	1
amended 7 years	1
amended into fine	1
amended 10 years	1
amended 5 months	1
Amended	1
amended partially	1
Total	100% 512

Fines and alternative measures in the second instance

As most of the 512 questionnaires containing data regarding the second instance sentencing involved imprisonment or missing data, there is only a minimum amount of information on second instance decisions regarding fines and alternative measures.

Of defendants receiving alternative measures in the first instance, many of these were confirmed in the second instance. For the 23 defendants who received alternative measures and also for which we have information on the second instance decisions, 10 defendants or 43.5% of them had alternative measures that were confirmed in the second instance. However, 7 defendants had their first instance sentence changed to a suspended sentence and 6 defendants had their alternative sentence amended in some fashion. Any generalizations about these trends should be approached with caution as they only involve a very small percent of the total data set (i.e. only 23 defendants).

Acquitting and refusing judgment in the second instance

In the representative sample of 512 questionnaires containing data on sentencing in the second instance, 0.8% of the defendants were acquitted (i.e. 9 defendants) and 0.3% (i.e. 3 defendants) were refused judgment in the second instance.

Further explanations in the second instance

Only four questionnaires contained excerpts from the explanation part of the second instance judgment regarding the sentencing. They include information that in two cases the sentences were confirmed, while in the other two cases the judgment was abolished through use of an extraordinary legal remedy.

Mitigation and aggravation in the second instance

The Basic Court Skopje 1 Skopje has noted that the same mitigating and aggravating circumstances are often repeated and common for all cases subject of this assessment. The following is a summary of the most frequent mitigating and aggravating circumstances mentioned by judges adjudicating these defendants' cases.

Most frequent mitigating circumstances considered while meting out sentences are:

- Personal and family circumstances of the defendant;
- Previous convictions of the defendant;
- No procedures pending against defendant for other criminal act.

Most frequent aggravating circumstances considered while meting out sentences are:

- Frequency in committing crimes;
- Threat of some types of crimes;
- The degree of criminal liability;
- Manner of perpetrating the crime and the perseverance (determination) of the perpetrator;
- Former conviction;
- Consequences of the crime;
- Crimes committed by several perpetrators;
- Motivation to commit crime;
- The defendant is absconded and is unreachable for law enforcement bodies.

F. Summary And Implications Of Empirical Analysis

In summary, the Specialized Department appears to be a high functioning court operating under the mandate of Article 32 of the Law on Courts. The existence of one specialized department for the entire country for organized crime and corruption will ensure that the law is applied consistently without great disparity. The Specialized Department hears about 60 cases a year.

The majority of cases against defendants involve minimum sentences of one year or less and 15 year maximums. In practice, the majority of sentences involve some form of imprisonment. Of these, 50% involve sentences of up to 2 years and 41% involve sentences of 2 to 8 years. Fewer cases involve punishments with lengthy imprisonment or alternative remedies or fines. Few cases make reference to mitigating or aggravating sentences.

On average, the Specialized Department's sentences **for the most prevalent crimes fall within or close to within the average statutory minimums and maximums.**

For crimes involving Human Trafficking, Abuse of Official Position, Taking a Bribe, and Tax Evasion, the average sentences are somewhat below the average mandatory minimum. For Abuse of Official Position, the difference between the average actual sentence and the average mandatory minimum is very slight. However, for Trafficking in persons offenses, which constitute the majority of the cases before the Department, the average sentence is about 6 months below the average minimum and for Taking a Bribe, the average sentence is about one year below the average minimum. While there may be good reason for the deviation from the minimum in specific cases, the Specialized Department and legislature **may want to specifically monitor these categories of crimes to ensure that the punishments are in line with other goals of criminal punishment such as deterrence, retribution, and proportionality.** Further, as trafficking of migrants constitutes the majority of crimes before the Specialized Department, other policy measures outside the court should be undertaken to combat this crime, such as tighter controls at the border and sanctions against neighboring countries that do not have stringent methods for discovering these crimes.

The analysis also shows that first instance decisions related to corruption and organized crime **are generally confirmed in the second instance.** The Specialized Department may want to further analyse the effectiveness of second instance review and whether it provides a sufficient check on judges' decision-making in the first instance. On one hand, the high rate of confirmation in the second instance may simply reflect the high level of professionalism in this Department and deference to judges in the first instance is generally encouraged. On the other hand, the high level of confirmation may signal that second instance review is not rigorous enough. In any event, further analysis should be done to determine why there is such a high level of confirmation in the second instance.

Finally, the analysis was almost completely confined to the work of the Specialized Department prior to the adoption of plea bargaining. In fact, only one case in the entire analysis of defendants involved the new plea bargaining procedure. It is predicted that with the introduction of plea bargaining, sentences will on average be lower than those analysed here because prosecutors can only induce plea bargains by providing defendants with deals which are better than those involved with a lengthy trial procedure. Therefore, further analysis should be done concerning the effect of plea bargains on the Department's sentencing decisions. If plea bargaining causes a further drop in sentences, then legislators and judges may want to change their policies regarding punishment of these crimes.

