



Monitoring of the Trafficking in human beings and illegal migration cases in Macedonia 2010

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I. Project “Monitoring of the Trafficking in human beings and illegal migration cases in Macedonia 2010”

The Coalition All for fair trials in the period from 2005 to August 2011, through monitoring of the criminal procedures from Trafficking in human beings and illegal migration, in front of the Primary courts in the Republic of Macedonia, is trying to make a positive influence over the official stakeholders in the fight against this type of crime, as well as over the wider public.

Starting from 2004, for 7 full years, the Coalition is monitoring the criminal justice response of the state authorities and institutions to the identified cases from Trafficking in human beings, Smuggling of migrants and Mediation in prostitution, with a short interrupts, because of lacking of funds for continuous monitoring.

According to the Macedonian legislative, for the processing of the Trafficking cases the Unit for fight against organized crime and corruption in Primary court Skopje 1 – Skopje is in charge. With the cooperation with the Primary court Skopje 1 the biggest part of the data was collected from the cases which appeared in the period of implementation of this project.

The table for identified and monitored cases by the Coalition shows a significant improvement in the processed cases from the Trafficking with juveniles (art. 418-d from the Criminal code of Macedonia). This data is also relevant because during the previous project of the Coalition which was implemented from September 2009 to April 2010, the Ministry of Interior identified 8 cases, from which only 2 came in front of the court, and did not finish in the time of the implementation of the project.

The Coalition, same as in the previous years, is underlining that by the law enforcement organs, is not fully used the essence of the crime Trafficking in juveniles. This is in a way that the law stipulates that the offender is criminally responsible, if the crime is committed through forced marriage or enforced work, in 2011 there is not even one case.

The Coalition, just as in its previous reports, considers that the responsible prosecution institutions of the Republic of Macedonia do not use fully their authority regarding the criminal act trafficking in juveniles. Hence, in spite of the fact that according to the law there is criminal indictment against a person who was involved in criminal act trafficking in juveniles, through forced marriage or enforced work, still the records show only 4 cases for forced sexual intercourse, 1 case where minors were forced to work and there is no registered case of trafficking in juveniles through forced marriage. The lack of official data creates room for rising of public speculations, and these together with the actual field situation create an image of high number of children, who are begging or do some physical work, as well as there are cases of contracted marriages between minors, but all these rarely appear in front of the courts.

	418 a	418b/418c	418 d	191
January – August 2011	1	12	5	3
September 2009/April 2010	2	15	/	3
2008	4	9	3	1
2007	2	2	0	0
2006	3	10	0	6
2005	11	8	0	16
Total monitored	23	56	8	29

Table 1: Overview of new cases per year

A. Research topic

The Monitoring of the Trafficking in human beings and illegal migration cases in Macedonia 2010 project, as a research topic has the following criminal acts:

- Trafficking in human beings – Article 418 A of the Criminal Code of the RM
- Smuggling of migrants – Article 418 B of the Criminal Code of the RM
- Organizing a group and inciting the perpetration of acts of trafficking in human beings and smuggling of migrants – Article 418 c of the Criminal Code of the RM
- Trafficking in juveniles – Article 418 D of the Criminal Code of the RM
- Mediation in prostitution – Article 191 of the Criminal Code of the RM

All mentioned criminal acts are part of the organized crime area, under the jurisdiction of the Unit for fighting organized crime and corruption in the Primary Court Skopje 1 – Skopje, except the criminal act Mediation in prostitution (Article 191 of the Criminal Code of the RM). The interest for observing this criminal act, which is not part of the crimes from the section of Trafficking in human beings and Illegal migration, is arising from the fact that in the last 7 years of observation, there were frequent cases of prequalifying of the criminal act from Trafficking in Human Beings to Mediation in Prostitution, because of the similarity of this criminal acts. Also, with the changes of the Criminal code, (Official Gazette No.139 from November, 4. 2008) the sentence for the Mediation in prostitution was significantly increased. In the focus of this research of the Trafficking in human beings situation, were the effects of these changes in the law.

As a main objective of this analysis are the criminal procedures for the acts related to Trafficking in Human Beings and Illegal Migration, with overview of some procedural and legal aspects, as description of the perpetrator's profile and the victim's profile, analysis of the length of the procedure regarding presenting of the evidence, presence of the participants and the reasons for delaying of the hearing, and analysis for the sentences for each criminal act.

B. Project objectives

The objectives of the research in the project are:

- Analysis of the use of the law changes and recommendations for improvement of the investigations and discovering the crimes and perpetrators in the crimes related to Trafficking in Human Beings and Illegal migration, in the procedures in front of the Basic courts in Republic of Macedonia.
- Noting of the changes from the previous reports, for the criminal procedures for crimes related to Trafficking in human beings and Illegal Migration, and following of the use of new mechanisms for more successful fight against organized crime.
- Support of the Judiciary and Justice system in order to aim improvement of the criminal justice response to the criminal acts related to Trafficking in Human Beings and Illegal Migration, through locating the good practices and also identifying the practical problems.
- Rising of the awareness for the problem, and for the need for fight against Trafficking in Human Beings, Mediation in Prostitution and Smuggling of Migrants, through the final report, and the analysed statistical data.

C. Methodology

The Coalition All for Fair Trials, during the implementation of the various projects, as well as in this research, is using a unique experience in collecting data, directly from the court rooms, during the hearings. The first step of the practice is sending the letters to the Presidents of the Basic Courts in the Republic of Macedonia, with information for the start of the Project, and a request for information about the number and dates of hearings, for the on-going cases related to Trafficking in Human beings and Illegal Migration. Also a clearance for the presence of the trial observers is asked from the Presidents of the Basic Courts. After receiving the needed information for a start of a case from Trafficking in Human Beings and Illegal Migration, on every hearing, a team of two trial observers of the Coalition is present. The trial observers, through monitoring of the criminal procedure, are noting the relevant information in to the questionnaire. The fulfilled questionnaires are fed into a programme for statistical data processing (SPSS), which allows for the extraction of various statistical data relevant to this research. Through the analysis of the data and statistical indicators, an attempt is made to see the frequency of presence of these criminal acts in front of the Courts in Macedonia in the last years, and for the speed of the criminal procedure and the way of punishing of the perpetrators.

