FUNDAMENTAL CIVIL AND POLITICAL RIGHTS AND LIBERTIES

Analysis of trials monitored for the period of 01.09.2013 through 30.06.2014

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I.

INTRODUCTION

Even after more than 20 years since the independence of the Republic of Macedonia, the functioning of the judicial system is facing multiple issues and shortcomings. The domestic and international reports on the situation of human rights, without exception, pinpoint the judiciary as the main obstacle to comprehensive implementation of the principle of rule of law. This situation has resulted in negative outcomes for both the concerned citizens, as well as the democratization and euro-integration of the country. Although compared to the previous decade the number of active court cases has significantly decreased (a fact which, among other things, is due to the transfer of cases under the authority of notaries and enforcement agents), problems still persist on system level that the judiciary has not been able to overcome, is taking too long to overcome, or are getting deepened. The basic problems are due to the insufficient independence of the judiciary by allowing the executive authority to intervene in the work of the judicial authority, insufficient competence and training of judges, lack of transparency in the work of courts, inconsistencies in the jurisprudence, unequal treatment of citizens v. state bodies when they appear as parties in procedures and non-existence of efficient legal protection, in particular when it comes to access to justice, violation of the right to court trial within reasonable time and the presumption of innocence.

In the past four years new or thoroughly changed existing organic laws were adopted, regulating the development of court proceedings in a completely new way. The new Law on Criminal Procedure, the thorough changes to the litigation, the laws on prevention and protection against discrimination, protection against harassment at the workplace and civil liability for defamation and libel pose an important reform of the judiciary. Although some of them offer solutions which are in favour of the citizens, the non-transparent procedure and the short period of time they were adopted in has increased the need to monitor their implementation. Hence, the monitoring of court proceedings was arranged thematically and referred to four areas: 1) protection against torture and other cruel inhuman or degrading treatment or punishment; 2) protection and prevention of discrimination (including mobbing); 3) freedom of speech and expression; and 4) criminal procedures violating the principle of presumption of innocence or leading to suspicions of possible political or other pressures on the judicial authority.

The Helsinki Committee is one of the few organizations in the Republic of Macedonia that have continual long-term experience in monitoring court proceedings. Furthermore, through its programme for free legal assistance, the Committee has access to records which are an integral part of court cases. Consequently, the monitors from the Helsinki Committee have the opportunity to observe proceedings from both the scientific and legal aspect, as well as the practical one. This analysis is the outcome of the monitoring of 30 court proceedings in the period from 1 September 2013 to 30 June 2014, with a special overview on the manner of implementation of the aforementioned laws. Additionally, the proceedings were observed through the perspective of the European Convention for the Protection of Human Rights, and drew on the relevant jurisprudence of the European Court of Human Rights which refers to the principle of a fair and equitable trial.

II.

ABOUT THE PROJECT

This analysis is the outcome of the project "Monitoring of court proceedings in the area of fundamental civil and political rights and liberties", which was supported by the USAID Civil Society Project implemented by the Foundation Open Society - Macedonia, and was conducted in the period from 1 September 2013 to 30 June 2014.

The main goal of the project was to enhance the efficiency, independence, impartiality and legitimacy of the judiciary in the Republic of Macedonia by:

1. Increasing the number of proceedings monitored by the public eye;
2. Providing transparency, visibility and accountability of the work of courts by means of observing and publishing the findings of the monitoring of court proceedings and providing recommendations in order to overcome the inconsistencies;
3. Affecting the judicial authority towards increased compliance with the principle of presumption of innocence; and
4. Informing the citizens about the possibility for protection of the right to a fair trial within reasonable time by means of complaints and requests to the Presidents of the Courts, the Judicial Council of the Republic of Macedonia and the Supreme Court.

The main activities of the project covered:

1. Monitoring and assessment of court proceedings
    - analysis and determining inconsistencies by monitoring the course of the proceedings
2. Consultations with, counseling and guiding the parties
    - meeting the parties and taking action upon requests for monitoring of proceedings
3. Sharing the findings with the public and the concerned parties
    - reporting on the basis of regular monthly reports
4. Reaction and alarming in cases of more severe violations of the principle of a fair trial by means of:
    - written notices to the Presidents of Courts
    - complaints to the Judicial Council of the RM

The focus of the monitoring was on:

1. The right to security and freedom
2. The presumption of innocence
3. The transparency of court proceedings
4. The right to representation by an attorney
5. The right to an independent and impartial court
6. The equality of arms and the burden of proof
7. The right to trial within reasonable time

The team of observers consisted of permanent and occasional observers: Voislav Stojanovski, PhD, Project Manager, Neda Chalovska, lawyer who has passed the bar exam, Artan Murati, LL.M, Katerina Bakalova LL.M, Sofija Velkovska, Sanja Barlakovska and Hristina Shulevska - lawyers.

III.

METHODOLOGY

According to the Organization for Security and Co-operation in Europe (OSCE) "a trial monitorring programme can be seen as a disgnostic tool to collect objective information on administration of justice in individual cases and, through these, to draw and disseminate conclusions regarding the broader functioning of the justice system".[1] Guided by this premise and by its own long years of experience in trial-monitoring, the Helsinki Committee prepared the following methodology for the needs of this analysis, which refers to thematic trial-monitoring:

Legal research

Before the start of the project which refers to monitoring court proceedings in the area of basic human and political rights and liberties, the team of observers commenced legal research on the relevant provisions from the domestic and international law, regarding the principle of equitable trial. The determinants used to formulate the scientific and legal methodology for assessment of the court proceedings were derived from the Constitution of RM, the Law on Criminal Procedure, the Law on Litigation Procedure, the

1 OSCE/ODIHR, Trial-monitoring: A Reference Manual for Practitioners (revised), p. 16, Warsaw, 2012

Law on Prevention and Protection against Discrimination, the Law on Civil Liability for Defamation and Libel, the Law on Protection from Mobbing, the European Convention for Protection of Human Rights and the jurisprudence of the European Court of Human Rights.

Monitoring team

The monitoring team consisted of eight monitors-lawyers (permanent and occasional) and was divided into two groups, the first of which in general only followed proceedings from the civil matter, while the second one observed proceedings from the criminal matter. The Helsinki Committee, by means of faxes addressed to the President of the Court always notified the authorities about the monitors' intention to be present at a particular trial. Prior to entering the courtroom, the monitors were identified by the court police. The presence of the monitors was most often noted in the minutes of the court hearing, and in a large number of monitored proceedings, the notification of presence became an integral part of court records on the case. In this way, the higher courts were able to learn about the Helsinki Committee's interest to attend a particular trial.

Selection of cases and communications with parties

The monitored cases were selected by topic, in two ways 1) upon receiving a request for free legal aid and monitoring of a court proceeding by parties who have turned to the Helsinki Committee or 2) according to an initiative of the monitoring team itself, in cases when the media, or other sources had informed about a trial which falls under the interest of the project. Upon the request for monitoring by parties, a positive decision was made when the monitoring team assessed that there are indications i.e. suspicions of possible violation of the civil and political rights of citizens.

Before the monitoring team started the monitoring, a suggestion was made to the party who had submitted the request, to deliver relevant documentation on/referring to the case. Upon receipt of the documents the team appointed a

monitor(s) in charge of monitoring the proceeding. Some of the proceedings that were monitored at our own initiative, the monitors established direct contact with the parties, their families or legal representatives. In this way, the monitors were able to gain additional information or obtain documents relevant to the proceeding.

Questionnaires on monitoring of court proceedings

Questionnaires were prepared for the needs of the monitoring of court proceedings containing general and specific questions regarding the course of the proceeding and its management by judges. The general questions refer to the general laws on procedure (the ones on criminal and litigation procedures), while the specific ones refer to the provisions of the special laws (for protection against discrimination and mobbing and civil liability for defamation and libel) which are considered *lex specialis* and to a large extent prescribe different deadlines, course of proceedings, temporary measures, burden of proof etc.

Analysis and reports

Each filled-in questionnaire was analyzed separately and in correlation with the remaining questionnaires referring to a certain criminal or civil area. Upon the analysis of the questionnaires, a brief written report was prepared on the infringements and omissions by courts in relation to the legal provisions. The monitoring team, during its regular meetings, discussed certain actions of the courts which could be deemed violation of procedure, in detail. Some of the reports were published in the regular monthly/bimonthly reports of the Helsinki Committee on the human rights situation in the Republic of Macedonia. In this way the public and courts were alarmed about the more serious violations of court proceedings.

Exchange of arguments and communicating findings with concerned parties

In the course of the research, certain findings were communicated to the President of the Primary Court Skopje 1 (in which a large number of proceedings were monitored). At the invitation of the Court, representatives of the Helsinki Committee had the chance to present the violations of procedure they had observed in front of about thirty judges. The judges presented their professional standpoints and perspectives whereby, regarding some of the conclusions of the monitoring team consensus was reached by both parties, while in relation to the remaining part, the team had the chance to listen to the reasons as to why the judges did not agree with the findings.

IV.

