

# THE SUCCESSFUL SUPPRESSION OF THE ELECTION IRREGULARITIES KEY FACTOR FOR FAIR AND DEMOCRATIC ELECTIONS







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## Executive summary

In order to identify the problems that the judicial system faces while prosecuting persons under reasonable doubt that they have committed a criminal act against the elections and the voting, in July 2005, the Coalition "All for Fair Trials" has started to observe all the cases in the domain of criminal acts against the elections and the voting committed during the local elections in 2005.

First of all, based on the information given by the Basic Public Prosecutor offices and the basic courts, it was established that for a total of 49 criminal acts against the elections and the voting, committed during the local elections, a total of 65 persons were charged.

Out of a total of 65 charged persons, the criminal charges were rejected against 15 persons, 13 persons are under investigation, for 6 persons the Public Prosecutor Office is collecting evidence and 31 persons are indicted.

Out of 31 indicted, the first instance proceedings against 4 persons are ongoing, for one person the charges are dropped with a verdict, 21 persons are pronounced guilty and 5 persons are convicted.

Regarding sanctioning the perpetrators of the criminal acts, 11 persons are sentenced to imprisonment, 7 persons were fined, 7 persons were paroled, and one minor received correctional measure-enhanced parental supervision under the auspice of a social body. When deciding on the type and height of the penalties, the sentences of the courts were within the frame of the legal minimum and maximum, except in two cases where seven persons were sentenced below the legal minimum.

## **THEORETICAL AND METHODOLOGICAL APPROACH**

### **1. Subject and objectives of the project**

In order to increase the trust of the public in the legal system and the judiciary, to identify the problems in the judicial system and to point out the need for legal and institutional reforms, to increase the respect of the standards for fair trials by the domestic courts, as well as to introduce the public with the fair trials standards, in May 2003 the Coalition of 22 non-governmental organizations "All for fair trials" was founded.

In July 2005, the Coalition started with the implementation of the project "Monitoring the prosecution of related crimes against the elections and the voting at the local elections 2005", financially supported by the OSCE mission in Skopje.

The project is implemented in order to determine the readiness and willingness of the state institutions to deal with the electoral irregularities, and especially the readiness of the judicial system to deal with the persons who committed criminal acts against the elections and the voting at the local elections in 2005. In that direction, the aim of the project is to identify the problems that the judicial system faces when prosecuting the perpetrators of criminal acts against the elections and the voting, as well as to point out the need for legal and institutional reforms. Several activities were undertaken within this project:

- Identification of the irregularities during the local elections in 2005 and their monitoring in the pre-trial and the criminal procedure;
- Trial monitoring of the judicial cases of the criminal acts against the elections and the voting;
- Analysis of the received information - of the monitored cases as well as from other informative channels;
- Cooperation with relevant institutions (Public Prosecutor offices, courts etc.) with purpose to collect data for prosecuting the perpetrators of criminal acts against the elections and the voting.



Through this research project the Coalition would like to give its modest contribution towards the achievement of greater efficacy in the fight to successfully prevent electoral irregularities as well as providing conditions to hold fair and democratic elections.

## 2. Methodological approach

One of the methods for realization of the project and the objectives and tasks is the **method of observing** the judicial proceedings.

In order to provide collection of impartial data that served as basic instrument to prepare thorough analyses about the condition regarding the prosecution and sanctioning the perpetrators of the criminal acts against the elections and the voting, the existing questionnaire of the Coalition was altered in accordance with the objectives of the project, and the observing was performed by six observers with considerable experience in the observation of the judicial cases.

Based on the information given by the Basic Public Prosecutors offices and the Basic Courts, 19 cases in relation to criminal acts against the elections and the voting during the Local Elections in the Republic of Macedonia in 2005 were instigated by the state institutions.

The data for the criminal prosecution of the perpetrators were collected through observation of the judicial proceedings, through written information given by the Basic Public Prosecutors offices and the Basic Courts, as well as through direct meetings with basic public prosecutors, deputy public prosecutors and judges. Namely, for 4 cases the data were collected through observation of the judicial proceedings, in such way that the observers after the performed observation based on the data about the case collected form the hearing, would fill in a questionnaire for observation, and the same was being submitted to the project-coordinator. For the cases that were completed at first instance, as well as for the cases that were legally completed, when the implementation of the project began, the data were collected through written information as well as through direct meetings with judges and prosecutors.