D. Sample

The monitoring process, as part of information collection directly from court cases, covered all cases of trafficking in human beings, smuggling of migrants, organised form of trafficking and smuggling, trafficking in juveniles and mediation in prostitution, that were on-going during the research and for which the Coalition was notified. In the period from January 1.2011 to August 31.2011 are identified 21 criminal cases and 70 hearings are monitored for the criminal acts trafficking in human beings and illegal migration.

In addition, the work of courts was monitored daily by checking their websites on the publication of judgments and notifications referring to the topic of trafficking in human beings and illegal migration.

II. Legislation

A. Trafficking in human Beings

The criminal act for trafficking in human beings was incorporated in the Macedonian penal system since 2002, according to the Law for amending of the Criminal code (Official Gazette No. 04/02). After the changes of the article 418-A, in official gazettes 19/04, 7/08 and 114/09) the article 418-a reads:

Article 418-a

(1) The one who by means of force, serious threat shall mislead or other forms of coercion, abduction, fraud, of abuse of one's power or another person's condition of pregnancy, feebleness or physical or mental inability; or by means of giving or receiving money or other benefits to achieve the consent of a person having control over another person, or in another way shall recruit, transport, transfer, buy, sell, harbour or receive persons for the purpose of exploitation by way of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar attitude or prohibited transplantation of human body parts, shall be sentenced to imprisonment for at least four years.

(2) The one who shall seize or destroy an identity card, passport or someone else's identification document to commit the act of paragraph (1) of this Article shall be sentenced to imprisonment for at least four years.

(3) The one who shall use or allow another person to use sexual services or another type of exploitation of persons which he knows or is reasonably expected to know that this will result in those persons being victims of trafficking in human beings shall be sentenced to imprisonment for six months to five years.

(4) If the act of paragraphs 1, 2 and 3 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least 8 years.

(5) The consent of a victim of trafficking in human beings to the intended exploitation set forth in paragraph 1 shall have no bearing on the existence of the criminal act of paragraph 1.

(6) If the act of paragraph 1 is perpetrated by a legal entity, it shall be punished by a fine.

(7) The real estate used and the articles and means of transportation used for the perpetration of the act shall be seized.

Article 1	
418 a	1

Table 2: Cases in 2011

The identifying and the sanctioning of the criminal act Trafficking in human beings in Macedonia is decreasing for all time of the Coalition’s observation. In 2005 are identified and processed 11 cases, in 2006 criminal procedure is led for 3 cases, in 2007 for 2 cases and in 2008 for 4 cases. The Coalition did not succeed to make a full year monitoring for 2009 and 2010, so there is no a final number of the criminal cases for Trafficking in human beings for these years. However, according the reports of the National Commission for combating Trafficking in human beings and illegal migration shows that in 2009 and 2010 there is not a significant changes of the number of the identified cases.

In 2011, according to the period for the implementation of the project, are covered first 8 months of the year. In this period it is identified one criminal procedure which started in 2011, and for this procedure a first instance verdict was announced.

Period	No. of cases
January – August 2011	1
September 2009 - April 2010	2
2008	4
2007	2
2006	3
2005	11

Table 3: THB cases from 2005 to 2011

The relatively small number of initiated criminal procedures for Trafficking in human beings is a frequent topic among the professional public. In the discussions between different stakeholders, in different phases of the identification of the crimes and criminal justice response, there are different analyses for the reason of the small number of the crimes identified as Trafficking in human beings.

There is an opinion that the significantly bigger number of the cases in 2005 is related to the period after the conflict in 2001 in Macedonia, and in this period there was a bigger presence of the foreign armies, which is a “good soil” for development of trafficking in human beings.

Also, in this period, against related to the post conflict situation, in Macedonia still existed some villages where the control of the state authorities was insufficient. This reasons disappeared during the time, so the number of identified Trafficking in human beings cases decreased.

Other point of view stands for the fact that the number of the foreign citizens, which were identified as a victims of human trafficking, significantly decreased after the Bulgarian and Romanian membership in the European Union. This is related to the fact that in a period from 2005 to 2007, the victims were usually foreign citizens, and Republic of Macedonia was destination country for the victims who usually arrived from the Eastern European countries. After joining of Bulgaria and Romania in to the European Union, the victim's transit to the Macedonia as a final destination was tougher.

It seems that this analysis is relevant, having in mind that the number of the foreign victims significantly decreased after 2007.

As a reason for decreasing of the number of the criminal cases qualified as Trafficking in human beings, is a fact that in 2008 in the criminal code was introduced the article 418-d trafficking in juveniles. Until 2008 all cases identified as human trafficking were analysed under the article for Trafficking in human beings, without difference for the age of the victim, and in the last 3 years every statistics is divided between this two articles and as Trafficking in human beings are registered only the cases with adult victims.

From other side, it seems that the thesis that the Ministry for Interior has to change the way of discovering and identifying of the cases with elements of Trafficking in human beings. In 2011 there is a continuation of the practice the evidences for Trafficking in human beings to be provided through unannounced controls in the night bars and locals. This way of controlling the situation with human trafficking seems to be unsuccessful, instead use of the "Special investigative measures" as a tool for providing evidences, in a similar way as the practice of the Ministry of Interior for the Smuggling of migrants' cases.

B. Smuggling of migrants

With the law for amending the Criminal code from March 30.2004 (Official gazette No. 19/04), the article 418 b was amended. With the last amendment of the paragraph 5, which is relevant for the official who is committing the crime during committing his official duty, the article 418 – b, Smuggling of migrants reads:

Article 418-b

(1) The one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose shall be sentenced to imprisonment for at least four years.

(2) The one who recruits, transports, transfers, buys, sells, harbours or accepts migrants shall be sentenced to imprisonment for one to five years.

(3) If during the perpetration of the acts of paragraphs 1 and 2 a migrant's live or health is endangered, or if the migrant is treated in a particularly degrading or cruel manner, or if he/she is prevented from exercising the rights he/she is entitled to according to international law, the perpetrator shall be sentenced to imprisonment for at least eight years.

(4) If the act of paragraphs 1 and 2 is perpetrated against a juvenile, the perpetrator shall be sentenced to imprisonment for at least eight years.

(5) If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.

(6) The articles and means of transportation used for the perpetration of the act shall be seized.