FINDINGS OF THE MONITORING TEAM

1. Right to liberty

Article 12 from the Constitution of the RM (amended with constitutional Amendment III) stipulates that the human right to freedom is irrevocable and it may not be restricted except by a court decision or in cases and procedures determined by law. The legality of the detention, without any delay shall be determined by the Court. After the indictment, the duration of detention is determined or prolonged by the competent court while the persons detained may, under the conditions determined by law, be released from custody to conduct their defense. Similarly, Article 5 of the European Convention for the Protection of Human Rights stipulates that any human has the right to freedom and security and no person may be deprived of his/her freedom, except in accordance with a procedure prescribed by law.

Paragraph (c) of the aforementioned Article states that the detention for the purposes of criminal prosecution is only allowed when the detained person is arrested or detained for the purpose of being brought before the competent legal authority on reasonable suspicion of the person having committed an offence or when it is reasonably considered necessary to prevent his/her committing an offence or fleeing after having done so. Any detained person has the right to a trial within a reasonable time or to a release pending trial.

The release may be conditioned by guarantees to appear for trial. According to item 4 from Article 5 of the Convention, any person shall be entitled to take proceedings to court by which the lawfulness of his detention shall be decided speedily by a court and his/her release ordered if the detention is not lawful. All these rights are guaranteed and laid down in more detail both by the previous Law on Criminal Procedure[2] (which is still being applied to proceedings started prior to 1 December 2013), as well as the new Law on Criminal Procedure (LCP).[3]

1.1 Pre-trial detention as punishment

In the period of monitoring, an increased number of complaints regarding the measure of detention were submitted to the Helsinki Committee. The complains mainly objected to the procedures of statement and extension of detention, its duration, the failure to take more lenient measures, the overpopulated detention units, the bad living conditions and the improper healthcare. In 10 out of the total of 18 criminal proceedings that were being monitored, the measure of detention was stated against about 100 defendants. According to the response given, in October 2013 the capacity of the detention units was 335 beds, and 466 people resided in them which is overpopulation of 139%. The Special Rapporteur on Torture of the United Nations states that the overpopulation in the institutions of imprisonment equals abuse and even torture.[4] This stance also originates from the practice of the European Court of Human Rights which stipulates that in cases when the country does not intend to torture someone, the overpopulation and bad conditions in detention institutions equal torture.[5]

2 "Official Gazette of the Republic of Macedonia" no.15/1997; 44/2002; 74/2004; 83/2008; 67/2009 and 51/11.

3 "Official Gazette of the Republic of Macedonia" no. 150/2010 and 100/2012.

4 United Nations, General Assembly, A/68/295, pp. 22, 9 August 2013.

5 Kalashnikov v. Russia, Application, no. 47095/99, Strasbourg, 15 July 2002, para. 92-103.

1.2. The unlawful practice of statement and extension of detention

From the monitored decisions for imposition and extension of detention measures, what is particularly alarming are the reasons provided for the statement of detention, even in cases when the legal conditions for detention had not been met. This was, in particular, observed in the case **M.SH and others, K.no. 23/14 of the Primary Court Skopje 1**. After the detention of the other suspects/defendants in the case, M.SH. was in USA and was determined to face the charges, so he voluntarily arrived to Macedonia earlier than planned, and when he was arrested in Austria he did not appeal against the request for extradition which excluded the possibility of fleeing. As of that moment he was no longer the authorized person in the company where the offence allegedly took place and there was no possibility for him to repeat or continue with the offence, and the danger of possible influence on witnesses was minimal, since the investigation was already in a more advanced stage and they already been interrogated by an investigative judge. The possible influence on witnesses could also be prevented by a more lenient, alternative measure (e.g. house arrest). However, the measure of detention was continually extended and M.SH. spent over 8 months in detention.

In the monitored cases where several persons appear as defendants, it was determined that judges continue to impose and extend detention by means of collective decisions. Although there is visible progress in the process of imposing detention (the judges refer to each defendant individually in a separate paragraph), the practice of collective extension of detention to a group of defendants whose names are mentioned, persists, and there is no individual overview of the reasons as to why each defendant has had the measure of detention extended against them. This is contrary to the jurisprudence of the European Court of Human Rights, which in two verdicts against the Republic of Macedonia *Vasilkoski and others v. the Republic of Macedonia* from 2010 (in which the legal representative of the complainants was the Helsinki Committee)[6] and *Miladinov and others v. the Republic of*

6 Application no. 28169/08, Strasbourg, 28 October 2010.

Macedonia from 2014.[7] In the first verdict the Court states that by confirming the applicants' detention (...) the domestic courts constantly repeated the same summary formula using an identical form of words. It appears that they had little if any regard to the applicants' individual circumstances, as their detention was extended by means of collective detention orders. The practice of issuing collective detention orders has already been found by the Court to be incompatible, in itself, with Article 5, paragraph 3 of the Convention in so far as it would permit the continued detention of a group of persons without a case-by-case assessment of the grounds for detention in respect of each individual member of the group".[8] In the case **T.K. and others KOK. no. 51.13 of the Primary Court Skopje 1**, the passing of the decisions for continuation of the measure of detention against T.K. was taken by the Court in a procedure and in a manner which are contrary to the European Convention of Human Rights and the jurisprudence of the European Court of Human Rights. In fact, fundamental and procedural violations were committed in the assessment and argumentation of the necessity to extend the detention by the Primary Court Skopje 1 and with the failure of the Court of Appeal in Skopje to take action upon the receipt of an appeal. In this case too, the measure of detention was extended collectively without individualization of the reasons for each of the defendants separately. The decisive arguments in the decisions for extension of the detention for the eight defendants were laid down on a single page.

1.3 International supervision in detention units

In the case **A.D. and others KOK.no.80/12 of the Primary Court Skopje 1,** the International Committee of the Red Cross (ICRC) had submitted a request to the Court for a visit of the detained persons. During one of the hearings from this case, the President of the Trial Chamber informed that the request had not been granted because ICRC did not agree with the conditions imposed by the court regarding the manner in which the visit was to be carried out. The public present at the hearing was not informed about the details regarding

7 Applications no. 46398/09, 50570/09 and 50576/09, Strasbourg, 24 April 2014.

8 Application no. 28169/08, Strasbourg, 28 October 2010, para. 63.

the imposed conditions. We would like to emphasize that the significant role for the human rights that ICRC plays with its supervision of authorities in the implementation of the measure of detention has been affirmed in both the old and new Law on Criminal Procedure which stipulates that "Representatives of the International Committee of the Red Cross have the right, upon obtaining the approval of the investigative judge, to visit and talk to the detained persons without supervision." Additionally, the international mandate of the ICRC also emanates from the Geneva Conventions from 1949 signed by the Republic of Macedonia.

Apart from the aforesaid rejection of international supervision in the detention units, in the case **T.K. and others KOK.no.51.13 of the Primary Court in Skopje 1**, the request of the Special Rapporteur of the United Nations for the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, who requested to visit the sued journalist T.K. was also rejected. This action of the Primary Court Skopje 1 leaves place for suspicion that the Macedonian detention units are places where the international and domestic standards for treatment of detainees are not complied with. On the other hand, the permissions to visit detained persons issued by several courts in the country to representatives of the Helsinki Committee are to be commended. Although the permissions only allowed for conversations in the visiting room and under the supervision of the prison police, this marks progress, considering the fact that prior to 2013, our requests had been rejected without legal justification.

2. Presumption of innocence

Article 13 of the Constitution of RM stipulates that a person indicted for an offence shall be considered innocent until his/her guilt is established by a legally valid court verdict. Article 6, paragraph 2 of the European Convention on Protection of Human Rights states that Everyone charged with a criminal offence shall be presumed innocent until proved guilty according

to law. According to the European Court of Justice the suspicion of whether someone is guilty or not should be in favour of the defendant.[9] Through its jurisprudence, the European court states that the authorities should refrain from bias regarding the suspects' guilt. According to the Court, Article 6, paragraph 2 would be violated in cases in which judges and prosecutors,[10] ministers and police officers, [11] and high officials would state that the person, who is still on trial, is guilty.[12] Such jurisprudence has been introduced into the new Law on Criminal Procedure. Article 2, paragraph 2 from the Law, stipulates that the state authorities, the media and others are obliged to adhere to principle of presumption of innocence, and that with their public statements regarding the ongoing procedure they may not violate the rights of the defendant and the damaged party, as well as the judicial independence and impartiality. This protection is necessary in order to protect the fairness of the procedure and relieve the pressure on judges and lay judges while reaching decisions regarding the cases. Apart from the prohibition of bias among relevant persons, according to the European Court of Human Rights even a "viral media campaign (...) may affect the public opinion which may lead to lay judges finding the defendants guilty".[13]

2.1 Violations of the principle by the authorities and the media

In the past few years, members of the Ministry of Internal Affairs (MoI) have provided titles to some of the police arrests. The naming of police actions with, for example, "Monster", or "Schismatic" is a certain violation of the right to presumption of innocence. When it comes to the monitored case **A.D. and others KOK. no.30/12 of the Primary Court Skopje 1**, on the day of the arrest

9 Barberà, Messegué and Jabardo v. Spain, Application no. 10590/83, Strasbourg, 6 December 1988, para. 77.

10 Daktaras v. Lithuania, Application no. 42095/98, Strasbourg, 10 October 2000, para. 42.

11 Allenet de ribemont v. France, Application no. 15175/89, Strasbourg, 10 February 1995, para. 41.

12 Butkevičius v. Lithuania, Application no. 48297/99, 26 March 2002, para. 53.

13 Craxi v. Italy, Application no. 34896/97, 5 December2002, para. 98

of the suspects, the Minister of Internal Affairs stated "MoI has found the perpetrators of the heinous murder near Lake Smilkovo (...) followers of radical Islam...". As soon as MoI names an action, the name is taken up by the media, but is also used in the official court releases. Thus, for example, in its release from 14 April 2014, the Primary Court Skopje 1 states "Regarding the case **KOK. no.80/12,** also known to the public as "Monster", the Primary Court Skopje 1 - Skopje informs that the case is still under way, but it is approaching its closing stage..."[14] In their announcements, almost all media take no consideration whatsoever about the principle of presumption of innocence and they used headlines or entire articles on ongoing cases in which the defendants are portrayed as guilty.