The data related to the criminal prosecution of persons, who during the local elections committed criminal acts against the elections and the voting, regarding the period from July 1, 2005 to December 1, 2005 were systematized and analyzed, so this report was prepared based on that systematization and analysis.



## CHAPTER I

### 1. Legal frame of the local elections

In accordance with the Constitution of the Republic of Macedonia, the local elections are regulated by the **Law on local elections** (Official Gazette of the Republic of Macedonia no.45/04).<sup>1</sup> The law on local elections regulates in detail the proceedings and the conditions to elect members of the councils of the units of local self-government (hereinafter: municipalities), the Council of the City of Skopje and for election of Mayor of the municipalities and Mayor of the city of Skopje. The members of the councils are elected according to a proportional model, and the Mayor is elected according to a majority model. Every citizen of the Republic of Macedonia who has turned 18, has legal capacity, and has a permanent residence in the municipality, i.e. the city of Skopje where the elections are held, has the right to vote.

The Law on local elections guarantees freedom and confidentiality of the voting and no one can hold the voter accountable because of the voting or to demand to tell who he/she voted for or why he/she did not vote.

### 2. Election bodies

- **The State Election Committee**, is composed of a president who is appointed by the President of the Republic of Macedonia; four members (who are judges in the Supreme Court of the Republic of Macedonia) and their deputies who are appointed by the Parliament and whose mandate is four years.
- **Municipal Election Committees and the Election Committee of the city of Skopje (election committees)**, appointed by the State Election Committee, and they are comprised of a president and deputy appointed from the line of judges

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<sup>1</sup> Legal standards for regulation of the local elections are also contained in:

- Law on Polling stations (Official Gazette of the Republic of Macedonia no.50/97); Law on the list of voters (Official Gazette of the Republic of Macedonia no.42/02);
- A decision for establishing the number of members of the Municipality Councils in the Republic of Macedonia made by the Government of the Republic of Macedonia at a session on 23.08.2005.
- Instructions for clarifying the application of the Law on local elections, Code of the rules and the procedure for observation of the local elections 2005, Calendar-journal for carrying out of the electoral activities for election of members of the Municipalities Councils and the city Council of the city of Skopje and for the mayors of the municipalities and the mayor of the city of Skopje and description of the polling stations, which according to the competence were made by State Election committee, and in order to provide legality in the preparations and the conducting of the elections.

of the basic court which covers the concerned district; four members and their deputies elected for a time period of four years.

- **Election boards** comprised of a president and his/her deputy; four members and their deputies. In accordance with their competencies, the election boards manage directly the voting at the polling stations, they provide regularity and confidentiality of the voting, they provide free and peaceful course of the voting and sum up and announce the results from the voting at the polling stations where they conducted the voting.

*The Law on local elections gives exclusive privileges to the four leading parties in the part of appointing bodies that will conduct the elections. Appointing the bodies for conducting the elections by the four leading parties results in political influence on the judiciary, by which the efforts for independent functioning of the judiciary are being destroyed as well as the conditions to conduct fair and democratic elections.*

### **3. Scheduling elections, election campaign, and conducting elections**

The local elections in the Republic of Macedonia were initially scheduled for October 2004 (because the previous local elections were held in 2000), but they were held in March 2005. Namely, because of the conducting of the referendum, which was deciding how many municipalities there will be in the Republic of Macedonia, the Parliament of the Republic of Macedonia made alterations of the Law on legal elections, pursuant to which the President of the Parliament scheduled the local elections on 13.03.2005.