III. Comparative Sentencing Practices

The Law on Courts created a Specialized Department of the Basic Court Skopje I Skopje to decide all cases regarding organized crime for the entire country. As stated previously, the jurisdiction of the Specialized Department is limited to organized crimes which are listed in Article 32¹⁰ of the national Law on Courts. This article was enacted in compliance with country's ratification of the United Nations Convention against Transnational Organized Crime (UNTOC)¹¹. In general in the national criminal law system, the sentences for organized crime and corruption include mandatory minimums of imprisonment although in a few instances, fines can be used in lieu of prison. Judges can deviate from the mandatory minimums as provided for in the Criminal Code articles 40 and 41.

It should be noted that not all of the crimes defined in the national Law on Courts are directly comparable to organized crimes and corruption in other countries. This is due to the fact that definitions of each crime and the aggravating and mitigating circumstances considered vary among countries.

Further, while the country has modelled its practices dealing with organized crime under the provisions of UNTOC, UNTOC itself does not provide specific sentences for organized crimes. The United Nations, in its publication, *Model Legislative Provisions against Organized Crime* (2012),¹² specifically states that its model provisions intentionally do not provide information on what penalties should be sought to prosecute these crimes as follows:

“Reflecting the approach to this issue taken in the Organized Crime Convention, no penalties are specified in these model legislative provisions. Under article 11, paragraph 1, each State party is to make the commission of an offence, established in accordance with articles 5, 6, 8 and 23 of the Convention, liable to sanctions that take into account the gravity of the offence. With this proviso, the issue of penalties is left to the discretion of States. In setting penalties, it is important to ensure that the offences established to give effect to the Convention meet common criteria for mutual legal assistance and extradition.”

10 Article 32 of the Law on Courts, Official Gazette of RM No. 58/2006, 62/2006, 35/2008 and 150/2010, stipulates that: “(1) A specialized court department competent for trying in organized crime and corruption for the whole territory of the Republic of Macedonia shall be established in the Basic Court Skopje I – Skopje. The specialized court department shall be competent to try for:

- crimes committed by a structured group of three or more persons that exists for a certain period of time and acts for the purpose of committing one or several crimes for which an imprisonment sentence of minimum four years is anticipated by law, with intend to obtain financial or other benefit directly or indirectly,
- crimes committed by a structured group or criminal organization on the territory of the Republic of Macedonia or other countries or when the crime is prepared or planned on the territory of the Republic of Macedonia or in another country,
- crimes for abuse of official position and power referred to in Article 353 paragraph 5, accepting bribe of significant value referred to in Article 357 and illegal mediation referred to in Article 359, all referred to in the Criminal Code, committed by an elected or appointed functionary, official or responsible person within the legal entity, and
- crimes for illegal manufacturing and distribution of narcotic drugs, psychotropic substances and precursors referred to in Article 215 paragraph 2, money laundering and other incomes from punishable crime of substantial value referred to in Article 273, terroristic threat to the constitutional order and security referred to in Article 313, offering bribe of greater value referred to in Article 358, illegal influence on witnesses referred to in Article 368-a, criminal association referred to in Article 394, terrorist organization referred to in Article 394-a, terrorism referred to in Article 394-b, crimes involving trafficking in persons referred to in Article 418-a, crimes involving smuggling migrants referred to in Article 418-b, trafficking juveniles referred to in Article 418-d, and other crimes against humanity and the international law referred to in the Criminal Code, regardless of the number of offenders.”

11 https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

12 Available at:

http://www.unodc.org/documents/organized-crime/Publications/Model_Legislative_Provisions_UNTOC_Ebook.pdf

In many contexts, international cooperation, such as mutual legal assistance and extradition, will be provided only if the offence attracts a penalty of at least one year's imprisonment.”¹³

This section provides a comparative overview of other countries' definitions and approaches to organized crime which correspond to UNTOC's substantive provisions in articles 5, 6, 8, 23, and the additional protocols. The Criminal Codes used for this analysis were found on the United Nations' website's "Sherloc" search engine, which allows researchers and policymakers to look at other countries' legislation dealing with organized crime. This website is organized by cross referencing particular countries' codes provisions with the articles of UNTOC. The legislative search engine is available at <http://www.unodc.org/cld/index-sherloc.jsp> by selecting "database of legislation".

While it appears that the website is comprehensive, it is hard to know how often it is updated. Therefore, it is possible that the legislation available on this website has since been updated. Nonetheless, it is useful to note how other countries have incorporated provisions of UNTOC into their domestic law. This section is organized by comparing the national sentencing practices to those of other countries in regards to the Palermo protocols dealing with Trafficking in persons as well as the four main substantive articles of UNTOC (articles 5, 6, 8, and 23).