Before the start of the trial on the case **D.S. K.no.1505/14 of the Primary Court Skopje 1,** MoI released an announcement informing the public about the arrest of person D.S. Although MoI did not spell out the name of the suspect, the presumption of innocence was violated by their revealing of his profession and qualifications, the name of the healthcare institution in his ownership, his previous and present workplace in specific clinics in Skopje. By combining all the given details, one could very easily find out the full name and surname of the suspect. During the meeting between representatives of the Helsinki Committee and about thirty judges from the Primary Court Skopje 1, this issue was initiated and it was requested from the judges to make active efforts towards protection of the principle of presumption, for although its violation is not regulated by sanctions in accordance with any of the laws, it is intolerable according to the European Convention on Human Rights which is superimposed to our laws. It was also stressed that even if the headlines do not affect the judges who do their jobs professionally, they definitely do affect the lay judges who are the majority in the Trial Chambers. According to the judges' stance, the violation to the presumption in the naming of police actions and the informing of the media is not their activity and may not be considered a violation on their part.

14 Avalable via: http://www.osskopje1.mk/Novosti.aspx?novost=256 (last access 3 July 2014).

2.2 Violations of the principle by courts

In part of the monitored court proceedings in which the measure of detention was stated against the defendants, when considering the decisions for statement and extension of this measure, we noticed that the judges had also violated the presumption of innocence in the wording of the text on the reasons as to why the measure of detention is being imposed. Namely, in several decisions for detention which resembled each other, read that detention is imposed due to the "degree of criminal responsibility" and the "manner of and the motives for committing the crime". We would like to stress that the degree of criminal responsibility and the manner of and the motives for committing the crime may be determined only after the end of the main hearing and during the determining of the sentence, and not during the investigation or the trial. In the case of **T.K. and others KOK.no.51/31 of the Primary Court Skopje 1**, one of the judges addressed one of the witnesses with the exclamation "you are lying!". This manner of conducting a procedure most certainly does not correspond with the role of a judge in trial and may be interpreted as premature conviction of the judge regarding a certain fact, before the completion of the trial.

3. Publicity of court proceedings

Article 102 from the Constitution of the RM stipulates that court hearings and the passing of verdicts shall be public, and the public can be excluded in cases laid down by law. The right to a public trial is also guaranteed with Article 6, paragraph 1 from the European Convention on Protection of Human Rights, as well as Article 5 of the Law on Criminal Procedure. The public may be excluded by the Court *ex officio* or upon proposal by the parties or the defendant from part of the main hearing or during the entire main hearing, if that is necessary in order to protect a state, military, official or important business secret, preserve public order, protect the privacy of the defendant, witness or the damaged party, protect the safety of the witness or victim and/or to protect the interests of a juvenile person (Article 354 of the Law on Criminal Procedure). In court proceedings initiated for protection of the basic human

rights and duties of humans and citizens, civil disputes, where the court is in session and passes rulings in accordance with the provisions of the Law on Litigation Procedure, the hearing shall be public.

The citizens of the Republic of Macedonia very rarely venture out to follow a certain court trial. The reasons for this situation are of various origins and are due to the lack of space in courts, inaccessibility to courts, lack of information, lack of interest, etc. Nevertheless, like never before, in the past few years increased interest has been noted in following court proceedings by the media who regularly inform about dozens of court trials at any given time. Apart from the media, very few civil organizations also appear in the role of a public in the courtrooms and even fewer of them perform systematic monitoring of court proceedings. In addition, a certain number of trials are monitored by the Mission of the Organization for Security and Cooperation in Europe (OSCE) in Skopje, and sporadically, the trials are also attended by representatives of several Embassies of Foreign Countries to the Republic of Macedonia. The presence of the OSCE Spillover Mission in Skopje, which is, incidentally, the mission with longest duration of this organization since its founding, as well as the presence of representatives of embassies at trials which do not involve their citizens as parties are indicative of the low level of rule of law and the low level of trust in the Macedonian judicial system.

The practice of having certain court proceedings take place in the judges' offices continues to persist. In such conditions, it is practically impossible for the public to attends the trials. The spatial conditions in most of the courtrooms do not allow for presence of more than 10 people, and at times there are more parties and direct participants in the court proceeding than there are free seats in the courtroom. Despite such spatial limitations, most of the judges did allow the public to be present, although the attendees were forced to stand. The monitors have observed that at times the court police did not allow entrance of members of the close families of the parties, even if there were free seats available in the courtrooms. However, upon the reaction of the defense attorneys to the judge, these persons were granted entrance.

In most of the courtrooms, the presence, of even a small group of citizens, resulted with crammed and stuffy courtrooms. Often, the temperature in some of the courtrooms depended on the weather conditions, and it was particularly unpleasant during the hot summer and cold winter days. In such conditions it would be unrealistic to expect from the public to be interested in following court proceedings.

The use of web-sites by the courts in order to publish the agenda of the scheduled trials is also to be commended. Moreover, most of the courts make use of LCD screens to show the schedule of the trials, as well as the number of the courtrooms in which they are to be held. However, it would be desirable to have brochures available in the court, which, among other things, would notify citizens about their right to enter the premises of the court at any given time should they sport an interest to follow a certain trial or trials.

3.1 Violation of the principle of publicity

Apart from one problem in the Primary Court in Kumanovo, the monitoring team encountered no difficulties in accessing the courtrooms where the monitored trials took place. In the case of **A.G. and others K.no.906.13 of the Primary Court Kumanovo**, apart from the parties and a representative of the monitoring team, a journalist was also present in the courtroom. The President of the Trial Chamber, who did not wear the special judicial robe which he is obliged to wear in accordance with Article 57 from the Law on Courts,[15] asked the journalist whether she had obtained permission from the Supreme Court of RM for her presence. Although the journalist rightfully attempted to explain to him that according to the Law on Criminal Procedure, permission is only necessary for audio or video recording or photographing, the President of the Judicial Council, in consultation and with the consent of the representative of the Public Prosecution sent the journalist to see the President of the Court and seek permission to stay in the courtroom.

During another court hearing on the same case, at the moment when the monitor arrived on the premises of the Primary Court Kumanovo, he was

15 „Official Gazette of the Republic of Macedonia“ no. 58/06, 35/08 and 150/2010.

asked by the court police to present written permission to attend the trial whereby he showed his official identification and informed the representatives of the court police that the President of the Court and the President of the Trial Chamber are familiar with his presence, that he is to follow a hearing that he had already been attending on two occasions, that the trial is public and there is no need for a special permission to attend and that the prohibition to enter the courthouse by the court police would be unconstitutional and unlawful. Such argumentation was not accepted by the court police who prevented the monitor from entering the courthouse. After this event, the Helsinki Committee immediately sent a complaint to the President of the Court. The President of the Court, calling on an old and void Court Rules of Procedure and its provisions regarding the security of buildings, property, people and the maintaining of order and discipline in the courthouse that had ceased to apply, came to a conclusion that the court police rightfully demanded permission or an invitation. For this flagrant violation of the principle of publicity the Helsinki Committee submitted a complaint to the Judicial Council of the RM, but by the time this analysis was ready to be printed, although the legal deadline of two months for a response had passed, no decision of the Council had been delivered.

3.2 Transparency of judges and recording/photographing of proceedings

Both the old (Article 314) and the new Law on Criminal Procedure (Article 363) stipulate that before the start of the main hearing, the President of the Trial Chamber, apart from the other obligations, is obliged to introduce the members of the Chamber. Out of all the monitored proceedings from the criminal matters, the members of the trial chamber were only introduced by the President at the start of the case **M.E. KOK.no.107/13 of the Primary Court Skopje 1.** Although no fundamental violation of the law was in question, we believe that this provision is of importance, both for the transparency of the procedure, as well as for the accountability of the members of court chambers.

In accordance with both the old (Article 310), and the new Law on Criminal Procedure (Article 360), no film or television recording shall be allowed in the courtroom. As an exception, with the permission of the President of the Supreme Court of the Republic of Macedonia, journalists may record at a specific main hearing. In the course of monitoring of court proceedings, the monitors of the Helsinki Committee, on several main hearings at the Primary Court Skopje 1, noted that the council removed the journalists after they had recorded brief excerpts, and before the main hearing had started at all. Due to this court practice, the public is unable to get the full picture on the conditions pertinent to a criminal case, and this also leaves space for mistakes in the journalists' reporting.