In order to provide legal and democratic course of the election campaign, 32 leaders of political parties and 3 independent candidates for mayors signed a ***Code of Conduct for free and fair local elections***.<sup>2</sup> However, in spite of the signed Code, the Association of citizens MOST in their Announcement for the media on 17.03.2005 noted premature start of the election campaigns by the candidates for mayor of the city of Skopje, and that is by placing a billboard in the centre of Skopje, holding press conferences where logos were displayed, banners and election slogans which will be used during the campaign, while in the announcement of March 9, 2005 on the basis of 188 reports, noted

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<sup>2</sup> This Code was published in the daily papers "Dnevnik" and "Fakti" on 25.02.2005 which were media supporters of the Code and the activities related to it.

abuse of children for the goals of the parties<sup>3</sup>, interruption of classes in order to participate in the party meetings, taking advantage of the cultural and sports events to promote the programs of certain candidates, cases of giving money, distributing food and other products to the citizens. As most frequent violations, the violations of articles 7 and 8 of the Code are mentioned, with constant fights between the participants in the pre-election race, mutual insults, and accusations between each other recorded during the massive public meetings. Unfortunately, although some irregularities were noted during the election campaign no complaint concerning that was submitted.

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<sup>3</sup> “The election headquarters of the candidate for Mayor, Risto Penov, will take away all the billboards, posters, and advertisements where children appear. This is a reaction to the criticism of the Ombudsman Ixet Memeti that Penov is taking advantage of children for political aims.” - Dnevnik 02.03.2005.

## CHAPTER II

### 1. Classification of the criminal acts against the elections and the voting

According to the current measures and standards of the democracy and the legal state, important condition for the existence of a democratic society founded on the human rights and freedoms, is undoubtedly the right of the citizen to freely choose the model of the political system and the representatives who on their behalf will govern the state and the social works. To that effect, the criminal acts against the elections and voting are incriminated, while the elementary issues which are important for legal conducting of the elections and realization of the constitutionally guaranteed voting right of the citizens to elect and to be elected are legally protected.

In Chapter 16 of the Criminal Code of the Republic of Macedonia<sup>4</sup>, eight criminal acts against the elections and the voting are incriminated<sup>5</sup>:

In order to provide legal protection of the elections as a legal act and a form of realizing the voting right of the citizens, Article 158 of the CC (Criminal Code) of the Republic of Macedonia incriminates a criminal act **Preventing elections and voting**, which is committed by a person that with intent by using force, serious threat or other means, makes impossible or prevents the course of the elections or the voting, or would make impossible or prevent the confirmation and the announcement of the results of the voting. If the elections and the voting are prevented by usage of weapons, explosive or other dangerous devices, by using violence against two or more people or in an organized group, or in the region of two or more polling stations, then the criminal act in question is a more serious one – preventing elections and voting.

In order to protect from the activities that make the exercise of the voting right impossible, Article 159 of the Criminal code of the Republic of Macedonia incriminates

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<sup>4</sup> Official Gazette of the Republic of Macedonia No. 37/96, 80/99, 4/02, 43/03 and 19/04.

<sup>5</sup> In Chapter VIII of the Criminal law of the Socialistic Republic of Macedonia from 1977, altered and amended in 1984, 1987, 1989, 1990, 1992 (when its name was changed into Criminal Law of the Republic of Macedonia) and 1993, under the name “Criminal acts against self-government” eight criminal acts against the election system are systematized: violation of the voting right, violation of the voter’s freedom of choice, destruction of electoral documents, calling to account because of the voting, misuse of the voting right, preventing elections, violation of the confidentiality of the voting and changing the results of the elections and the voting.

the criminal act **Violation of the voting right**, which is committed by a member of the electoral board, the election committee, the board for conducting a referendum or other official entity while performing its duty in connection with the elections and the voting, which:

- With the intention to disable others to exercise their voting right, and against the law will not enroll them in the list of voters or in the list of candidates, against the law will erase them from the list of voters or the list of candidates or in some other way<sup>6</sup> will deprive the voter from the right to elect, to be elected or to vote, or
- Illegally will enable others to use the voting right, although knowing that that person does not have such a right.

Considering the fact that freedom of choice at the elections is a form of exercising the democratic freedoms and the rights of the person and the citizen and a necessary condition to exercise the voting right, Article 160 of the Criminal Code incriminates a criminal act **Violation of the voter's freedom of choice**. The freedom of choice of the voters is infringed when somebody by using force, serious threat, a deceit or in some other way, forces or prevents a voter to exercise, not to exercise or to exercise the voting right in a certain sense. While, if a member of the electoral board, election committee, the board that conducts the referendum or other official entity while performing its duty in connection with the elections or the voting, violates the freedom of choice of the voters, then it is a matter of more severe form of this criminal act.