➤ *Palermo Conventions regarding Trafficking in Persons and Trafficking of Migrants*

The comparative analysis begins with the Palermo Conventions as crimes dealing with trafficking in persons are those most frequently adjudicated by the Specialized Department. The national Criminal Code regarding trafficking of humans includes mandatory minimums of 6 months, 4 years and 8 years while trafficking of children involves mandatory minimums of 4, 8 and 10 years depending on the circumstances surrounding the crime.

Many countries approach slavery and trafficking offenses seriously as reflected by high punishments. For example, the United States Code Title 18, section 1581 criminalizes the acts of anyone who holds or returns someone to peonage. The punishment is a fine or imprisonment of not more than 20 years or both. If the same offense involves death or includes "*kidnapping, attempt to kidnap or aggravated or attempted aggravated sexual abuse*" the punishment is a fine or imprisonment for any term of years including life imprisonment.

Migrant trafficking

As in the former Yugoslav Republic of Macedonia, trafficking of migrants is also a significant problem in the United States. The United States Code Title 8, section 1324 criminalizes five specific actions under this crime in which the punishment increases with the defendant's knowing inducement of a migrant to enter the country. The penalties range from fines to a maximum of 20 years imprisonment. A term of any imprisonment or the death penalty is allowed if the migrant being trafficked dies during the trafficking. For fiscal years 2009 to 2013, federal immigration crimes which involved transport of migrants, but also re-entry after deportation, averaged about 18 months in prison.¹⁴ While data from the United States

¹³ Id. At page 25.

¹⁴ This information is from the U.S. Sentencing Commission, 2009- 2013 Data files, USSCFY09-USSCFY13. An interac-

Sentencing Commission, at first glance appears to prescribe high sentences for these crimes, in practice there are many exceptions allowing defendants to plead to lesser charges with lower punishments if they are first time offenders or assist law enforcement officials. For example, a “safety valve” provision exists, allowing courts to lower the time of imprisonment substantially if the defendant meets certain requirements or is a first time offender.

Child trafficking

Much of the variation in treatment of trafficking in persons among countries revolves around whether the trafficking involved children and the definition of a child. Under a specific provision for sex trafficking of children, the US Code section 1591 criminalizes the use of force, fraud, coercion or benefits financially from any actions involving sex trafficking of minors. For these offenses, if the child is not yet 14 years of age the punishment is a fine and a minimum of 15 years to life. If the child is 14, but not yet 18 years of age the punishment is a fine and not less than 10 years imprisonment. If someone is involved in obstructing the enforcement of these criminal provisions, he or she faces not more than 20 years in prison. To succeed in a prosecution under this section “the Government need not prove that the defendant knew that the person had not attained the age of 18 years.”

Similarly under the Croatian Criminal Code of 1998 amended in 2003, Article 175 provides the criminalization and punishment for trafficking in human beings and slavery. The provision provides:

“[...] (1) Whoever, in violation of the rules of international law, uses force or threatens to use force or by fraud, kidnapping, abuse of position or authority solicits purchases, sells, hands over, transports, transfers, encourages or mediates in the buying, selling or handing over of another person or who conceals or receives a person in order to establish slavery or a similar relationship, forced labor or servitude, sexual abuse or illegal transplantation of parts of a human body, or who keeps a person in slavery or in a similar relationship shall be punished by imprisonment for one to ten years.[...]”

The Croatian Criminal Code raises the punishment if a child is involved ranging from 3 to 15 years. If the offenses above involve an individual involved in a criminal organization, “is committed against a larger number of persons” or causes death, the defendant faces a minimum sentence of 5 years up to life in prison.

➤ *UNTOC Article 5 - Criminalization of Participation in an Organized Crime*

UNTOC article 5 deals with conspiracy and participation in an organized criminal group. UNTOC requires that states criminalize either an agreement to commit a serious offense [UNTOC article 5(1)(a)(i)] or participation in activities of the criminal organization [UNTOC Art. 5(1)(a)(ii)] or both. Article 5(1)(a)(i), agreeing with one or more persons to commit a serious crime, requires the intentional entry into the agreement and that the agreement was made for the purpose of directly or indirectly obtaining financial or material benefit. Article 5(1)(a)(ii) deals with conduct by a person towards an organized group with knowledge about

tive resource for comparison of various sentences by crime types under the United States federal system is available at: <http://isb.ussc.gov/Login>.

that group's intentions.

Under UNTOC, organized criminal group is a structured group of three or more persons with the aim of direct or indirect financial or material benefit. It has been noted that the two options of criminalizing either the agreement to participate or only the actual participation in organized crime often reflect policy choices which diverge between common and civil law countries. Common law countries generally criminalize the act of conspiracy separately from actual participation in a crime. Civil law countries generally require direct participation for defining criminal culpability under this section.