Although it is undisputable that the presiding judge, i.e. the trial chamber may decide not to allow certain parts of the main hearing to be recorded, from the trials monitored so far it was established that the camerapersons were removed from the courtrooms without the adoption of any written decision for it, which would be inserted into the minutes of the proceeding. This behaviour is not fully in compliance with the permission of the President of the Supreme Court. This omission was discussed amongst representatives of the Helsinki Committee during the course of the meeting with about thirty judges at the Primary Court in Skopje. According to the judges, the spatial limitations do not allow for recording of the entire court hearing, and the issuing of permits to all media who request them from the Supreme Court contributes to the equal treatment to all of them. However, after the meeting, in the case **A.D. and others KOK.no.80.12**, the camerapersons and photo-reporters were allowed to record the entire announcement of the verdict which is a step in a positive direction and as such it is worth of note.

With reference to recording/photographing of civil procedures, the Law on Litigation Procedure does not contain special provisions allowing for or prohibiting recording i.e. photographing of the court proceedings. However, the Court Rules of Procedure[16] regulate this issue in Article 104 paragraph 3,

16 „Official Gazette of the Republic of Macedonia" no. 66/2013.

where it is stated that the visual (video) and audio recording, reporting and photographing in the civil proceedings and in the proceedings pursuant to an administrative dispute, shall be done provided that the President of the Court grants permission, by having previously obtained the opinion of the judge to whom the case has been assigned and the written permission of the parties. We believe the structure of this article is such due to the nature of the disputes, which is civil.

The court disputes for defamation, slander and discrimination are also conducted in accordance with the provisions from the Law on Litigation Procedure. Due to their nature, these disputes may be of exceptional importance for the public, which is why it is necessary to have the disputes on these cases conducted in civil courts both on visual (video) and audio recordings. However, pursuant to Article 104 from the Court Rules of Procedure, consents needs to be provided from the parties in the case, which is exceptionally difficult to achieve. In fact, in the case **A.A. and others RO 121/13 of the Primary Court in Gostivar**, where the determining of discrimination on grounds of political affiliation was required, a request was submitted for both visual (video) and audio recording of the main hearing, whereby positive opinion was obtained from both the President of the Trial Chamber and the plaintiffs. However, due to the negative opinion of the sued, the request was declined.

3.3 The protected witness as a reason to exclude the public

By monitoring court proceedings in which persons with hidden identity testify as witnesses, the monitoring team established that the public was being excluded from the courtrooms as a rule. In this context, we would like to put special emphasis on the case **LJ.B and others KO.no.2917/12 of the Primary Court Skopje 1**. Namely, notification was sent in this court proceedings by Prof. Dr. Gordan Kalajdziev, that himself, in the role of a scholar and professor of Criminal Procedure at the Faculty of Law "Iustinianus Primus" and President of the Helsinki Committee would monitor this process. A positive opinion on not excluding the expert public from the interrogation of the protected witness was also given by the Public Prosecutor, as the proposer

of the witness, whereby, for the first time good will was shown by the public prosecution towards increased transparency in the procedure of hearing of the protected witness. However, the council decided to totally exclude the public, including the professionals in the area. We find that the constant decisions of councils for exclusion of the public in cases where protected witnesses appear, does not leave room to establish whether the principle of a fair and equitable trial is being upheld.

We find the exclusion of the professional public to be particularly ungrounded, since they would merely follow the special manner of hearing of the protected witness in order to establish the implementation of the legal provisions which prescribe the manner of protection of witnesses in the Republic of Macedonia, and its impact on the principle of fair and equitable trial. We would like to emphasize that in future the judicial council should take advantage of the possibility stipulated in Article 355 paragraph 2 of the new Law on Criminal Procedure (the provision was also present in the old law) to allow for the presence of professionals in the area, scholars and public officials at a main hearing where the public is excluded. This possibility was also discussed among representatives of the Helsinki Committee during the meeting with about thirty judges at the Primary Court Skopje. The representatives of the Helsinki Committee emphasized that they would continue to submit requests to attend trials as scholars, and the judges agreed to consider those requests for each case separately.

4. The right to representation by a legal representative/attorney

Article 12 of the Constitution of RM stipulates that any person has the right to an attorney in a court procedure. Article 6, paragraph 3, item c, from the European Convention on Protection of Human Rights, states that everyone has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Article 70 from the

new Law on Criminal procedure cites in full the aforementioned provision from the Convention. According to the jurisprudence of the European Court of Human Rights, when determining whether "interests of justice" required that the applicant receive free legal assistance by line of duty, three factors are to be taken into consideration, the seriousness of the offence and the severity of the possible sentence; the complexity of the case; and the social and personal situation of the defendant. [17]

When determining whether a person will be assigned an attorney for free and *ex officio*, it may not be required from the person to prove "beyond all doubt" that they are unable to pay for their legal representation.[18] Furthermore, Article 8 from the Convention on Protection of Human Rights (Right to Privacy), guarantees the privilege of confidentiality between the defendant and their attorney. According to the practice of the European Court of Human Rights, the correspondence between the defendant and their attorney is of a private and confidential character. [19]

4.1 The role of representatives/attorneys in the court proceedings

Upon completion of graduate studies, a person intending to work as a lawyer must gain apprenticeship of at least two years and pass the bar. The legal education has been described as overly theoretical, offering almost no practice in the courtroom. The apprenticeship is most often only formally carried out, and very rarely do the candidates gain the necessary skill to represent clients. Upon obtaining a lawyer's license, the lawyers upgrade their knowledge and skills solely at their own initiative, i.e. there is no system of continual education.

In most of the monitored court proceedings, the parties in the proceedings had an attorney or attorneys they had chosen themselves. The monitors did not observe any rejection of an assigned free attorney ex officio by the courts. On the contrary, in the case **J.V. and others KOK no.59/12 of the Primary**

17 Quaranta v. Switzerland, Application no. 12744/87, 24 May 1991, para. 33-35.

18 Pakelli v. Germany, Application бр. 8398/78, 25 April 1983, para. 34.

19 Campbell v. UK, Application no. 13590/88, 25 March 1992, para. 48

Court Skopje 1, a free attorney was assigned to an employed person who was sentenced to probation at the end of the proceedings. Consequently, it can be concluded that the jurisprudence regarding the assignment of attorneys *ex officio* is in accordance with the Constitution, the European Convention for Protection of Human Rights and the laws.

4.2 Attorney ex officio free of charge

The monitors observed that attorneys assigned ex officio were not always active in the cases in which they represent parties who do not have the means to hire an attorney of their own choice. This was particularly striking in the case **V.L. and others KOK.no.8/08 of the Primary Court Skopje 1** in which the attorneys hired by parties for compensation are much more active compared to those assigned *ex-officio*. This situation calls into question the effectiveness of the defense of those citizens are unable to hire an attorney of their own choice. Despite the lack of engagement of some of the attorneys assigned *ex-officio*, the monitoring team did not observe a case in which the judge reacted to the inadequate defence. We would also like to mention that according to the jurisprudence of the European Court of Human Rights, courts must rapidly react when the failure to provide effective representation is manifest or sufficiently brought to their attention in some other way.[20]

The major shortcomings of the system of provision of attorneys ex officio is the non-existence of clear rules in their appointment, as well as the inability of those attorneys to act after the end of the first instance proceedings. The attorneys ex officio are assigned by the court from its own internal list of interested lawyers. The lawyers on those lists are most often young and take advantage of the ex officio engagement to gain experience. There is no system for random choice of an attorney from an official registry. This situation adds to the excessive freedom of the courts when deciding which attorney to assign. The fee paid to the attorneys ex officio is twice lower compared to the one laid down in the Attorney tariff.

20 Czekalla v. Portugal, Application no. 38830/97, 10 October 2002, para. 60.

The monitoring team was informed by the attorneys ex officio that the court pays their fee with long delays, oftentimes after the full completion of the court proceedings. This additionally brings into question the effectiveness of the defense. The attorneys ex officio are paid a fee solely in the first instance proceedings. Due to this situation, they most often do not submit appeals to the rulings of first instance. The failure to use legal remedies may have negative consequences for the parties, especially for those who are in detention or in prison, do not understand Macedonian, or are illiterate.

5. The right to an independent, impartial and competent court

Article 12 from the Constitution of RM (amended with Constitutional Amendment XXV) establishes that Judiciary power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law. Article 6 of the European Convention of Human Rights states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of his civil rights and obligations or the grounds of any criminal charges against him/her. According to the jurisprudence of the European Court of Human Rights, in case the judge forms his/her ruling before taking into consideration the evidence which would support his/her reasoning, it would be considered ungrounded and impermissible according to Article 6, paragraph 1 of the Convention.[21]

The existence of a system for random choice of cases which would be assigned to them is of great importance for the independence impartiality of judges. The Courts in the Republic of Macedonia use a unified Automated Court Case Management Information System (ACCMIS) through which, among

21 Fey v. Austria, Application no. (14396/88, 24 February 1993, para. 34.

other things, performs automatic distribution of cases to judges and monitors the movement of cases. The appointment of judges, which in the Republic of Macedonia, in accordance with Article 38, paragraph 1 of the Law on Courts,[22] is without limitation to the term of office, is also very important. Compared to the other holders of public offices, the salary of the judges in the Republic of Macedonia is relatively high, which is supposed to contribute to their independence and impartiality.