The voting right is general (every person who has turned 18 and has legal capacity, has a right to vote) and immediate (the voter votes in person, i.e. he cannot transfer his/her voting right to another person and he/she cannot vote instead of other person/persons).<sup>7</sup> Because the legality and legitimacy of the elections and the voting can be influenced by the participation of persons who do not have a voting right, voting instead of somebody else and when one person votes several times, Article 161 of the Criminal Code incriminates the criminal act **Misuse of the voting right**. The voting right is misused by the person that:

- Votes instead of another person, falsely introducing himself/herself that he/she is some other person, regardless whether the perpetrator has already voted on his/her behalf, nor who he/she has voted for, but it is important that he/she has voted instead of another person, usurping their voting right.

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<sup>6</sup> "Other way" means disabling somebody else to exercise his voting right with any other illegal activity.

<sup>7</sup> In accordance with Article 22 of the Constitution of the Republic of Macedonia.

- Will vote twice or more times, while it is irrelevant whether the perpetrator has voted many times on his/her behalf or on behalf of some other person or
- Will take part in the elections or the voting, although he/she knows that he/she does not have a voting right.

Within the frame of the penalizing intervention, the drawing of a line between the allowed influence on the voters which is an integral part of the election propaganda and gaining individuals over a destined ballot, candidate or outcome of the voting at a referendum, appears very often as a problem. The persuasion of individuals, promising some communal benefit (building of a road, street, water supply, opening jobs etc.), and other forms of personal influence, however stays within the limits of the allowed influence on the voters. With aim to provide protection of the legal character of the voting right, exercising that right in the function of election of state bodies or making important decisions, the freedom of choice should be protected from the personal bribing, i.e., from the “buying” of individual votes. If the voter does not use his/her voting right for the purpose of electing state bodies or making important decisions, but for acquiring some personal benefit, then the function of the elections and the voting itself is violated: instead of an instrument for democratically constructed government and conveyance of decisions, they become a private business deal of the citizens and the candidates. Due to these reasons and with aim to provide protection of the elections from illegalities and irregularities, Article 162 incriminates the criminal act **Bribery at elections and voting**.

The Criminal Code of the Republic of Macedonia anticipates active and passive bribery. Active bribery is when one person offers to another person (that has a voting right), gives or promises him/her a gift (promise for employment, a positive solution of some request of the voter etc.) in order to take part in the elections and to vote, or not to take part in the elections and not to vote or to use his/her voting right in such way as the briber requests. Passive bribery is when one person that has a voting right asks for himself/herself or receives a present or some other benefit in order to exercise, not exercise or to exercise the voting right in a certain sense.

In order to protect the voters from possible pressures and negative consequences for the given vote, which is one of the basic presumptions for free, fair and democratic elections, Article 162 of the Criminal code anticipates the criminal act **Violation of the confidentiality of voting**, which provides legal protection of the freedom of choice of the voters when deciding how to use their voting right (for which candidate, i.e. ballot they will give their vote). The confidentiality of the voting is violated when one with any kind of activity will violate the confidentiality of the elections or the voting: by disabling the voter to vote in confidentiality, opening the ballot after the voting and to find out who the voter voted for, by marking the ballot etc. If the confidentiality of the voting is violated by a member of an election board, election committee, a board that



conducts the referendum, or other official entity while performing its duty in connection with the elections and the voting, or by using force, serious threat, by using official labour or economic dependence, then it is a matter of severe form of this criminal act.

Not damaged and not falsified electoral documents are documents that prove the validity of the elections. Aiming to provide an accurate documentation to confirm the validity of the elections, Article 164 of the Criminal Code incriminates the criminal act **Destruction of electoral documents**, which can be performed by destroying, hiding, damaging, altering or by some other activity by which an unusable electoral document will be made, a book or a text which is of use for the elections and the voting. There is a more serious form of this act if electoral documents are destroyed by a member of the electoral board, election committee, the board that conducts the referendum or other official entity while performing its duty in connection with the elections and the voting.