	Paragraph 1	Paragraph 2	Paragraph 4
Smuggling of migrants - 418 b	1	14	8

Table 4: Cases in 2011 per paragraph

The basic form of the act of smuggling of migrants is committed by the one who by means of force or by serious threat to attack the live or body, by abduction, fraud, for cupidity, by means of abuse of his/her official position or by taking advantage of another person's inability illegally transfers migrants across the state border, as well as the one who produces, provides or possesses a false travel document for that purpose.

In previous court practice the perpetrator of the criminal act of smuggling of migrants was a person who for cupidity illegally transferred migrants across the state border.

In the period from 2005 to the August 2011, during the monitoring of the cases of Trafficking in human beings and illegal migration in Macedonia, the Smuggling of migrants is most frequent. In some indictments the criminal acts were qualified as Smuggling of migrants, and in the other as Organizing a group and encouraging committing the Smuggling of migrants. In these criminal procedures, during the last years, the "Special investigative measures" found place, and also 3 big organized groups were identified and prosecuted.

C. Organising a Group and initiating the Perpetration of Acts of Trafficking in Human Beings, Trafficking in Juveniles and Smuggling of Migrants

Article 418-c

(1) The one who organises a group, gang or other association for the purposes of perpetration of the criminal acts of Articles 418-a, 418-b and 418d shall be sentenced to imprisonment for at least eight years.

(2) The one who becomes a member of a group, gang or other association of paragraph 1 or in another way assists the group, gang or association shall be sentenced to imprisonment for at least one year.

(3) A member of the group of paragraph 1 who shall uncover the group before he/she commits a criminal act in or for it shall be exempt from punishment.

(4) The one who calls for, incites or supports the perpetration of the criminal acts of Articles 418-a, 418-b and 418 d shall be sentenced to imprisonment for one to ten years.

	Paragraph 1	Paragraph 2
418 c	4	16

Table 5: Cases in 2011 per paragraph

Even though the paragraph 418c refers to organizing and membership in criminal groups for conduct of actions related to trafficking in human beings, smuggling of migrants and trafficking with minors, still the court practice of the Republic of Macedonia shows that all trailed cases for organized group refer to the criminal act 418b – Smuggling of migrants.

D. Trafficking in Juveniles

Article 418-d

(1) The one who recruits, transports, transfers, buys, sells, harbours or accepts a juvenile for the purpose of exploitation by way of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar attitude or prohibited transplantation of human body parts shall be sentenced to imprisonment for at least eight years.

(2) The one who commits the act of paragraph 1 by means of force, a serious threat by means of misleading or other forms of coercion, abduction, fraud, of abuse of one's power or another person's condition of pregnancy, feebleness or physical or mental inability; or by means of giving or receiving money or other benefits to achieve the consent of a person having control over another person shall be sentenced to imprisonment for at least ten years.

(3) The one who uses or enables another person to use sexual services or other type of exploitation of a juvenile which he knows or is reasonably expected to know that this will result in the juvenile being a victim of trafficking in human beings shall be sentenced to imprisonment for at least eight years.

(4) The one who shall seize or destroy an identity card, passport or someone else's identification document to commit the act of paragraphs 1 and 2 shall be sentenced to imprisonment for at least four years.

(5) If the act of paragraphs 1, 2, 3 and 4 of this Article is perpetrated by an official while carrying out his/her official duty, he/she shall be sentenced to imprisonment for at least ten years.

(6) The consent of a juvenile to the actions set forth in paragraph 1 shall have no bearing on the existence of the criminal act of paragraph 1.

(7) If the act of paragraph 1 is perpetrated by a legal entity, it shall be punished by a fine.

(8) The real estate used and the articles and means of transportation used for the perpetration of the act shall be seized.

	Paragraph 1	Paragraph 2	Paragraph 3
418 d	7	5	3

Table 6: Cases per paragraphs for Trafficking in juveniles, from 2011

The article 418d from the Criminal code of the Republic of Macedonia was enacted as results of the growing frequency of having minors as victims of human trafficking. In order to prevent this tendency, the legislature decided to introduce a completely new article in the Criminal Code, instead of dealing with this issue in the existing Article for Trafficking in human beings, 418a.

During the last 8-month research conducted by the Coalition, in the period from September 2009 to April 2010, 2 cases for trafficking in juveniles were registered in the Primary Court Skopje 1.

During this research we noted that the number of registered cases of trafficking in juveniles has increased to 5. Even though the last to researches are done in periods which do not correspond to the calendar year, still one may conclude that the institutions responsible for identifying and prosecuting these types of cases were much more efficient.

Something that supports the claim that there are actions which may be qualified as trafficking in human beings is the non-existence of registered cases of forced work, as one of the forms of trafficking in human beings. Namely, during April 2011 the issue of having minors who are begging and performing other forms of forced work got higher media coverage, and the cases which were presented mainly referred to minors from the Roma ethnic group, coming from the whole territory of the country. If one considers the information leakages in the public, that are in form of speculation, and refer to that the minors are forced to begging and working, and the resources they gather are then taken away from them by some organized groups, then this describes a situation which matches the description of the criminal act of trafficking in human beings. Namely, paragraph 1 from the article 418a, among other also states the following: ***The one who by force or serious threat brings misbelief or other forms of forced behaviours to another person..., for exploitation through... forced work or serving... will be punished with imprisonment of minimum 4 years.***

Therefore it is important that the prosecution institutions are dedicated to this type of cases and to determine to what extent it is realistically presented that minors are forced to work by organized groups, so that the groups can gain illegal property/resource benefits.

E. Mediation in Prostitution

Even though the act Mediation in prostitution, from Article 191 from the Criminal Code of the Republic of Macedonia, is not part of the actions from the area of organized crime, still due to its similarities to the act trafficking in human beings, it is an issue covered with this analysis.

Article 191

(1) The one who recruits, induces, incites or entices a person for prostitution or the one who in any way participates in handing a person over to somebody else for the purposes of prostitution shall be sentenced to imprisonment for five to ten years.

(2) The one who for the purpose of gaining benefits enables someone else to use sexual services shall be sentenced to imprisonment for three to five years.

(3) The one who for the purpose of gaining benefits by means of force or a serious threat to use force shall force or by means of fraud shall induce another person to give sexual services shall be sentenced to imprisonment for at least eight years.

(4) The one who organises the perpetration of the acts of paragraphs 1 to 3 or who shall commit the acts while committing family violence shall be sentenced to imprisonment for at least ten years.

(5) If the act of this Article is perpetrated by a legal entity, it shall be punished by a fine.

(6) The real estate used and the articles used for the perpetration of the act shall be seized.