For a court to be considered impartial, it is necessary for it to employ judges who would represent all the members of communities in the country. The report of the Ombudsman on monitoring of implementation of the principle of adequate and equal representation for 2012 states that "Considering the total sum of obtained data from 27 Primary Courts on the territory of the Republic of Macedonia for 2012, the following ratio regarding the representation of communities may be established: Macedonians – 83,8%, Albanians – 10,5%, Turks – 1,6%, Roma – 0,9 %, Serbs – 1,0%, Vlach – 1,3%, Bosnians – 0,5% and others 0,4%. In primary courts there has been certain, but very low progress regarding the implementation of the principle of proper and equitable representation compared to previous years, which is why we pinpoint the slow pace of employing people who do not belong to the majority community, and in particular, their representation in managerial positions."[23] The situation in the four Courts of Appeal is similar. According to this, apart from the Vlach, no other minority community is equitably represented in the courts in the country.

The independence and impartiality of judges is also reflected in their relationship to other participants in the proceedings (defendants, damaged parties, prosecutors, plaintiffs, sued, defense attorneys, etc.). The monitoring team noted that judges are generally professional in their attitude to other

22 „Official Gazette of the Republic of Macedonia" no.58/06, 35/08, and 150/10.

23 Ombudsman, Report on Monitoring of Implementation of the Principle of Adequate and Equal Representation for 2012 pp. 28-30, Skopje, April 2013, available at: http://ombudsman.mk/upload/documents/2013/Izvestaj%20-SPZ%20-za%202012.pdf (last access: 4 July 2014).

participants in the proceedings, but there is a certain closeness between judges and prosecutors as well as more favorable behaviour on the part of judges towards older and more experienced lawyers, as opposed to their attitude towards less experienced attorneys.

Suspicions of bias were observed in the case **J.V. and others KOK no.59/12 of the Primary Court Skopje 1.** Namely, on the day when the announcement of the verdict was scheduled, the Trial Chamber decided to take the case back to the stage of trial and on the spot, without the knowledge of the defendants and their attorney, informed that a person will testify in court, who allegedly arranged sale of property with J.V. The witness claimed that he negotiated for the land on his own behalf and on behalf of his neighbors who authorized him as proxy by written authorization. J.V. denied having ever met the witness, whereby the defense attorney requested the letter of authorization to be presented as evidence in court. At that point the judicial council left the courtroom and after 20 minutes of counseling informed that the proposal is rejected, and the litigation ends. The ruling, in which all defendants were found guilty, used the testimony of the witness as one of the main proofs of J.V.'s guilt.

In the cases **A.D. and others KOK.NO.80/12** and **T.K. and others KOK. no.51/13 of the Primary Court Skopje 1** a judge, member of the Trial Chamber was observed leaving the courtroom in the course of the proceedings. In the case **A.D. and others KOK.NO.80/12** the president of the Trial Chamber asked the defendants' attorneys whether there was a need to make a break during the proceedings since one judge, member of the trial chamber, had gone out to have some water, whereby they answered negatively and the court proceedings went on without his presence. With reference to this, we would like to emphasize that according to Article 307 from the old and Article 357 from the new Law on Criminal Procedure, the President, the members of the Chamber and the court clerk, as well as the judges and lay judges shall incessantly attend the trial. The defendants' approval of a judge briefly exiting the courtroom does not make it possible for the members of the trial chambers to act contrary to the law.

When it comes to the competence of courts, in the case **V.CH and others RO no.95/2013 in PC Gostivar**, which referred to discrimination caused by political affiliation, a court verdict negative to the plaintiffs was adopted, along with a note from the Trial Chamber that prior to filing a lawsuit, the plaintiffs should have submitted a complaint to the Commission for Protection against Discrimination. Through this example, we would like to point out to the judges in the Republic of Macedonia that the Commission for Protection against Discrimination is an independent authority which adopts opinions and recommendations upon submission of complaints for possible discrimination and is no prerequisite for court protection against discrimination.

Regardless of whether victims of discrimination have addressed or not addressed the Commission for Protection against Discrimination, they can file a lawsuit in order to establish and get protection from discrimination. In cases when proceedings have been initiated and an opinion has been delivered by the Commission for Protection against Discrimination that discrimination had occurred in the said case, the opinion may be used as evidence in court proceedings, which however, may by no means oblige the court to adopt the same decision. Article 26 of the Law on Prevention and Protection against Discrimination states that the Commission acts upon the complaint if the procedure in front the court for the same matter has not already been initiated or effectively finalized. In case a procedure has been started with the Commission for Protection against Discrimination and no decision on the submitted complaint has been made, the victim of possible discrimination may initiate court proceedings and inform the Commission on Prevention and Protection against Discrimination about it, whereby the procedure in front of the Commission shall be stopped.

5.2 Lay judges

The main conclusion from all the monitored proceedings regarding the lay judges is that they are not perceived as an integral part of the trial chamber which decides on the specific case, although within the chamber they are majority with a right to vote in decision-making. This impression is partially

based on the behaviour of the lay judges themselves, who in part of the proceedings are uninterested and leave the courtroom without a halt in the hearing, i.e. the trial. In the case **AA. and others RO 121/13 of the Primary Court in Gostivar,** one of the lay judges left the courtroom during the main hearing at a moment when one of the plaintiff was testifying. In this case, the decision was made half an hour after the main hearing finished. The monitoring team, in the course of the proceedings that they observed, did not observe a single posed question by a lay judge, although they are entitled to this according to the Law on Criminal Procedure.

6. Equality of arms and burden of proof

6.1 Equality of arms

According to the jurisprudence of the European Court on Human rights, the equality of arms denotes the equal possibility for each party in the proceedings to present their perceptions and explain their arguments in relation to the specific court case under conditions that do not place them at a substantial disadvantage vis-à-vis their opponent.[24] In a large number of its verdicts regarding the equitable trial guaranteed with Article 6 of the European Convention of Human Rights, the European Court considers the equality of arms as an integral part of the Convention. Article 14 of the new and Article 15 of the old Law on Criminal Procedure stipulate that the court and state authorities are obliged to pay equal attention to examine and determine both the facts that allege the defendant, as well as those that are in his/her favour.

In terms of equality of arms in criminal proceedings, we would like to point out the public hearing on the case **J.V and others KOKZH.no.9/14 before the Appellate Court**. Namely, the Higher Public Prosecutor pointed out that in the case proceedings, with the indictment and with the verdict of guilty of the first instance, the prosecution had proved that the defendant committed the offense while the defendants had failed to prove the opposite. We want to

24 De Haes and Gijsels versus Belgium, Application no. 19983/92, 24 Feburary 1997, para. 53.

point out that the mere filing of the indictment and the first instance verdict of guilty do not mean that the crime which the defendants are sued of has been committed, until an effective court verdict is passed.

6.2 Burden of proof

With the adoption of the Law on Prevention and Protection against Discrimination, the provisions of the Law on Labour Relations pertaining to protection against harassment at the workplace, and later on also the Law on Protection against Harassment at the Workplace and the Law on Civil Liability for Defamation and Libel, it was stipulated the burden of proof to fall upon on the sued, in case the plaintiff is able to establish a probable cause that he/she had been a victim of discrimination, harassment at the workplace, or of libel or defamation. Shifting the burden of proof and compliance with it is of great importance, both in terms of protection of victims, as well as in terms of keeping step with the international practice and the legislation of the European Union.

From the monitored proceedings in these areas, the monitoring team established that the courts do not have a practice of, nor are they trying to create a practice of shifting the burden of proof upon the sued. As an example, we shall state the proceeding **A.A. and others RO 121.13 of the Primary Court Gostivar,** which was about determining discrimination on the basis of political affiliation. In this case, despite the large amount of evidence that gave the plaintiff probable cause that they had been discriminated against by the sued, the court decided not to shift the burden of proof upon the sued and conducted the proceedings as any regular civil procedure in which the plaintiffs are supposed to prove the grounds for their claim. In fact, apart from their proxy - lawyer, the sued were not even present at the main hearing at all.

The shifting of the burden of proof upon the sued is of particular importance in cases of discrimination and harassment at the workplace, since the collection of evidence by the plaintiff is made more difficult considering the fact that the plaintiffs do not always have access to information that would prove the alleged

discrimination i.e. harassment. In addition, this affects the efficient initiation of proceedings for determination of discrimination, i.e. harassment, through which one may also seek interim measure for protection against victimization.

The European Court of Human Rights has pointed out in several decisions that shifting the burden of proof is of particular importance in proceedings that require determination of discrimination. Especially important is the decision *D.H and others v. Czech Republic* in the European Court of Human Rights which states: "Where a plaintiff alleging discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden of proof then shifts to the respondent State, which must show that the difference in treatment is not discriminatory (...). Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (...), it would be extremely difficult in practice for plaintiffs to prove indirect discrimination without such a shift in the burden of proof. [25]

7. The right to trial within reasonable time

Article 12 from the Constitution of RM (amended with Constitutional Amendment XXV) establishes that Judiciary power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law. Article 6 of the European Convention of Human Rights states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of his civil rights and obligations or the grounds of any criminal charges against him/her.