The legitimacy and the objectivity of the voting i.e. the verification and announcing of the results of the voting must not be questioned at any moment, because that would lead to losing the trust of the voters in the regularity of the conducted elections. The results of the conducted elections must be a reflection of the true will of the electorate, because otherwise the legality and the legitimacy of the elected representatives will be brought into question. In that direction, aiming to provide legitimacy of the elections, the voting, the verification and the announcement of the results of the voting, Article 165 of the Criminal Code incriminates a criminal act **Electoral deceit**.

The criminal act Electoral deceit is performed by a member of the election board, election committee, the board that conducts the referendum or other official entity while performing its duty in connection with the elections or the voting with intent (aware about the deceit while conducting the elections and the voting) will alter the number of the given votes by adding or taking out of one or more ballots, will alter the number of the votes while counting or alter the number of the votes when announcing the results of the elections or the voting by adding or subtracting one or more votes.

## CHAPTER III

### 1. Irregularities during the local elections in 2005 identified by accredited domestic and foreign observers

A general assessment of the accredited domestic and foreign observers is that the local elections in the Republic of Macedonia in 2005 were fair, democratic and in accordance with the OSCE Copenhagen Document and the other international standards for democratic elections, but with serious irregularities in a significant number of municipalities in the western and north-western part of the country (the Kumanovo-Lipkovo region, the Tetovo region and the Gostivar region as well as in the part of the Skopje region, in the municipalities of Suto Orizari and Studenicani), which have an impact on the integrity of the whole election process.

*The irregularities and the violations of the election process, confirmed by the accredited domestic and foreign observers refer to:* **Stuffing of ballot boxes; Group voting; Interruptions of voting; Voting instead of other persons; Not using an invisible ink to avoid repeated voting; Family voting; Disobeying of the procedure for voting prescribed by law; Violent behavior and fighting; Usage of firearms for the purpose of intimidation; Not signing the voters in the statements from the list of voters; Violation of the confidentiality of the voting; Usage of voting manuals only in Albanian language; Tensions, unrests and intimidation outside the polling stations; Breaking ballot boxes; Agitating, assaults on voters and distributing propaganda material; Tension, unrests and intimidation inside the polling stations; Lack of election material; A direct participation of the members of the election boards (committees) in the violation of the voting right; Not-conducting a procedure to check the identity of the voters; Discovering a larger number of ballots in the ballot boxes than the number of voters who have given their vote; Late opening of the polling stations etc.**

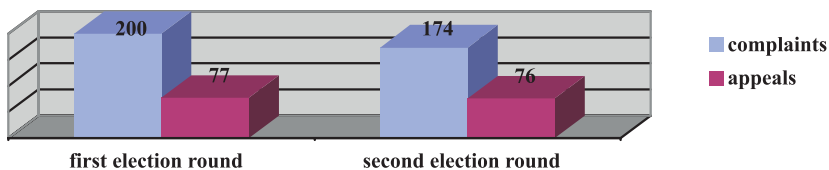
If irregularities are noted during the elections, every submitter of the list of candidates for Council members, the list of candidates for Mayor and every voter in the voting procedure, summing up and verifying the results of the voting has a right to submit a complaint to the election committee, within 48 hours after the noticing the irregularities.<sup>8</sup>

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<sup>8</sup> In accordance with Article 81 of the Law on Local elections of the Republic of Macedonia (Official Gazette No. 45/04).

The election committee will annul the voting at the polling station by a decision, if it establishes that the confidentiality of the voting has been violated; if the voting has been interrupted more than three hours; if the police have not answered the request of the election board for intervention, that was needed and influenced the voting at the polling station; if the number of the ballots in the ballot box is larger than the number of voters who have voted, and that number has an impact on the results of the voting at a level of municipality and the city of Skopje or if it establishes that some person or persons voted instead of other persons (person), and the number of those votes has an impact on the results of the voting at a level of municipality and the city of Skopje. An appeal against the decision of the election committee can be submitted within 24 hours to the Supreme Court which is obliged to act on the appeal within 48 hours after the receipt of the appeal.<sup>9</sup>