Paragraph 1	
191	7

Table 7: Cases per paragraph in 2010

The Coalition All for fair trial in all its annual reports from the previous years recommends for the paragraph 3 from the Article 191 to be erased. This is elaborated with the fact that the description of this criminal act fully matches the description of the criminal act trafficking in human beings. Namely, there are the elements that the act is done by threat, force or deceit. The difference is only that the victim of trafficking in human beings may be violated in more various ways, while as according to the criminal act mediation in prostitution, the victim is violated only with prostitution. In spite of the fact that there are suspicions that the prostitution from certain places in the country is not eradicated and it is not just an incidental occurrence, still if we consider the number of cases which are solved in front of the courts, it seems as if there are only few of this type of cases per year.

The daily bulletin of the Ministry of interior itself supports the claim that it is necessary that the prosecutions institutions gather more detailed evidence, in order to ensure that there is a case to be presented in front of the court. During the research period for this report, the Ministry of interior published on its web-site information about 7 police actions in night bars and other public houses, where 59 illegal employees were registered, all of whom were females, and 43 of those were foreign citizens. The illegal employees are mostly from Albania, Serbia and Bulgaria, and one of them was from Kosovo. Certain issues are raised when looking into the stated employment reasons, so there are cases where more than 10 persons are recorded to work as singers or waitresses. After the action and the statements of the persons found on

the spot, the Ministry of interior started a procedure for violation of the Employment law, i.e. for having unregistered employees.

The three identified cases according to the act Mediation in prostitution are in front of the primary courts in Skopje, Kumanovo and Tetovo. From the three monitored cases in 2011, only the case presented in front of the Primary court of Tetovo is finished with decisions, according to which two of the indicted are realised from the charges against them, and the third was convicted to one year imprisonment. Considering that the only case which has court decisions refers to a criminal act conducted in November 2008, the sentence of 1 year is mild and is favourable to the perpetrator. In the last 3 years, since the enforcement of the amended article for Mediation in prostitution, the Coalition has not identified a single case in front of the primary courts that has finished with decision from the primary court.

The question is whether the sentences planned for this type of crime, which is stricter now, put off the perpetrators from this form of crime, or is it that the Public prosecutor hesitates to investigate these crimes, that results with very strict sentences.

This raises another issue, if it truly the case that there are no cases for mediation in prostitution, and that there are very few cases for trafficking in human beings. The issue to be reviewed here is if this is the realistic situation in our society that these cases have decreased to a level that they no longer exist.

III. Disclosure of the perpetrators

According to the report of the Ministry of interior for work on specific criminal acts from the area of organized crime, for the period between 2001 and 2010, the situation is as presented below.

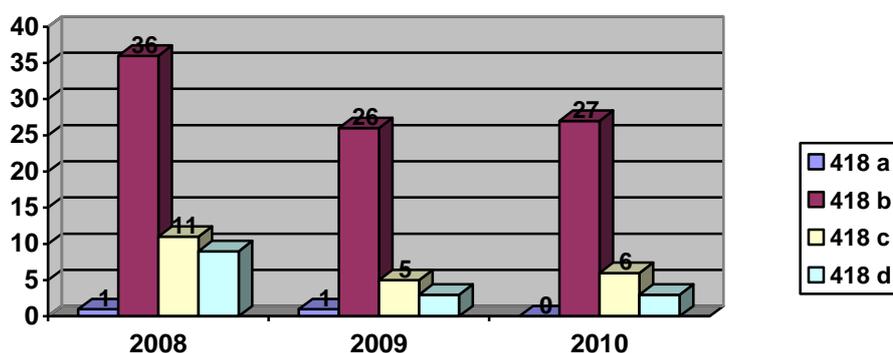


Figure 1: Number of registered cases for the period between 2008 and 2010

It is evident that in 2009 and 2010 the number of registered cases from the area of trafficking in human beings and illegal migration has decreased. Considering the duration of the pre-investigation and the investigation procedure, some of the cases which were recorded by the Ministry of interior as cases from 2010, were processed

by the courts in 2011, i.e. during this project's implementation period. Only the number of cases for human trafficking in juveniles is different from the one registers by the Ministry of interior in 2010, and it is higher, but this is probably due to the cases that occurred in 2011 and were processed the same year, which is given below where the duration of the procedure is presented.

During the research period, from 01.01.2011 to 31.08.2011, according to the Coalition's data, 12 criminal procedures started in front of the primary courts of the Republic of Macedonia, for Smuggling of migrants, which covered a total of 44 prosecuted individuals. From the 44 prosecuted persons, most are for the case "jug" (south), in which the procedure against 16 persons is returned to second trial. There is a case trafficking in human beings with only one person charged, and there are 5 cases from trafficking in juveniles, where there are 20 prosecuted persons.

7 persons are charged with mediation in prostitution, for 3 criminal cases.

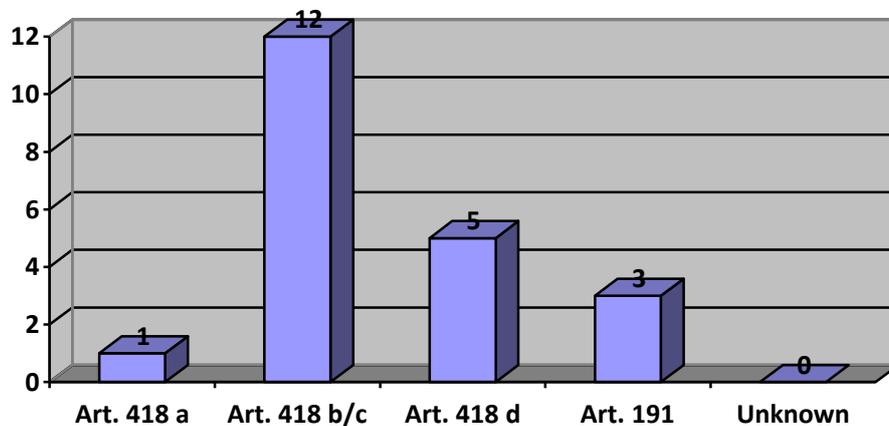


Figure 2: Number of cases

In the above given monitored cases the number of prosecuted persons is as follows:

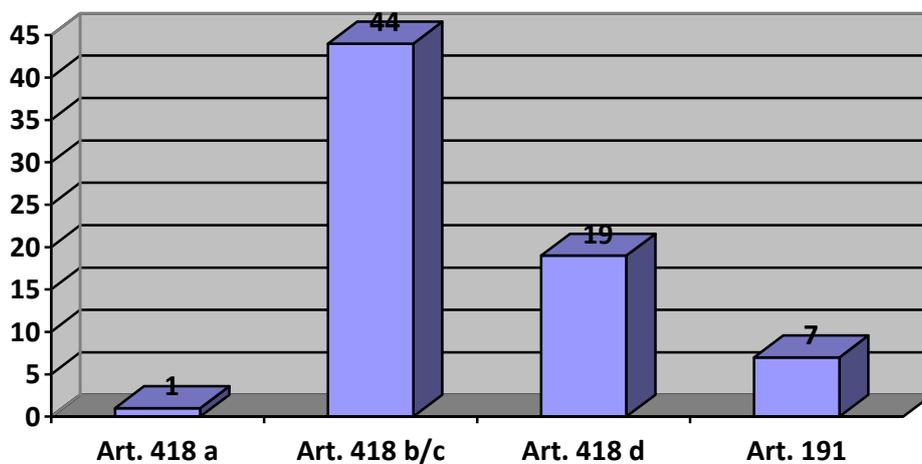


Figure 3: Number of prosecuted persons

Compared to 2009 and 2010, there are no significant changes regarding the number of prosecuted persons for smuggling of migrants, i.e. the number of individuals prosecuted remains almost the same. However, there is significant progress in identifying and prosecuting the perpetrators for trafficking of minors. There were no prosecuted persons against this type of crime in 2009 and 2010, and in the first 8 months of 2011 procedure was started against 20 individuals, for 5 criminal cases.

A. The organizational form of the cases in trafficking in human beings and illegal migration

In every of the 5 annual reports for Trafficking in human beings, that were prepared and published by the Coalition All for Fair trials, special attention is paid to the number of identified perpetrators. This is due to the fact that all criminal acts registered as crimes of Trafficking in human beings, trafficking in juveniles and smuggling of migrants, are recognized both, nationally and internationally as organized crime criminal acts. In order for one criminal act to be analysed as crime from the organized crime area, except for the qualitative characteristics it should possess (organized for longer period, for committing one or more criminal acts, has elements of violence, with the aim to gain illegal property benefits...), there is also one quantitative aspect, i.e. the group should have minimum three members, in order to be called a group. The number of group members is considered to be irrelevant by the practitioners, as the identified perpetrator of the criminal act will be convicted, which is enough to serve the general preventive purpose of the punishment. On the other hand, however, we should consider the essence of the criminal act, so for example in trafficking in human beings it is logical to have more persons who are involved in committing the crime, such as buyer, seller, guard, transporter, person using the services and other. From that aspect, the cases where there is only one or two prosecuted persons could raise doubt about the capacity of the prosecution institutions to identify all perpetrators who were involved in committing the criminal act.

Considering this aspect (the number of prosecuted persons per case), we got the following results:

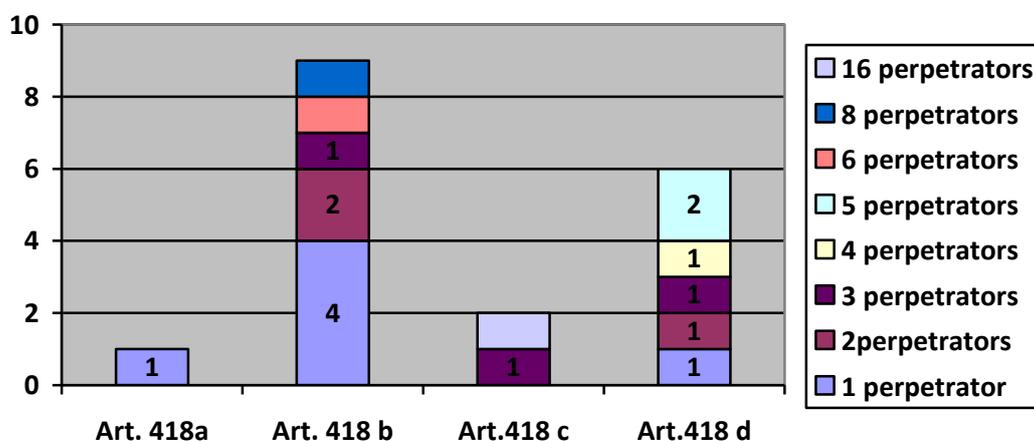


Figure 4: Number of prosecuted persons per case

The number of group members, for all identified criminal acts from the area of organized crime, gives the following situation:

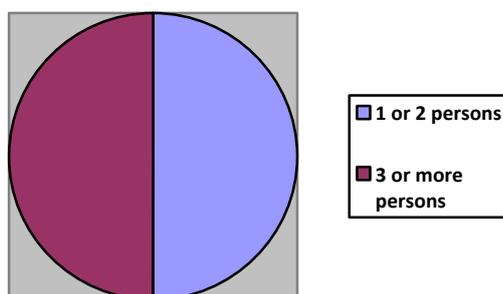


Figure 5: Number of group members in the organized crime cases

This situation brings us to the following two conclusions: either the prosecutions institutions failed to identify the entire group members for most of the identified cases from the area of trafficking in human beings or illegal migration, or the perpetrators often use certain circumstantial occasions to take unorganized actions that contain the elements of trafficking in human beings or smuggling of migrants.

Compared to the period from 2004 to this date, since the Coalition monitors the courts cases from this area, the last period shows improvements in the efficiency of the prosecution institutions. They are more efficient in identifying organized groups for activities from the area of smuggling of migrants, mainly as a result of the increased use of the special investigation measures which are available to them for this purpose. In 2009, measures for identifying organized groups for smuggling of migrants were undertaken, which resulted with 2 criminal cases, in one of which there were 10 accused persons and in the other 16. However, the same measures are very rarely applied for identifying crimes according to Article 418-a, trafficking in human beings. In the criminal legal events, qualified as trafficking in human beings and sentenced according to Article 418-a from the Criminal Code, still a main evident used is the statement of the witness – the victim. In 2010, the number of criminal cases where there are at least 3 accused persons was around 20% from the total number of cases. In 2011 it is for the first time, since the Coalition makes this research that the number of cases where there are 3 or more accused persons is equal to the number of cases with only one or two accused individuals. This progress deserves to be recognized, but still it is important to apply the special investigation measures, especially for the cases in trafficking in human beings, in order to identify as many of the involved persons in conducting the criminal act, as possible.