In the UN's Model Legislative Provisions against Organized Crime, the authors emphasize that the criminal group must be formed for "financial or other material benefit" and as such terrorist and insurgent groups may not be covered by this definition if they do not seek financial or material gain, although it is possible that they are covered by other provisions such as when they are involved in other crimes such as drug trafficking.¹⁵

Across countries, definitions regarding organized criminal group vary widely. The UN Model Legislative Provisions Guide¹⁶ lists several examples of how organized crime is defined in various countries. Article 394 of the national Criminal Code defines the crime of criminal organization and levels of culpability based on individual involvement and stipulates punishment ranges from 6 months to 10 years. Anyone who discloses a criminal association to law enforcement prior to the commission of the crime by an organized group will be acquitted.

Some countries have definitions of different types of organized crime groups and the punishment for involvement with these groups varies depending on the type of organized group as well as the individuals' level of actual participation in the group. For instance, the Albania Criminal Code distinguishes criminal organization (Article 333) from an established structured criminal group (Article 333A). The punishment varies depending on the individual's involvement with these two groups. For those who establish or lead a criminal organization, punishments range from 5 to 15 years while participation in such a group involves 4-8 years imprisonment. If fire arms are involved in either type of organization, sentences are increased by 1/3. For an established structured group, those who establish or lead such groups face 3-8 years of punishment, while those who participate in this same type of group receive 2-5 years of punishment. Additional convictions and punishments attach if the defined group actually commits a crime. In these instances, five additional years are added onto the underlying crimes sentence, not to exceed the maximum allowed by law. Further, the Albanian Criminal Code provides that organizing or leading a criminal organization for the purpose of illegal production or trafficking of narcotics can lead to a 10 to 20 year punishment.

Another approach used by some countries is to define crimes and punishments based on the individual's level of involvement in the crime. For example under the Bulgarian Criminal Code, Article 20, distinctions are made between perpetrators, abettors and accomplices as defined below:

15 See page 8, Model Legislative Provisions against Organized Crime, UN, 2012 http://www.unodc.org/documents/organized-crime/Publications/Model_Legislative_Provisions_UNTOC_Ebook.pdf

16 The guide is available at:
http://www.unodc.org/documents/organized-crime/Publications/Model_Legislative_Provisions_UNTOC_Ebook.pdf

“Article 20

(1) Accomplices in the perpetration of intentional crime shall be: perpetrators, abettors and accessories.

(2) A perpetrator shall be a person who took part in the perpetration itself of the crime.

(3) An abettor shall be a person who intentionally incited another to commit a crime.

(4) An accessory shall be a person who intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.”

Under the Bulgarian Criminal Code, criminal culpability varies depending on individuals’ level of involvement. Under article 21, those who form or lead an organized criminal group, face from 3 to 5 years in prison. Taking part, but not leading or organizing that same group requires only 1-6 years. If armed force is used, individuals who are leading the group can receive 5 to 15 years punishment while those who simply participate simply 3-10 years.

Another approach is that used by the United States under its federal code which distinguishes between principals and accessories after the fact (United States Code, Title 18, sections 2 and 3) and varies punishment based on involvement in the crime. Under the United States Code, punishments for accessories after the fact are as follows:

“[...] Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.[...]”

➤ ***UNTOC Article 6 - Criminalization of the Laundering of Proceeds of Crime***

UNTOC Article 6 deals specifically with money laundering. The national Law on Courts and Criminal Code incorporate UNTOC Article 6 into the country’s domestic law. Under Article 272 of the Criminal Code, the money laundering offenses have punishments which range from three months to 10 years and culpable legal entities are fined.

It should be noted that some countries incorporate crimes involving money laundering within their criminal codes, while others have separate money laundering statutes dealing with many facets of laundering, such as banking, mutual assistance, etc. For example, Serbia has the following listed codes for money laundering: (Law on the National Bank of Serbia 2004; Law on the Prevention of Money Laundering and the Financing of Terrorism 2009; Law on Payment Transactions 2004; Law on Seizure and Confiscation of the Proceeds of Crime 2008; Criminal Procedure Code 2006; Law on Mutual Legal Assistance in Criminal Matters 2008; Law on the Liability of Legal Entities for Criminal Offences 2008; Law on Investment Funds 2009; Act on Associations 1990)

Serbia's Criminal Code of 2006, Article 231 deals specifically with money laundering offenses. This article specifies four specific offenses regarding money laundering all with different sentences paraphrased as follows:

Table 11. Serbia's Criminal Code Article 231 for Money Laundering

Crime defined	Penalty for offense
(1) Converting or transferring property knowing that it comes from a criminal offense "with intent to conceal or misrepresent the unlawful origin of the property"	6 months to 5 years imprisonment Seizure of money or property
(2) if money in paragraph (1) exceeds 1,500 dinars	1 to 10 years imprisonment Seizure of money or property
(3) If in offense 1 or 2, person "could have been aware or should have been aware that the property represents proceeds acquired by criminal offence"	Up to 3 years imprisonment Seizure of money or property
4) Officer of legal entity that commits offense	Seizure of money or property

The Croatian Criminal Code 1998 as amended through 2003 provides a similar scheme as that of Serbian Criminal Code article 279. The Croatian Code provides:

Table 12. Croatia's Criminal Code for Money Laundering

Crime defined	Penalty for offense
(1) Whoever, in banking, financial or other economic operations, invests, takes over, exchanges or otherwise conceals the true source of money, objects or rights procured by money which he knows to be acquired by a criminal offense: six months to five years.	6 months to 5 years imprisonment Forfeit money or property
(2) For those who possess the property mentioned in paragraph (1) and know its origin: six months to five years.	6 months to 5 years imprisonment Forfeit money or property
(3) Whoever commits the criminal offense referred to in paragraphs 1 and 2 of this Article as a member of a group or a criminal organization shall be punished by imprisonment for one to ten years	1 to ten years imprisonment Forfeit money or property
(4) Negligence in regards to origin of property:	3 months to 3 years imprisonment Forfeit money or property

➤ *UNTOC Article 8 - Criminalization of Corruption*

UNTOC article 8 deals specifically with corruption of officials. The crimes in this category deal with accepting a bribe or accepting money for unlawful influence or giving a bribe. Table 14 below shows some variations in criminal codes among 3 former Yugoslav countries, namely former Yugoslav Republic of Macedonia, Croatia and Serbia. The former Yugoslav republics' approaches and punishments are strikingly similar, perhaps due to the time of

adoption and shared traits of the region. These codes differentiate between whether an official who is bribed or unlawfully influenced is acting within or outside of his or her official duties.

In comparison, the United States Code is somewhat different in that it distinguishes between whether acts are done corruptly or not. Acts where corruption is not proven have lower sentences. The U.S Code allows fines which are tied to the value of the money involved in the crime. Further, the punishment can be a fine, imprisonment, or both. When prison time attaches for corrupt acts, the mandatory minimums are notably longer than those of the former Yugoslav republics. When imprisonment is ordered, criminal defendants under the United States Code face a minimum of 15 years for accepting and giving a bribe and undue influence when acts are done corruptly. Such stiff sentences may reflect the United States long and difficult history with organized crime. If the bribe does not involve corrupt acts then defendants can only receive a maximum sentence of 2 years.

Table 13. Comparison of Criminal Codes for Corruption

UNTOC Article 8	National Criminal Code	Croatia Criminal Code	Serbia Criminal Code	United States Code Title 8 crimes and criminal procedure USC title 18 section 201
Accepting a bribe	<p>Article 357</p> <ul style="list-style-type: none"> ▪ 3 m. - 10 years <p>Variation depends on whether official performing duty should or should not perform</p> <ul style="list-style-type: none"> ▪ Legal entity fined 	<p>Article 347</p> <ul style="list-style-type: none"> ▪ 6 m. – 8 years <p>Variation same as former Yugoslav Republic of Macedonia</p>	<p>Article 367</p> <ul style="list-style-type: none"> ▪ 2 to 12 years for bribe for official act that should not perform ▪ 2 to 18 if bribe for official act should perform ▪ 3 to 15 years if involves work for someone enforcing the law 	<p>Article 201</p> <ul style="list-style-type: none"> ▪ If acts done “corruptly”: Fined not more than 3 x the monetary equivalent of the value or imprisonment for ≤15 years or both & may be disqualified from holding any office “of honor, trust, or profit under the US. ▪ If acts not done “corruptly”: imprisoned not >2 years, fined or both
Accepting a reward for unlawful influence	<p>Article 359</p> <ul style="list-style-type: none"> ▪ 1-10 years ▪ Legal entity fined 		<p>Article 366</p> <ul style="list-style-type: none"> ▪ 6 months to 5 years 	<p>Article 201</p> <ul style="list-style-type: none"> ▪ If acts done “corruptly”: Fined not more than 3x the monetary equivalent of the value or imprisonment for ≤15 years or both & may be disqualified from holding any office “of honor, trust, or profit under the US. ▪ If acts not done “corruptly”: imprisoned not >2 years, fined or both

Giving a bribe	Article 358	Article 348	Article 368	Article 201
	<ul style="list-style-type: none"> ▪ 1-5 years ▪ Legal entity fined 	<ul style="list-style-type: none"> ▪ 3 months to 3 years if official should perform the duty ▪ 6 months to 5 years if official should not perform duty 	<ul style="list-style-type: none"> ▪ 6 months to 5 years for official act that should not be performed ▪ At least 3 years for official at that should be performed 	<ul style="list-style-type: none"> ▪ If acts done “corruptly”: Fined not more than 3x the monetary equivalent of the value or imprisonment for ≤15 years or both & may be disqualified from holding any office “of honor, trust, or profit” under the US. ▪ If acts not done “corruptly”: imprisoned not >2 years, fined or both

➤ **UNTOC Article 23 - Criminalization of Obstruction of Justice**

UNTOC Article 23 deals with the obstruction of justice in all government proceedings related to offenses in UNTOC articles 5, 6, 8, and 23 and other serious crimes and offenses related to the protocols. UNTOC 23(a) requires use of force, threat, intimidation, promise, offer or undue advantage to a person. The conduct must be intentional with the purpose of inducing false testimony. Article 23(b) requires use of force, threats or intimidations with the intent to interfere with law enforcement, prosecution or judicial authorities.