Article 6, paragraph 2 of the Law on Courts stipulates that while deciding on civil rights and obligations as well as deciding on criminal liability, everyone

25 D.H. and others v. the Czech Republic, Application no. 57325/00, 13 November 2007, para. 189.

shall be entitled to just and public trial within a reasonable time before an independent and impartial court established by law. Article 10 stipulates that the procedure before a court shall be regulated with a law and it shall rest on several principles among which is the trial within reasonable time. Article 36 from the Law on Courts stipulates that the party who deems that the competent court has violated the right to trial within reasonable time, may submit a request for protection of the right to trial within reasonable time to the Supreme Court of the Republic of Macedonia.

7.1 Delays in court proceedings

There is a general impression that the courts sometimes fail to comply with the provisions of the Law on Criminal Procedure regarding the deadlines for the drafting of verdicts. The deadline for drafting verdicts of 15 days as of the day of conclusion of the main hearing is not complied with, and a case was observed in which even the deadline of 60 days for more complex cases was missed. Such is the example with the case **Lj.B and others KO.no.2917/12 of the Primary Court Skopje 1** in which more than 4 months passed between the day of conclusion of the first instance proceeding and the day of delivery of the verdict, which is twice longer than the legally prescribed deadline.

Also, in the case of **J.V. and others KOK no.59/12 of the Primary Court Skopje 1** the first instance verdict was delivered to J.V. who was serving a previous sentence at the time, 106 days after its statement. The first instance verdict was contested, and the Court of Appeal in Skopje took more than seven months to schedule the public hearing on the case of J**.V. KOKZH.no.9/14 of the Court of Appeal in Skopje**, in April 2014. When the public hearing was finally to be held, the court postponed it for May because J.V. had not been brought from PCI Idrizovo. In May, the prison management, without notifying the court about its reasons, once again failed to bring the defendant. The non-compliance with the court verdicts by the bodies of the state administration speaks of the improper attitude of other institutions towards the court. Aside from the fact that this practice affects the duration of the court proceedings, it can, in particular, violate the rights of defendants placed in detention, a

situation in which the Law on Criminal Procedure stipulates an immediate litigation.

The courts often violate the right to trial within reasonable time. Apart from the already mentioned infringements, violation was also observed in several other cases from both the criminal, as well as the civil procedure. Namely in the case **K.K.no.-534/13 of PC Gostivar**, which is conducted for criminal act of Rape, reported on the 09.10.2008, when the critical event allegedly took place, the indictment was submitted to court on the 21.06.2011 i.e. two years and 10 months after the submission of the report. The proceeding, on the other hand, is stuck before court for 3 years, because the decisions of the court of first instance have been overturned twice by the court of second instance and no effective verdict on the case has been adopted yet. We believe that this case, in which 5 years and 10 months have passed after the reporting of the crime and no effective court verdict has yet been reached, shows that there is no efficient protection when it comes to sexual violence against women.

Regarding the provisions from the Law on Criminal Procedure regarding the pronouncing of verdicts, a violation was observed in the case **Zh.K. K.no.-534/13 of PC Gostivar,** where the President of the Council, upon the completion of the main hearing, scheduled the pronouncing of the verdict in a few hours, but failed to appear at the scheduled pronouncing because of a meeting, with an explanation that the verdict would be pronounced in a few days. Despite this notification, the verdict was not announced even after the expire of an entire week, because the judge had gone on vacation. These actions evidently violate Article 370 from the Law on Criminal Procedure which stipulates that the presiding judge of the trial chamber shall immediately declare verdict, after the court has pronounced it. If the court is not capable to pronounce the verdict the very same day after the completion of the main hearing, it shall postpone the proclamation of the verdict by not more than three days and it shall determine the time and location of the proclamation of the verdict.

From the civil cases, we would point to case **B.J. RO - 2253/11 of the Primary Court Skopje 2**, as an example. Although the verdict was positive to the

plaintiff and violation of the rights of labour relations was established, the procedure was conducted in the course of 2 years and 5 months, which is an extremely long procedure when it comes labour relations disputes. Article 405 of the Law on Litigation Procedure stipulates that in the procedure in labor relation disputes, and especially when determining time periods and hearings, the court shall always pay special attention to the need of urgent deciding of the labor relations. The hearing for main contention in labor relations disputes referring to termination of labor relation shall be held in a period of 30 days as of the day of the receipt of the response to the lawsuit. In the procedure upon labor relation disputes, the procedure with the court of first instance has to be completed in a period of six months as of the day of filing the lawsuit. Based on these provisions, it appears that the court had conducted proceeding which was four time longer than the deadline stipulated in the Law on Litigation Procedure, whereby it indisputably follows that the right to trial within reasonable time has been violated, which can have major impact on the personal and family life of the plaintiff when they file a lawsuit for unlawful termination of employment.

The case **A.Zh VPP 232/12 of the Primary Court Skopje 2**, is about compensation for expropriated estate. After the 13-year-long proceedings, A.Zh. finally saw the day when compensation was arranged for his expropriated estate during the time of former Yugoslavia. In 2011 he attempted to collect his claim from the state through enforcement agents, which resulted in an appeal by the Public Attorney which in 2010 submitted a request for reinstatement of the proceedings, and in 2011 submitted new evidence to the court. The process of deciding whether the proceedings need to be reinstated is still under way, although A.Zh. has submitted a request for trial within reasonable time to the Supreme Court which has ordered the first instance court to finish the procedure within three months. In spite of the fact that the case is already 16 years long, and that the deadline given to the lower court by the Supreme Court to complete the case has run out, the first instance court has still not passed a decision. Apart from pointing to extreme lack of efficiency of the court,

this example also indicates that the courts do not provide equal treatment to parties whose opponent in the court dispute is the state.

At times, the reason why the right to trial within reasonable time is not complied with are the parties in the proceedings themselves. Thus, for example, in the case **V.L. and others K.O.K.no.8/08 of the Primary Court Skopje 1,** in which over 70 people were sued, the trial was postponed several times because one, or several of the sued had failed to respond to the court summons. At one of the trials, where one of the sued was not present, the President of the Trial Chamber told the other sued to inform the absentee that in case he is absent from the next hearing, the measure of detention shall be imposed against him. Although the judge's interest and engagement in conducing the case within reasonable time is praiseworthy, it is not clear why no court order had been issued by the court instructing the police to secure the presence of the accused during the proceeding which lasts 6 years already.

7.2 Drafting and pronouncing verdicts

With regards to the deadlines for announcement and drafting of verdicts, the courts very often fail to comply with the provisions of the Law on Litigation Procedure. The verdicts are very rarely pronounced immediately after the conclusion of the main hearing, and in accordance with Article 324, paragraph 3 of the Law on Litigation Procedure, although seldom are there more complex cases. Not even the deadline for announcement of eight days as of the day of conclusion of the main hearing is complied with, at times when more complex cases are question, in accordance with Article 324, paragraph 4 of the Law on Litigation Procedure. The case with the drafting of court verdicts is also similar, i.e. in the part to non-compliance with the legal deadlines in the drafting and delivery of verdicts has been observed, as stipulated by Article 326, paragraph1of the Law on Litigation Procedure, which states that the pronounced verdict shall be drafted in writing within 8 days, and in more complex cases within 15 days as of the day of pronouncing. Announcement of a decision immediately after the conclusion of the main hearing took place

in the case **A.A. and others RO 121/13 of the Primary Court in Gostivar**, in order to establish discrimination on the basis of political affiliation.

8. Other findings

8.1 Access to courts

The monitoring team established that access to the courts is generally unsatisfactory. Some courts do not have a separate entrance for arrested persons or detainees which is why it is a common sight to see these people being taken to court through the main i.e. only entrance of the courts. The behavior of the court police varies from the point of having practically no control at the entrance to the courthouse (eg. Primary Court Tetovo), to thorough controls of citizens. Strict controls are carried out at the entrance of the Primary Court Skopje 1, but it has to be noted that the court police in this court acted professionally and with respect to those entering the courthouse. There are no special rooms for the reception of juveniles, and no wardrobes, which is why those present are often dressed inappropriately for the temperature in the courtroom. The court buildings there are separate rooms for witnesses or victims of crimes. This leads to a situation where the defendants and plaintiffs often meet in court hallways which sometimes leads to verbal clashes and unpleasant atmosphere. In front of the largest courtroom in the biggest Primary Court - Skopje 1, there are no chairs, which is why the parties, witnesses and the public sometimes have to wait standing for hours. The toilets in almost all the courts in which proceedings were observed are in a very poor condition and are not maintained regularly which is not suitable for the role that the judiciary has in society.