IV. Profile of the perpetrator

A. Gender of the perpetrator

In the criminal acts from the area of trafficking in human beings and illegal migration, done over the last years it is evident that almost all of the perpetrators identified are male. There were some exceptional cases where there were women involved as perpetrators of the criminal act. In the analysis of 2011, the cases that were monitored by the Coalition give the following situation:

Gender of the perpetrator of the criminal act	Male	Female
Mediation in prostitution	6	1
Smuggling of migrants	44	1
Trafficking in human beings	/	1
Trafficking in juveniles	13	1

Table 8: Gender of the perpetrator of the criminal act

In spite of the fact that the data shows that for most of the criminal acts the accused persons are male, still there are cases where there is sexual abuse of the victim and the perpetrator of the crime is female.

B. National representation

The analysis of the perpetrators according to the nationality they belong to, for criminal cases committed under Article 418 – a, trafficking in human beings, from the period between January and August 2011, shows that the one prosecuted person is citizen of the Republic of Bulgaria.

For the cases of smuggling of migrants and organized form of smuggling, there is wide variety of the perpetrators, according to their nationality. This is one of the specifics for the criminal acts of smuggling of migrants, due to its transnational characteristics, i.e. the need to involve in the group citizens from various ethnic groups from the Republic of Macedonia and also from foreign countries.

There are 44 accused persons, from who 43 are citizens of the Republic of Macedonia, the nationality of which is: 14 – Macedonians, 19 – Albanians, 1 – Roma, 3 – Serbs, and 6 of unknown ethnical background, while as there is only 1 foreign citizens, who is from the Republic of Albania.

Nationality/ethnic group	No. of accused persons
Citizens of the Republic of Macedonia	43 persons
<i>Macedonians</i>	14 persons
<i>Albanians</i>	19 persons
<i>Roma</i>	1 person
<i>Serbs</i>	3 persons
<i>No data</i>	6 persons
Citizens of the Republic of Albania	1 person

Table 9: Nationality and ethnic background of the accused persons

Unlike the variety of ethnical background for the crime of smuggling of migrants, all 19 persons accused for trafficking in juveniles are citizens of the Republic of Macedonia, from Albanian ethnic background.

For the criminal act mediation in prostitution there are 7 accused persons, for 2 of which the Coalition has no data of their ethnic background, while as 1 is Macedonian, 1 is Roma and 3 are Albanians.

C. Age

According to the report of the Coalition All for Fair Trials from 2008, Efficiency of the courts in handling the organized crime cases of 2005, 2006 and 2007, most of the accused persons (nearly 40% of the total number) are at the age between 31 and 40 years.

The analysis which covers the period of 2009 and the beginning of 2010 shows rapid decrease of the age limit of the accuses persons, i.e. 71% are at the age between 25 and 35 years.

Even though it seemed that the age structure of the perpetrators of the criminal acts in trafficking in human beings and illegal migrations seemed to be decreasing, still according to the data for 2011, 42% of the perpetrators are at the age between 35 to 45 years, and the others are of different age.

D. Education

The problem with defining a profile of the perpetrators repeats in the part of education, as well. Namely, the monitored cases are in a specific period of time, and the progress of the procedure of these cases is at various stages, so the persons responsible for the monitoring were not able to obtain the required data, neither do they have access to the material evidence and court case submissions. For these reasons, the Coalition was not able to obtain data regarding the education of most of the accused persons.

Still, according to the available data, one may conclude that the perpetrators of the criminal act smuggling of minors are mainly with high school education (approximately 50% of them). The rest of the perpetrators are with primary education, and there is only one registered case where the perpetrator has high education.

The cases of trafficking in human beings show that the perpetrators have significantly lower degree of education, i.e. 50% of them have not completed their primary education, 40% have primary education and only 10% have finished high school.

E. Recidivism

The data if the person was charged with the same type of crime is significant, not only for analysing the profile of the perpetrator, but also to determine the sentence.

From the 16 persons for whom the Coalition has data that if they were primary convicted, 11 were not primarily convicted and 5 were.

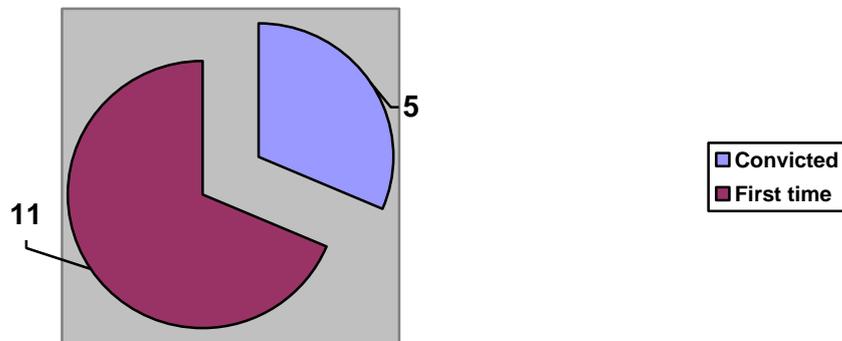


Figure 6: Proportion of first time crime committers and recidivists

Regarding the sentence, if we consider if the person was primarily convicted, for all the cases where there are recidivists only one has a primary court decision.

Even though this one case cannot picture the situation accurately and is not sufficient for analysis, still it is serious issue that the two perpetrators who were found guilty by the court, for trafficking in juveniles, were sentenced with four years imprisonment, regardless of the fact that the minimum sentence according to the law, for this type of crime is 8 years. In this case not only that the recidivism did not increase the sentence for the perpetrator, but there is an opposite situation, where the persons are sentenced half time below the legal minimum.

F. Profession

During the reporting period, a data for 28 persons, regarding their profession, was obtained. For the perpetrators accused according to Article 418b – Smuggling of migrants, there is data for 12 of the prosecuted persons, from whom 5 were drivers, 4 are unemployed, 2 are general labour workers and 1 is a waiter. This analysis corresponds with the ones from the previous years, where also a significant number of the identified perpetrators were unemployed. The majority of the accused are drivers, which is not a surprising fact, considering that the migrants are transited through the country or they are transported to some of the borders with the neighbouring countries.