After the completion of the first election round, around **200 complaints** for alleged irregularities were submitted to the municipal election committees, by the political parties and the independent candidates, but a larger part of the complaints have been rejected by the municipal election committees due to technical and procedural reasons. Deciding upon **77 appeals** submitted against decisions of the municipal election committees, the Supreme Court conveyed 64 decisions, granted 17 cases, and rejected a large number of appeals and confirmed the decisions of the municipal election committees. After the completion of the second election round, **174 complaints** were submitted to the municipal election committees for alleged irregularities, and a large number of the complaints were rejected by the municipal election committees. Against the decisions of the municipal election committees, **76 appeals** were submitted to the Supreme Court which accepted the appeals in 16 cases, but has rejected the appeals of large number of cases.<sup>10</sup>



As a result of the complaints and appeals filed for alleged irregularities during the election process, a re-voting was held on March 27, in 13 municipalities<sup>11</sup>; on April 10,

<sup>9</sup> In accordance with Article 74 of the Law on Local elections of the Republic of Macedonia (Official Gazette No. 45/04).

<sup>10</sup> Final report of the observing mission about the elections of OSCE/ODIHR, Warsaw, June 8, 2005.

<sup>11</sup> Kicevo, Kumanovo, Zelenikovo, Konce, Mavrovo and Rostusa, Studenicani, Butel, Gostivar, Brvenica, Cair, Tetovo, Suto Orizari and Gazi Baba.

in 11 municipalities<sup>12</sup>; on April 24, in 2 municipalities<sup>13</sup>, and there was re-voting on May 8 too.

In the municipality of **Suto Orizari**, because of the irregularities after the first election round, the results of the voting were annulled at four polling stations. Because of the repeated irregularities in the further election rounds, complaints were submitted, and consequently to that a repeated second round of voting was carried out on April 24. Because the newly elected Mayor was serving his prison sentence, his mandate was withdrawn in accordance with Article 54 paragraph 1 of the Law on local self-government and in accordance with this law **Pre-term elections** were scheduled. Based on the reports of 38 observers who in stationary and mobile teams monitored the voting on August 21, the Association of citizens MOST evaluates that the first election round of the pre-term elections for Mayor of the municipality of Suto Orizari took place in a peaceful atmosphere and without serious incidents. During the first election round the observers of MOST recognized cases of disobeying the voting procedure, i.e. an inadequate usage of UV lamp for check-out and an invisible spray for marking of the voters, disrespecting the confidentiality of the voting in the cases when the blind and the illiterate persons asked for help, cases of voting instead of another person, a large number of cases of family voting, as well as cases of organized transport of the voters and presence of propaganda material in the immediate vicinity of the polling stations recognized by the mobile teams of MOST.<sup>14</sup> MOST evaluates that the second round of the pre-term elections for Mayor of the municipality of Suto Orizari held on September 4, was without serious incidents, but with shortcomings while conducting the voting process seen from a technical point of view (inappropriate usage of a UV lamp for a check-out and invisible spray for marking of the voters), and the largest number of irregularities registered by the observers refer to family voting and voting instead of another person, as well as organized transport of the voters recognized by the mobile teams of MOST.

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<sup>12</sup> Butel, Dolneni, Stip, Makedonski brod, Ohrid, Zrnovci, Lipkovo, Cucer Sandevo, Mavrovo i Rostusa, Krivogastani and Brvenica.

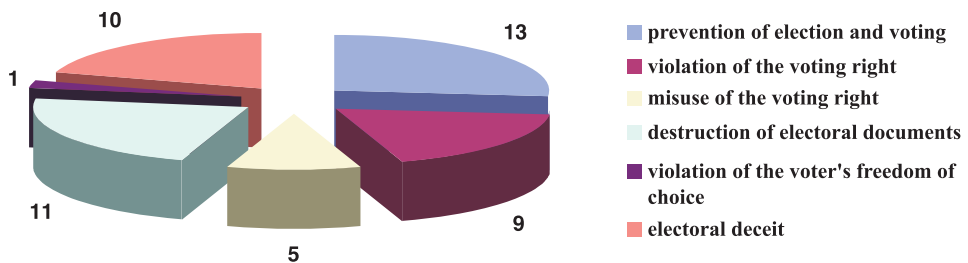
<sup>13</sup> Studenicani and Suto Orizari

<sup>14</sup> In the daily newspaper Dnevnik dated 22.08.2005 it was published that the Central Headquarters of the Association of the Romany people in their announcement state that the voters in the village Gorno Orizari during the first election round were offered money to vote for a certain candidate for mayor, while at the polling station no. 2973 in Gorno Orizari around 2.45 p.m. persons in a car golf with license plate no. SK-478-ND, offered money to the voters to vote for a certain candidate for mayor.