8.2 Civil associations as interveners in court proceedings

Taking advantage of the right to participate in the proceedings in the role of interveners, as organizations, i.e. civil associations which under the scope of their activities deal with protection of the rights of equal treatment, whose rights are being decided on in the proceeding (Article 39 from the Law on Prevention

and Protection against Discrimination), the Discrimination Protection Network submitted a request to intervene on the side of the plaintiffs in the case **A.A. and others RO 121/13 of the Primary Court Gostivar** which was accepted by the Court. In accordance with Article 196 of the Law on Litigation Procedure, the intervener is authorized to point out proposals and undertake all other litigation activities in the time periods when such activities could have been undertaken by the party he has acceded. In this way, civil associations who have been working in the field of protection against discrimination for a long time may play an active role in court proceedings establishing discrimination, pose questions, offer proposals, evidence, submit appeals. We commend this decision of the court to allow interference of civil associations in litigation, which we believe should become a practice, especially when it comes to court proceedings that deal with identification and protection from discrimination, whereby the civil associations are given the chance to play an active role in the proceedings when proving discrimination.

V.

CONCLUSIONS AND RECOMMENDATIONS

Right to liberty

What was of particular concern in a large number of court proceedings, is the practice of adopting decisions for imposition and extension of detention, unaccompanied by arguments and reasons for those measures. There is practice of collective extension of detention for a group of suspects whose names are mentioned, but the decisions contain no individual overview as to why the measure of detention is imposed against each defendant separately. Such decisions are adopted contrary to the domestic and international law and the jurisprudence of the European Court of Human Rights. The detention lasts too long, even after the end of the investigation and the interrogation of the defendant. The detention units in prisons are overpopulated to an extent that a stay in them already can be considered torture due to the bad living conditions and the lack of appropriate healthcare.

RECOMMENDATIONS:

1. The measure of detention to be used as an exception and not a rule, its duration to be reduced to the shortest time necessary and judges to first consider the possibility of using more lenient preventative measures.

2. When establishing, and in particular, when extending the measure of detention, the judges to bear in mind the jurisprudence of the European Court on Human rights, to explain and reconsider the reasons why they had opted for such a measure, to stop with the practice of writing identical decisions with stereotypical wording and to develop individual approach to each defendant by abandoning the practice of adopting collective detention decisions.

3. During regular weekly visits in the detention units, the judge in charge of supervision of the conditions that the detained persons live in, to pay special attention to the vulnerable categories of citizens, as well as those who are in need of healthcare services. Upon noticing violations of the rights, the judges carrying out the supervision to inform the judges from the previous proceedings about the situation with the detained persons and the need some of the detainees to be sent outside the detention unit for medical treatment.

Presumption of innocence

The practice which violates the presumption of innocence by officials and the media still persists. The courts fail to react to such violations, and in certain cases they even violate the presumption of innocence themselves, especially with the decisions stating or extending the measure of detention.

4. The judges should take action when police officers, public officials and media violate the presumption of innocence of people for whom there is an undergoing investigation or court proceeding.

5. To put an end to the practice of imposing detention orders containing phrases which can solely be used in the determining of the sentence, and not during the investigation or the court proceeding.

Publicity of the court proceedings

The citizens of the Republic of Macedonia have shown very low interest in attending court proceedings in the role of a public. The public is not informed

at all about the manner in which they can exercise their right to be present in courtrooms during court proceedings. The practice of conducting certain court procedures in inadequate conditions in the judge's offices still persists. Most often the camerapersons from the journalists' teams are allowed to record/photograph the people present in the courtroom before the start of the main hearing, but not in the course of the hearing. The public is being excluded as a rule and without an explanation whenever a protected witness is testifying. The use of screens to show the scheduled court hearing in the court, and the regular updating of the hearings on the web-sites of courts is to be commended.

RECOMMENDATIONS:

6. To introduce the system of "first come, first served", in all the courtrooms where there are spatial conditions for presence of the public, and the court police to provide the citizens with quick and easy access to courtrooms whenever there are conditions for this.
7. The camerapersons of the journalists' teams to whom the President of the Supreme Court of RM has issued permission to record or photograph the proceedings, to be allowed to record the entire court hearing or part of it, whereby pinpointing the right to privacy and non-disclosure of personal data to the participants in the proceedings.
8. In the course of court proceedings where a protected witness participates, the public, and especially the scholars, to be allowed to be present in the courtroom, since there is no need to protect the already protected witness once again. In case of exclusion of the public, a decision to be made elaborating the reasons for its exclusion.

The right to representation by a legal representative/attorney

The practice of assigning an ex-officio attorney free of charge, whereby it is not necessary for the person claiming they have no means to hire an attorney

of their own choice to prove their claim, is praiseworthy. However, there is no system for random choice of an attorney ex officio which brings into question the excessive freedom of the court when deciding which attorney from the internal list shall be assigned. The judges fail to replace the ex officio attorney, even when it is obvious that he/she is passive and is representing his/her client ineffectively.

RECOMMENDATIONS:

9. To develop a system for random choice of ex officio attorneys and integrate that system with the existing Automated Court Case Management Information System (ACCMIS).
10. Whenever the judges notice that the ex officio attorney is passive, does not represent the interests of the client or conducts the defense ineffectively, to assign a new ex officio attorney.

The right to an independent, impartial and competent court

No equitable representation of judges - representatives of minority communities has yet been carried out in Macedonia. Some judges have a varying attitude towards the different participants in the proceedings, whereby increased closeness with prosecutors and privileged status of the older and more experienced lawyers has been observed. The practice of judges or lay judges leaving the courtroom during the main hearing or trial has also been observed.

RECOMMENDATIONS:

11. The courts to adopt a program for future employment of judges - members of the minority communities in the country.
12. The judges to take a neutral stance and provide equal treatment to all the participants in the procedure, regardless of their profession and experience.

To put an end to the practice of judges or lay judges leaving the courtroom in the course of the court proceeding.

Equality of arms and burden of proof

The judges fail to react when representatives of the prosecution expect and demand from the defendants to prove themselves that they are not guilty. The court proceedings in discrimination is being determined and treated in the same way as the other civil procedures. Due to the sensitive nature of the cases, and due to the fact that in most of the cases the persons discriminated against do not dispose of the information and data that only the sued possesses. Such evidence, data, or statements of the sued are of particular importance in the process of proving whether discrimination had occurred or not in the specific case, and may be provided solely if the sued proves that no discrimination had occurred in the specific case.

RECOMMENDATIONS:

13. The judges and prosecutors to comply with the principle *ei incumbit probatio qui dicit, non qui negat,* meaning the burden of proof to be upon the one who claims, and not the one who denies.
14. To provide audio-video technology which would make it possible to record all the court proceedings, whereby the court, the prosecution, the plaintiffs and the sued will have realistic insight into the entire course of the court proceeding.
15. The courts to start applying the institution of shifting the burden of proof upon the sued in court proceedings seeking protection against discrimination.

Trial within reasonable time

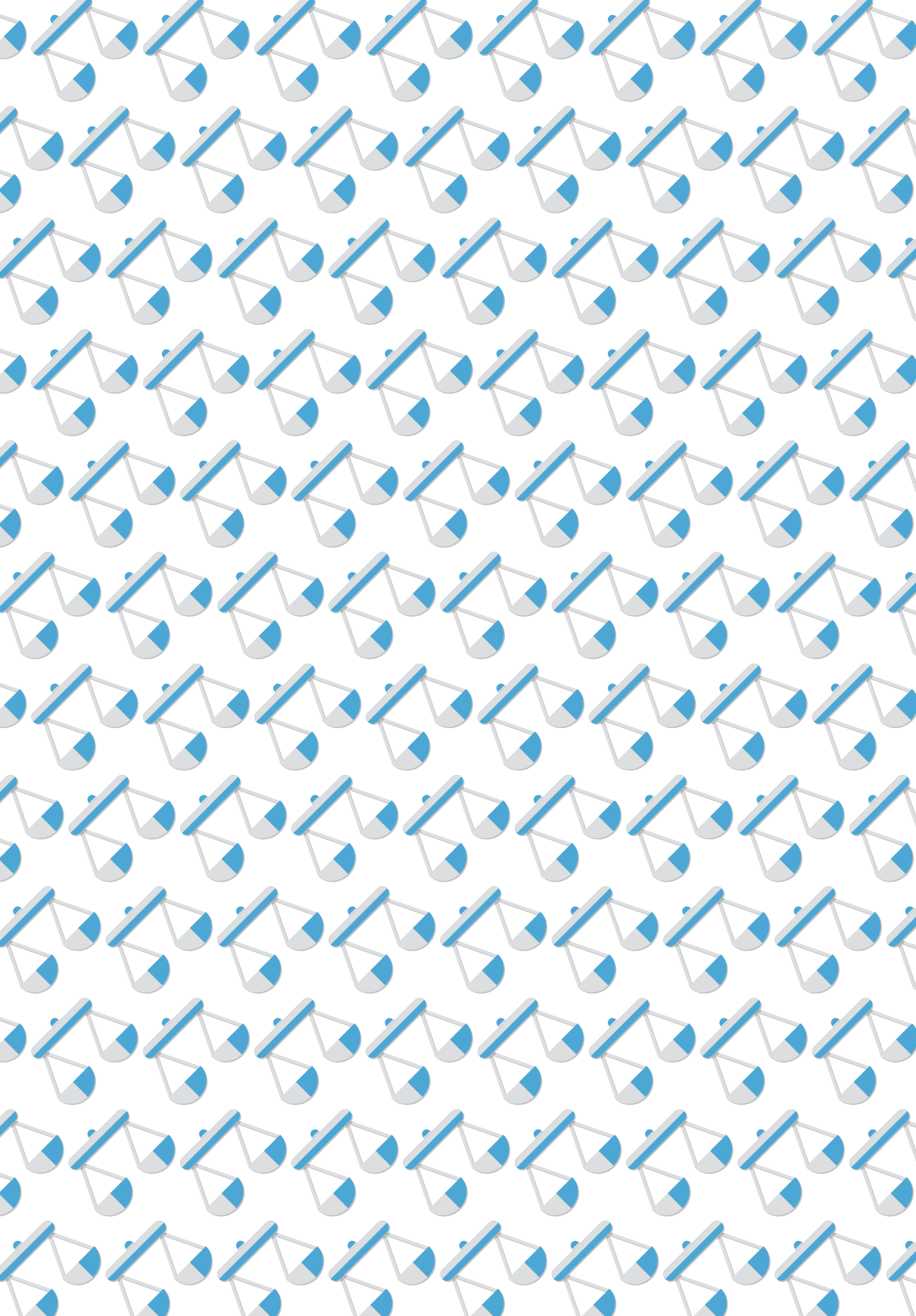
Given the long duration of some of the monitored cases in the project, as well as the persistent complaints of the citizens and the decisions that they obtain from the Supreme Court of the Republic of Macedonia and the European