Table 14. Comparison of Criminal Codes for Obstruction of Justice

UNTOC Article 23	National Criminal Code	Croatia Criminal Code	Serbia Criminal Code	United States code. Title 8 crimes and criminal procedure USC title 18 section 201
Illegal influence of witnesses	Article 368-a <ul style="list-style-type: none"> ▪ 1-10 years 	Article 209 <ul style="list-style-type: none"> ▪ 1-5 years 	Article 336b <ul style="list-style-type: none"> ▪ Not more than 3 years if involves judge or judicial officer. ▪ 6 months to 5 years if involves prosecutor ▪ 1 to 8 years if involves weapon ▪ 2 to 8 years if grave bodily injury 	Article 201 <ul style="list-style-type: none"> ▪ If acts done “corruptly”: Fined not more than 3x the monetary equivalent to the value or imprisonment for ≤15 years or both & may be disqualified from holding any office “of honor, trust, or profit” under the US. ▪ If acts not done “corruptly”: imprisoned not >2 years, fined or both

Other countries have taken slightly different approaches to that of the former Yugoslav Republic of Macedonia. The Criminal Code of Canada (1985), article 423, has an offense for intimidation of a group of people or the public to impede the administration of criminal justice, a justice system participant to impede his or her duties, and a journalist to impede the transmission of information. The Code also lists specific types of conduct such as violence,

threats, repeated following of a person or repeated communication and watching a person. The punishment under this Code provision is not greater than 14 years.

The French Code of 2000, article 434-8 criminalizes similar conduct with the purpose of “influencing behavior” in a justice official’s duties. This offense has a punishment of 2 years and a fine of 30,000 Euros. If the intimidation involves a death threat or threat to property, the penalty increases to 5 years and 75,000 euros. If the intimidation is used so that the official abuses his actual authority the punishment is 10 years imprisonment and a fine of 150,000 euros. A lesser punishment of 3 years and 45,000 Euros is envisioned if the threats or actions are used to persuade someone to provide false testimony or evidence. UNTOC article 11 provides consideration for aggravating and mitigating factors in punishments for obstruction of justice.

Closing Observations

The Specialized Department is focused on adjudicating cases involving organized crime and corruption. Although the Department has jurisdiction over a wide range of offenses, the majority of its work involves cases in which defendants are convicted of migrant trafficking. The analysis has revealed that the Department’s sentences for these crimes are slightly below their average prescribed minimums. The Department and policymakers **should review their procedures and processes involving the punishments for these crimes and ensure that the punishments are consistent with goals of proportionality in sentencing, deterrence, and retribution.** The comparative analysis in general shows **that the country’s approach to organized crime and corruption is in line with the mandates of UNTOC** and similar to other countries in the region.

It is noteworthy that the country has one Department adjudicate all cases involving organized crime and corruption. This ensures that defendants and cases are treated similarly throughout the country and avoids some of the problems which occur in other countries where national law is applied differently depending on the location of the crime.

While this analysis has provided information regarding the Department’s practices, **the Department itself should continue to collect data on its cases and analyze its practices after the introduction of the plea bargain procedure and over time.**

Annexes

Appendix 1: Questionnaire

Appendix 2: Number and Percent of Defendants, by Criminal Conviction

Appendix 3: Number and Percent of Defendants, by length of imprisonment

Annex 1: Questionnaire

FORM FOR FINAL JUDGMENTS IN CASES RELATED TO ORGANIZED CRIME AND CORRUPTION

KOK br. _____ Basic Court Skopje 1 - Specialized court department for adjudicating cases of organized crime and corruption

a) total No. of defendants _____ b) defendant No. _____

1 Type of criminal act (Enter the article and the paragraph of the Criminal Code)

2 Sentence prescribed by Law (encircle one answer. If the foreseen sentence is not listed, then provide details in 36 "Other")

1. Imprisonment of at least one year up to 15 years
2. Imprisonment of at least three years up to 15 years
3. Imprisonment of at least four years up to 15 years
4. Imprisonment of at least five years up to 15 years
5. Imprisonment of at least eight years up to 15 years
6. Imprisonment of at least ten years up to 15 years
7. Imprisonment of at least ten years or a lifetime
8. Imprisonment from three months to three years
9. Imprisonment from three months to five years
10. Imprisonment from six months to three years
11. Imprisonment from six months to three years and fine
12. Imprisonment from six months to five years
13. From six months to five years and fine
14. Of one to five years
15. Of one to five years and fine
16. Of one to eight years
17. Of one to ten years
18. Of three years to five years
19. Of three years to eight years
20. Of three years to ten years
21. Of five years to eight years