For the criminal act, trafficking with migrants, from the total available data for 12 persons, 5 are unemployed, 2 are working in the hotel industry, 3 are managers or owners of private companies, one is a driver and one is a general labour worker. Except for the unemployed persons who are identified as perpetrators of this type of crime, another significant group are the employees in the hotel industry, and one of the accused is owner of a night bar. From this one may conclude that most represented form of violating the victims of trafficking in human beings is through prostitution in night bars and locals.

V. Review of the criminal procedures

A. Use of evidence materials

In the research conducted in the first eight months of 2011, the Coalition applied the established practice for gathering and analysis of the data obtained in the procedure in front of the primary courts of the Republic of Macedonia. Each of the hearings was attended by two monitoring representatives from the Coalition, who analysed the evidence procedure.

In the evidence procedure as most frequently used form of evidence were the statements from a witness and statement from the damaged party. For the criminal acts for smuggling of migrants, as a material evidence was used the telephone number list, listing of phone calls, record for person's identification, insight in punishment record for previous convictions, personal identification documents, driving license and verification for temporary withdrawal of items.

For the crimes from the area of trafficking in juveniles and mediation in prostitution, the most commonly used evidence is a statement from the accused and from the damaged party. If the damaged party is not available, a statement given in the previous procedure and insight in the documentation for withdrawn items (mainly money), is used. The hearing of a forensic expert was used twice, once for determining the mental health of the victim in case of trafficking in juveniles and once to determine the mental health of the accused person, for another case of trafficking in juveniles. It seems that the lack of use of forensics' opinion is due to the situation where in spite of the legally prescribed measure that the court should decide for the damage amount in the criminal procedure, still in practice this is not the case, and instead this is transferred to additional civil procedure, where the damage amount is determined.

The special investigation measures, planned according to Article 146 from the Law for criminal procedure, this year too, same as with the previous years, were applied only in identifying perpetrators who committed a criminal act of organizing a group and encouraging/initiating trafficking in human beings, trafficking in juveniles and smuggling of migrants, sentenced according to Article 418c. For cases from 2011, one prosecuted according to Article 418c and another according to Article 418b, special investigation measures were used to obtain evidence. The special investigation measures which were used were according to Article 146, paragraph 3 – continuous monitoring, tracking and visual and tone recording, and technical means.

According to the data analysed by the Coalition, the special investigation measures are not yet used for identifying perpetrators from the area of trafficking in human beings, in spite of the fact that they proved to be very useful in providing evidence and identifying the entire organized group, for the cases for smuggling of migrants.

B. Detention and other preventive measures

Detention, the intensity of its use and the justification for its use, as well as if it could be replaced with other safety measures, are some of the questions which are in the focus of the professional public, as well as the Coalition. From the beginning of monitoring of cases from the area of trafficking in human beings and illegal migration, to the beginning of this year, the cases monitored by the Coalition had 263 accused persons, for 160 of whom a detention was determined, which is 61% from the total number of accused persons.

The duration of the detention for the persons for whom we have data, from the period between 2005 to the beginning of 2009 is as follows:

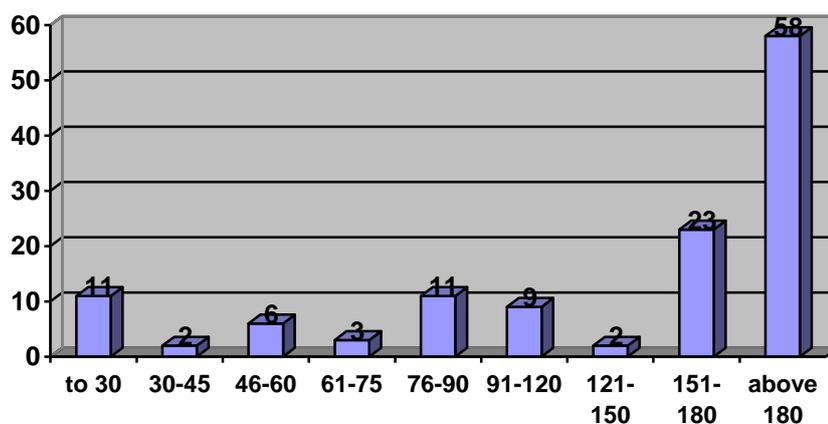


Figure 7: Detention 2005 – 2010

From the beginning of 2011 to September 01st 2011, detention was determined for 17 of the 72 accused persons, which equals to 23,6%. This number is significantly lower than the average from the previous years and is in line with the recommendations that the detention should be determined only for accused persons for whom there are legal conditions to determine this measure.

On the other hand however, one may note that the detention time in 2011 is longer. From the data available for 17 persons, 3 were detained for 45 days, 3 for 86 days and 11 of the accused persons were detained for more than 180 days.

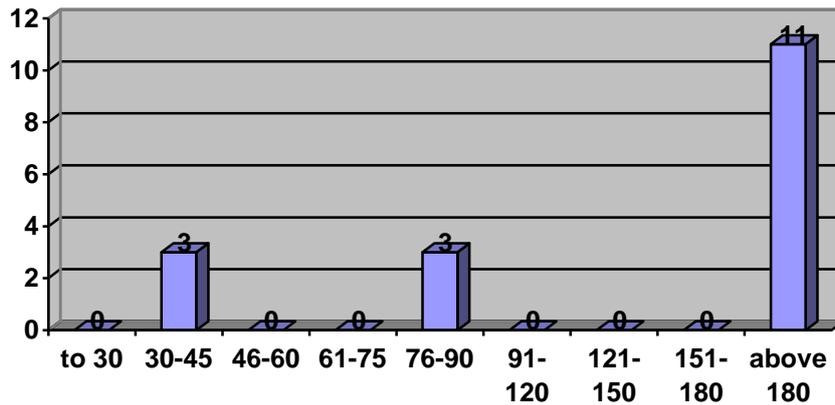


Figure 8: Detention in 2011

On the other hand, to 10 of the accused persons the detention was replaced with home arrest, and for 2 accused persons house arrest was determined as single measure for assuring presence. A positive change forward is the use of the house arrest, which if used accordingly has proven to be as efficient for assuring the availability of the perpetrators as the detention. In addition to this, the house arrest is more humane measure if it is applied to assure the presence of the accused, and it is also less expensive for the state, in comparison to the detention. Even though the accusations in these cases are for heavy criminal acts, still the more often use of the house arrest and the guarantees, will erase the perception from the previous years, that sometimes the detention is used as punishment, which is certainly not its intention, as prescribed by the law.