## CHAPTER IV

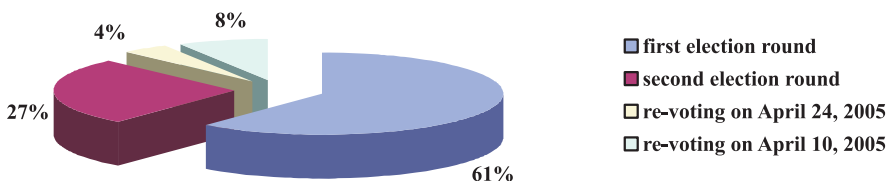
### 1. Phenomenological characteristics of the criminal acts against the elections and the voting committed during the local elections in 2005

During the local elections in Republic of Macedonia in 2005 a total of 49 criminal acts were committed against the elections and the voting: 13 criminal acts-preventing elections and voting (as per Article 158 of the Criminal Code of the Republic of Macedonia), 9 criminal acts-violation of the voting right (as per Article 159 of the Criminal Code of the Republic of Macedonia), 5 criminal acts-misuse of the voting right (as per Article 161 of the Criminal Code of the Republic of Macedonia), 10 criminal acts-electoral deceit (pursuant to Article 165 of the Criminal Code of the Republic of Macedonia), 11 criminal acts-destruction of electoral documents and 1 criminal act-violation of the freedom of choice of the voters.



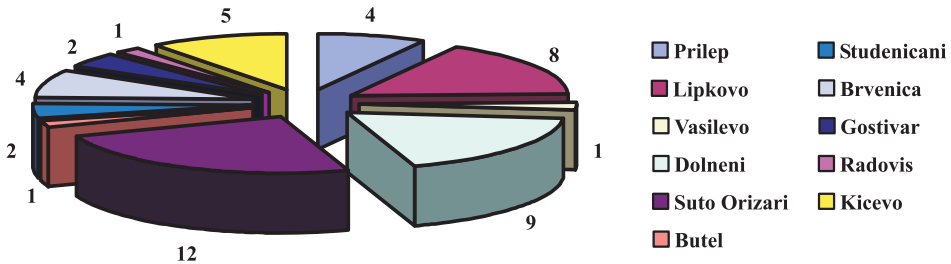
### Time when the criminal acts were committed

Regarding the issue about the time of committing the criminal acts against the elections and the voting, whether they have been committed during the first election round, the second election round or during the re-voting, based on the statistical processing of the data, it was established that the largest part of the criminal acts (61% of the total number of criminal acts) were committed during the first election round, 27% of the total number of criminal acts were committed in the second election round, 8% on the re-voting on April 10, 2005, and 4% on the re-voting on April 24, 2005.

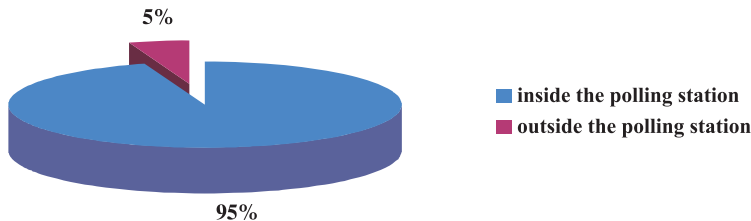


## Place of committing the criminal acts

Criminal acts against the elections and the voting were committed in eight municipalities during the local elections in 2005. The largest number of criminal acts against the elections and the voting (a total of 12) were committed in the municipality of Suto Orizari, 9 criminal acts were committed in the municipality of Dolneni, 8 in the municipality of Lipkovo, 5 in Kicevo, 4 criminal acts committed in Prilep and 4 criminal acts committed in Brvenica, 2 criminal acts committed in the municipality of Studenicani, 2 criminal acts committed in the municipality of Gostivar, and 1 criminal act committed in the municipality of Vasilevo, Butel and Radovis.