22. Of five years to ten years
23. Fine
24. A fine or imprisonment up to three months
25. A fine or imprisonment of three months to one year
26. A fine or imprisonment of six months
27. A fine or imprisonment of six months to five years
28. A fine or imprisonment of one year
29. A fine and imprisonment of one to five years
30. A fine or imprisonment of up to three years
31. Fine or imprisonment of at least three years
32. Fine and imprisonment for at least four years
33. Ban on performing profession, activity or duty
34. Prohibition on the use of motor vehicle
35. Expulsion of an alien from the country
36. Other _____

3 Sentence given (FIRST INSTANCE) (encircle and fill in details from the verdict)

1. convicting judgment prison _____
2. convicting judgment fine _____
3. alternative measure _____
4. mitigation of the sentence _____
5. acquitting judgement
6. refusing judgement
7. Plea bargaining for the criminal sanction _____
8. Excerpts from the explanation pertaining to sentence given _____

4 Sentence given (SECOND INSTANCE) (encircle and fill in details from the verdict)

1. convicting judgement prison _____
2. convicting judgment fine _____
3. alternative measure _____

4. mitigation of the sentence _____

5. acquitting judgement

6. refusing judgement

7. Excerpts from the explanation pertaining to sentence given _____

5 Mitigating circumstances (multiple answers may be encircled)

1. Personal circumstances of the defendant (age, property, unemployment, etc.)
2. Family circumstances of the defendant (family man, husband, parent, should provide for the family and dependents, a single provider, etc.)
3. Previous criminal convictions
4. No procedure pending for other crimes
5. Absence of harmful effects
6. Damaged party does not require damage and does not join prosecution
7. Contribution of the damaged party for the act to be committed (deeds in the sphere of traffic)
8. Confession of the defendant, expressed feelings of guilt and remorse
9. The act was committed by negligence

6 Aggravating circumstances

1. The danger of such crimes
2. Frequency of execution of acts
3. The degree of criminal liability of the defendant
4. The manner of execution of the crime
5. Persistence in carrying out the act
6. The consequences of the act
7. Former convictions
8. Special returnee
9. There are pending procedures for other criminal acts
10. Other aggravating or mitigating circumstances _____

Annex 2. Number and Percent of Defendants, by Criminal Conviction

TYPE OF CRIMINAL ACT	% OF THE TOTAL NUMBER OF DEFENDANTS	NUMBER OF DEFENDANTS
418b/2	16.30%	183
215/3	8.40%	94
215/2	7.00%	79
418v/2	4.20%	47
418b/4	3.40%	38
394/2, 353/5	3.40%	38
353/5	3.10%	35
418b/1	2.90%	33
394/2, 357/2	2.70%	30
418v/1, 418b/1	2.50%	28
394/1, 357/1	2.30%	26
353/3	2.30%	26
418b/2, 418v/2	2.10%	24
357/1	2.00%	22
279/2	2.00%	22
394/2, 396/2	1.80%	20
394/1, 361/3	1.40%	16
418g/2	1.40%	16
418g/1	1.30%	15
273/5, 253/3	1.20%	14
394/2, 60, 285/1	1.20%	14
258/2	1.20%	13
394/2	1.10%	12
273/5	1.10%	12
394/2, 60	0.80%	10
215/1	0.80%	9
365/2	0.80%	9
418d/3	0.70%	8
273/1	0.70%	8
359/1	0.70%	8
418v/1	0.60%	7
276/1	0.60%	7
353/4	0.50%	6
273/2	0.50%	6

353v/3	0.50%	6
357/2	0.50%	6
368a/1	0.50%	6
394/2, 278/2	0.50%	6
418v/1, 418g/2	0.50%	6
249/2	0.40%	5
353/3, 396/1	0.40%	5
354/3	0.40%	5
394/1	0.40%	5
394/1, 261/3	0.40%	5
394/1, 396/2	0.40%	5
418b/1, 418b/4	0.40%	5
357/1, 394/2	0.40%	5
327/2	0.40%	4
353/1	0.40%	4
353/2	0.40%	4
361/1	0.40%	4
396/3	0.40%	4
418b/2, 418b/1	0.40%	4
418b/3, 418v/1	0.40%	4
418b/1, 418v/2	0.40%	4
123/2	0.30%	3
141/2	0.30%	3
378/3	0.30%	3
394/1, 215/3	0.30%	3
418/2	0.30%	3
418a/1	0.30%	3
418a/1, 2, 3	0.30%	3
237/3, 292/1, 288/3	0.30%	3
418b/1, 418v/1, 358/1	0.30%	3
418g/3	0.30%	3
353/4, 273/2	0.20%	3
215/2, 396/2	0.20%	2
247/3	0.20%	2
251/5	0.20%	2
313	0.20%	2
378/3, 394/2	0.20%	2
394/1, 60, 285/1	0.20%	2
394/2, 357/1	0.20%	2