Court of Human Rights that recognize the violation of the right to trial within reasonable time and specify compensation for the damage, it can be concluded that there is inefficiency in the work of courts. What is particularly worrying is the fact that no one complies with the proceedings prescribed as urgent, both in the criminal as well as in the civil proceedings, which affect the exercising of other rights established by the Constitution of the Republic of Macedonia and international agreements.

RECOMMENDATIONS:

16. To increase the number of professional associates and consistently comply with the provisions from the procedures which guarantee efficiency in the work of courts. It is of particular importance that efficiency also naturally assumes competence.

17. The judges in criminal proceedings to start more frequently making use of the possibility to issue an order for forceful detention of people who obviously and without justified reasons fail to respond to the court summons.



ANNEX I

OVERVIEW OF MONITORED COURT PROCEEDINGS

CA – Court of Appeal, PC – Primary Court

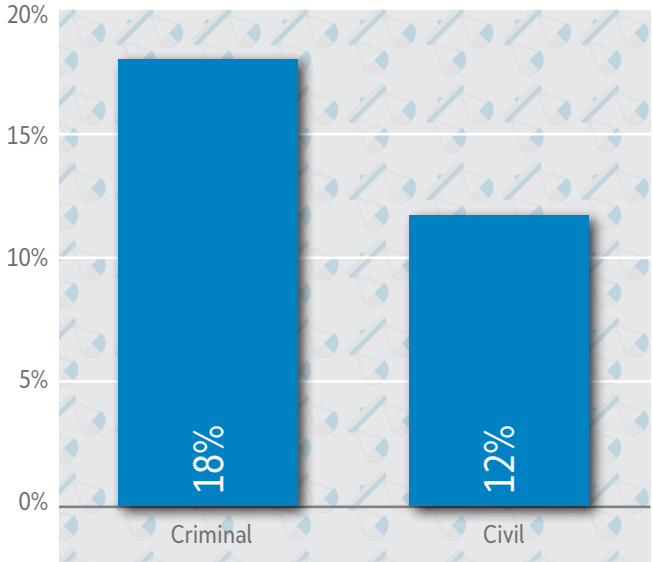
Number.	CASE	COMPETENT COURT	GROUNDS/CRIMINAL ACT
1	Lj.B. KZH.no.-2114/13	CA Skopje	Art.123 from the CC, Murder
2	J.V. KOKZH.no.9/14	CA Skopje	Art.279 from the CC, Tax evasion
3	M. V. K-432/13	PC Bitola	Art.130 from the CC, Physical injury
4	S.D. K-490/12	PC Bitola	Art.237 from the CC, Brigandage
5	I.S. K.no.161/14	PC Veles	Art.143 from the CC, Harassment at the workplace
6	ZH.K K-534/13	PC Gostivar	Art.186 from the CC, Rape
7	A.A. and others RO 121/13	PC Gostivar	Art. 3 and 6 para.1 Discrimination
8	V.Ch and others RO no.95/2013	PC Gostivar	Art. 3 and 6 para.1 Discrimination
9	N.B. KO.no.71/2014	PC K. Palanka	Art.367 from the CC, Providing false statement
10	T.F. K.no.35/2009	PC Kochani	Art.247 from the CC, Fraud
11	A.G. and others K.no.906/13	PC Kumanovo	Art.382 from the CC, Preventing an official in performing official duties
12	R.Z. PO 118/13	PC Ohrid	Mobbing

Number.	CASE	COMPETENT COURT	GROUNDS/CRIMINAL ACT
13	A.D. and others KOK.no.80/12	PC Skopje 1	Art.123 from the CC, Murder
14	T.K. and others KOK.no.51/13	PC Skopje 1	Art.353 from the CC, Misconduct
15	V.L. and others KOK.no.8/08	PC Skopje 1	Art.279 from the CC, Tax evasion
16	D.S. and others KOK.no.10/14	PC Skopje 1	Art.279 from the CC, Tax evasion
17	M.E. and others KOK.no.107/13	PC Skopje 1	Art.316 from the CC, Espionage
18	M.Sh. K.no.23/14	PC Skopje 1	Art.353 from the CC, Misconduct
19	G.M. and others K.no.1644/13	PC Skopje 1	Art.137 from the CC, Violation of the equality of citizens
20	S.M. v. J.K. P4-30/13a	PC Skopje 2	Art.6 para.1 from the Law on Civil Liability for Defamation and Libel
21	Z.L. RO no.179/14	PC Skopje 2	Mobbing
22	K.K. P2 - 1270/12	PC Skopje 2	Art.40 од Law on family, divorce
23	V.K. PO 215/14	PC Skopje 2	Mobbing
24	N.G. v. 3.3. P4 742/14	PC Skopje 2	Art.6 para.1 from the Law on Civil Liability for Defamation and Libel
25	Zh.T. P4-99/13 A	PC Skopje 2	Art.6 para.1 from the Law on Civil Liability for Defamation and Libel
26	G. against Z.S. P4-90/13A	PC Skopje 2	Art.6 para.1 from the Law on Civil Liability for Defamation and Libel
27	D.S. K.no.1506/14	PC Skopje 2	Art.279 from the CC, Tax evasion
28	A.Zh VPP 2/12	PC Skopje 2	Art.241 од LEP, Compensation for expropriated estate
29	V.H. and others K.no.366/13	PC Tetovo	Art.162 from the CC, Bribery during elections and voting
30	A.J. K.no.814/13	PC Tetovo	Art.133 from the CC, Threatening with a dangerous weapon in a fight or quarrel
TOTAL NUMBER OF MONITORED HEARINGS:			105

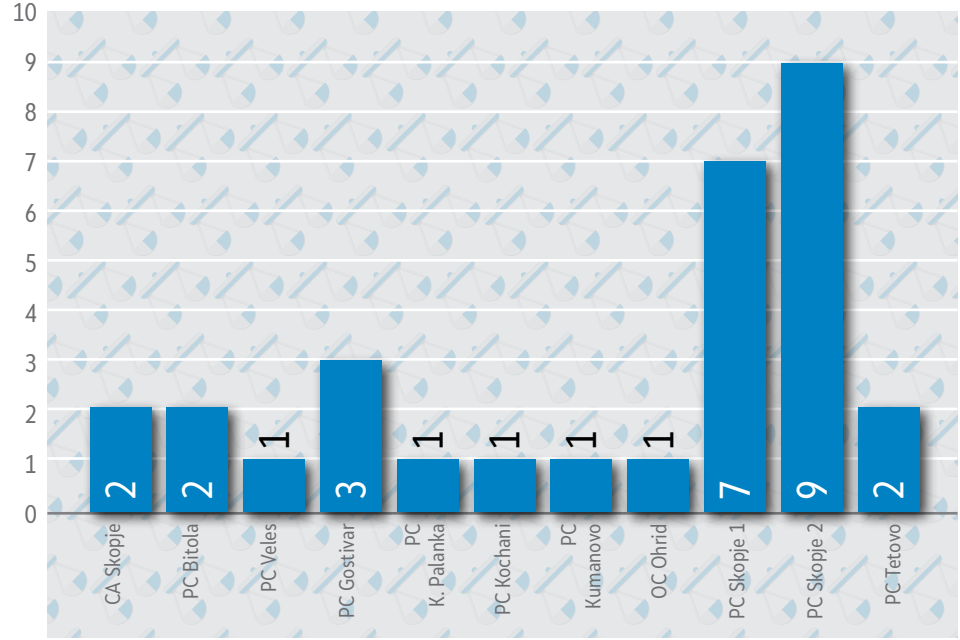
ANNEX II

STATISTICS

Graph no. 1: **Monitored court cases by area**



Graph no. 2: **Monitored cases by court**



Graph no. 3: **Monitored cases by grounds or criminal act**