Other measures for assuring presence	No. of persons applied to
Command for brining in the accuses	7 persons
Withdraw a driving license	7 persons
Provided guarantee so that the accused can defend himself from outside prison	/
Given promise that the one will be available to the court	1 person
House arrest	12 persons

Table 10: Other measures for assuring presence

One may note from the data provided in the table that the court has started to use more often the other available measures for assuring the court presence of the accused person, which is in line with the respect of the rights of the accused, in the criminal procedure.

C. Duration of the procedure

When talking about just trial, something that cannot be omitted with the analysis is the duration of the trial procedure. The monitored cases one may distinguish between two types of cases, one that begin for the first time and other that are returned to a second trial from the higher to the primary courts. Bearing in mind the

focus of the monitoring conducted by the Coalition, and considering the legal framework and the actual situation, the responsible persons for monitoring can monitor only the cases which are in front of the primary courts, at the hearings that are open for the public.

There are more cases which were returned to a repeated trial from the higher to the primary courts. Therefore, when defining the duration of the procedure, for begging of the procedure is considered the period when the crime was committed, and the end of the procedure is the moment when the decision for the specific case was made, or the last hearing in the investigation procedure.

For the cases in illegal migration there is a contradictory situation in the duration of the procedure. Namely, from the 11 analysed cases, the duration of the procedure, for 7 cases, was between 2 to 6 years, and decision was made for only one of those cases, while as the others are still active cases. On the other hand, there are 4 cases where the criminal act was committed 9 months ago, and for three of those there are already first degree court decisions. One may conclude from this that either low-quality decisions were made, which will not be accepted by the higher courts, or that the prosecution institutions has significantly improved their work over the last couple of years, so the courts process criminal cases which are supported with sufficient amount of quality evidence. Which of these options is right, one could see through analysis in the following year, when there will be available data on the number of primary court decisions that were returned to second trial by the higher courts.

5 decisions for cases of smuggling of migrants were made during the first 8 months of 2011, and the average court duration of the procedure is almost 9 months.

For the cases in trafficking in human beings the decisions were made after very short period of time, so there is a case where decision was taken after only 3 months from the period when it was identified. In addition, in 2011 there were 4 active cases in trafficking with migrants, where none of the procedure was longer than 11 months from the moment the crime was committed, and for one of the cases a first degree decision was made within 6 months.

For the cases in mediation in prostitution, two cases are still active, and for one case that was in front of the Primary court Tetovo, decision was made in 2011, but after 7 years from the period when the crime was committed.

Reasons for cancelling the hearings	
Absence of the accused	20
Absence of the defender	13
Absence of witness	3
Calling new witnesses	9
Supplying material evidence	7
Closing words	5
Announcing the decision	8
Absence of the damaged party	3
Absence of the public prosecutor	9
Incomplete judicial council	/
Other	8

Table 11: Reasons for cancelling the hearings

If the main hearing cannot begin due to the absence of some of the participants in the procedure, or if it cannot be finished within one session, the court will postpone the main hearing, according to the Criminal procedure law. Postponing the main hearing prolongs and directly affects the duration of the procedure, which is a reason for the research team to be focused on monitoring on the number of times the procedure was postponed. From the total of 85 cancelled/postponed hearings, 33 occurred due to the absence of the accused person or the defender, 16 were postponed for calling in new witnesses or supplying new evidence materials.

These two groups are the most common reasons for the postponing of the procedure, and as such they are of highest interest for the Coalition. The number of postponed hearings could decrease by 60% if the court makes sure that the articles from the Criminal procedure law are respected by the accused persons and their lawyers, and if all evidence materials and witnesses are collected and identified during the investigation procedure.

10% of the hearings (9 cases) were postponed due to court reasons or due to the absence of the public prosecutor. This number however may not present the objective situation, as the public prosecutor may not be present at the main trial if there were other reasons for postponing the hearing, for which he was informed, and the persons responsible for monitoring may have noted it as absence of the public prosecutor. Still, the cases where the reasons for delays of the hearings is the court or the absence of the public prosecutor, should be decreased to a minimum, through planning the hearings, prompt informing and other working activities.

D. Penal policy

For many years now, it seems that the court practice is inclined to penalizing the perpetrators with a penalty which is close to the legal minimum, and many times even below that. So, it seems that there is no need for the amendments of the Criminal code, where an article of trafficking in juveniles was added, according to which the minimum penalty for this type of crime is 8 years imprisonment, and according to which the penalties for the criminal act mediation in prostitution were also significantly increased. It seems that the stricter penalty system resulted only with decrease of the number of identified cases for mediation in prostitution. So, only one decision was made for this type of crime during the research period, and it is for a criminal act that was committed in 2004. There are 3 accused persons with this case, two of who were released from charges, and the third was sentenced to one year imprisonment, according to the more mild penalties which were valid during the period when the crime was committed.

There is only one sentenced person according to article 418a - trafficking in human beings. The minimum penalty for this type of crime is 4 years imprisonment, and the person was convicted for only 2 years.

The sentenced according to article 418b, paragraph 2, where the minimum penalty is 1 year imprisonment, received a penalty which is in the legal framework, but it is close to the legal minimum. One person is accused to 1 year imprisonment, and the

other to one year and two months. In addition to this, there are also two persons for who the penalty is below the legal minimum, and it is a suspended sentence.

For the criminal act trafficking in juveniles, the minimum penalty for paragraph 1 is 8 years imprisonment, but the two persons who were found guilty were sentenced with 4 years imprisonment, each.

From the above given, one may conclude that for all 8 convicted persons for whom we have data available, three have were sentenced to imprisonment within the legally planned limits, while as the penalty of the five is below the legal minimum for the crimes for which they were charged, i.e. the institute for mild penalty was applied for those.

According to article 418b, paragraph 6, from the Criminal Code of the Republic of Macedonia, the items and the vehicles used for committing the crime are seized. According to this article, 2 vehicles and 3 mobile phones were withdrawn from the persons accused for smuggling of migrants. Money and 2 mobile phones were withdrawn from the person accused for trafficking in human beings, and according to article 418d, paragraph 8, a hotel facility was withdrawn for the person accused for trafficking in juveniles. It is a very positive step forwards that real estate that was used in committing the crime has been withdrawn from the accused person.