415b/2	0.20%	2
418a/2	0.20%	2
418b/4, 418v/2	0.20%	2
394/2, 59, 60, 285/1	0.10%	1
191/1	0.10%	1
215/2, 215/1, 396/1	0.10%	1
236/3	0.10%	1
247/4	0.10%	1
261/3	0.10%	1
272/5	0.10%	1
273/2, 247/4, 273/5	0.10%	1
273/2, 249/1	0.10%	1
273/3	0.10%	1
278/3, 278/2	0.10%	1
278/3, 358/1	0.10%	1
279/2, 273/1	0.10%	1
353/1, 353/5	0.10%	1
353/4, 273/1	0.10%	1
353/4, 273/5	0.10%	1
353/4, 378/3	0.10%	1
353/5, 353/3	0.10%	1
353b/1	0.10%	1
357/1, 396/2	0.10%	1
358/1	0.10%	1
359/2	0.10%	1
363/2	0.10%	1
364/2	0.10%	1
378/1	0.10%	1
394/1, 353/4, 285/1	0.10%	1
394/1, 357/2	0.10%	1
394/1, 288/1	0.10%	1
394/2, 288/1	0.10%	1
396	0.10%	1
418b/2, 418v/2, 396/2	0.10%	1
418b/4, 418v/1	0.10%	1
418b/4, 418v/4	0.10%	1
No answer	0.20%	2
Total	100%	1125

Annex 3: Number and Percent of Defendants, by Length of Imprisonment

ADJUDICATED IMPRISONMENT SENTENCE IN FIRST INSTANCE	% OF THE TOTAL NUMBER OF DEFENDANTS	NUMBER OF DEFENDANTS
1 year	13.8%	128
2 years	8.6%	80
4 years	8.3%	77
3 years	6.8%	63
6 years	6.6%	60
1 year and 6 months	5.1%	47
5 years	4.8%	45
2 years and 6 months	3.4%	31
10 years	3.0%	27
7 years	2.7%	25
3 years and 6 months	2.5%	23
6 months	2.5%	23
8 years	2.4%	22
1 year and 3 months	2.2%	20
4 years and 6 months	2.2%	19
10 months	2.0%	18
6 years and 6 months	1.9%	18
2 years and 3 months	1.4%	13
7 months	1.5%	13
5 years and 6 months	1.3%	12
9 years	1.3%	12
1 year and 8 months	1.1%	10
15 years	1.0%	9
8 months	0.9%	8
13 years	0.8%	7
7 years and 6 months	0.7%	7
11 years	0.5%	5
3 years and 200.000 denars	0.5%	5
3 months	0.5%	5
suspended sentence	0.5%	5
1 year and 2 months	0.4%	4
12 years	0.4%	4
2 years and 123.000 denars	0.4%	4
2 years and 1 month	0.4%	4

8 years and 6 months	0.4%	4
10 years and 6 months	0.3%	3
5 months	0.3%	3
9 months	0.3%	3
life imprisonment	0.3%	3
1 year and 10 months	0.2%	2
1 year and 4 months	0.2%	2
11 years and 6 months	0.2%	2
14 years and 6 months	0.2%	2
2 years and 2 months	0.2%	2
2 years and 5 months	0.2%	2
2 years and 8 months	0.2%	2
3 years + 19.365.820 denars	0.2%	2
3 years and 3 months	0.2%	2
4 years and 3 months	0.2%	2
5 years + 22.888.918 denars	0.2%	2
5 years and 300.000 denars	0.2%	2
6 months and fine	0.2%	2
repealed	0.2%	2
suspended sentence 2 years from 5 years	0.2%	2
1 year and 1 month	0.1%	1
1 year and 5 months	0.1%	1
1 year and fine	0.1%	1
13 years and 6 months	0.1%	1
14 years	0.1%	1
2 years and 100.000 denars	0.1%	1
2 years and 3 years prohibition to practise the profession, activity or duty	0.1%	1
2 years and 4 months	0.1%	1
3 years and 123.000 denars	0.1%	1
3 years and 172.200 denars	0.1%	1
3 years and 10 months	0.1%	1
3 years and 5 months	0.1%	1
3 years and 6 months and 100.000 denars	0.1%	1
4 years and 270.600 denars	0.1%	1
4 years and 300.000 denars	0.1%	1
4 years and 4 months	0.1%	1
4 years and 5 months	0.1%	1
4 years and expulsion of a foreigner for 1 year	0.1%	1
5 years and 190.293 denars	0.1%	1

5 years and 3 months	0.1%	1
6 years and 2 months	0.1%	1
6 years and 4 months	0.1%	1
6 years and 5 months	0.1%	1
6 years and 9 months	0.1%	1
7 years and 3 months	0.1%	1
7 years and 7 months	0.1%	1
stopped	0.1%	1
separated	0.1%	1
suspended sentence and expulsion of a foreigner for 10y	0.1%	1
suspended sentence and expulsion of a foreigner from the country forever	0.1%	1
Total	100%	929