The analysis of the data led to a conclusion that 95% of the total number of the criminal acts was committed inside the polling stations i.e. the premises where the voting took place, while only 5% of the criminal acts were committed outside of the polling stations.



## Method of committing the criminal acts

The Criminal act **Preventing elections and voting**, was committed in 13 cases in the following ways: by using weapons<sup>15</sup>- in 6 cases, by using force<sup>16</sup>- in 5 cases, and

<sup>15</sup> Four persons by using weapons tore off a part of the election material and stuffed the ballot box with ballots, and by doing that they prevented the elections and the voting during the second election round at the polling station no.1391 in the municipality of Prilep. One person broke the glass of two windows in the room with a knife where the voting was held, and another person that was at a distance of 10 meters from the polling station pointed a shot gun towards the room where the voting was taking place and where there were a lot of people and fired a bullet in the next room, by which these persons prevented the elections and the voting during the first election round at the polling station no.1473 in the municipality of Dolneni.

<sup>16</sup> One person by breaking three ballot boxes sealed with safety tapes prevented the elections and the voting during the first election round at the polling station no.2905 in the municipality of Butel. After a previous quarrel between two persons there was breaking of the ballot box, by which these persons prevented the elections and the voting during the second election round at the polling station no.1119 in the municipality of Lipkovo.

in 2 cases by taking the election material away (from the polling station)<sup>17</sup>.

Out of a total of 9 criminal acts-violation of the voting right, committed during the local elections, 6 of them were committed by illegal deprivation<sup>18</sup> of the voters of their voting right, and in 3 cases illegally enabling persons who do not have a voting right, to use such right.<sup>19</sup>

During the local elections in 2005, the voting right was misused by 5 persons, four of who voted instead of the members of their family<sup>20</sup>. Concerning the destruction of electoral documents, out of 11 persons, 10 persons destroyed the electoral documents by destroying the list of candidates<sup>21</sup>, and by a serious threat,<sup>22</sup> they violated the freedom of choice to one voter.

During the local elections in 2005 in the Republic of Macedonia, two persons were charged with bribery during elections and voting, but in both cases due to non-existence of reasonable doubt that the charged have committed the criminal act, the Prosecution office dropped the criminal charges. On the other hand, no criminal charges were filed against violation of the confidentiality of the voting.

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<sup>17</sup> The Basic Public Prosecutor Office of Gostivar gathers evidence against two persons for who there is a suspicion that they prevented the elections and the voting by taking away the election material, which was handed over to the president of the municipal election committee without Minutes.

<sup>18</sup> During the second election round at the polling station no.1117 in the municipality of Lipkovo, the president and the four members of the election board, enabled one person to vote on his behalf and on behalf of the members of his immediate family, and by doing that they deprived the members of the family of the voting right. During the repeated voting on 24.04.2005 at the polling station no.2343 in the municipality of Studenicani, the president of the election board held the ballots and the list of voters in his hands and he did not allow the voting to begin, and by doing that he deprived the voters of the voting right.

<sup>19</sup> During the first election round at the polling station no.1470 in the municipality of Dolneni, the president, one member and one deputy member of the election board, have illegally enabled three persons to use the voting right although they knew that they did not have such a right, and they gave one person 3 ballots for election of Mayor and election of counsels, another person was given 5 ballots for election of Mayor and election of counsels, and to a third person 3 ballots for election of Mayor and election of counsels, and after this, these persons were allowed to vote by putting all these ballots in the ballot boxes.

<sup>20</sup> During the first election round at the polling station no.1470 in the municipality of Dolneni 3 persons misused the voting right, one person voted on behalf of his wife and mother, the other person voted on behalf of his mother, wife, daughter in law and daughter, and the third person voted on behalf of his wife and mother-in-law.

<sup>21</sup> An investigative judge of Basic court Skopje II Skopje undertakes investigation activities against 10 persons for whom there is a suspicion that during the first election round as members of the election committee in many returns allowed NN persons to take a larger number of ballots for election of Mayor of the municipality of Suto Orizari, and in order to cover up the missing ballots they left a portion of the other ballots instead of them and that is for election of Mayor of the city of Skopje and for election of Counsels of the city of Skopje and the municipality of Suto Orizari, by which they destroyed list of candidates.

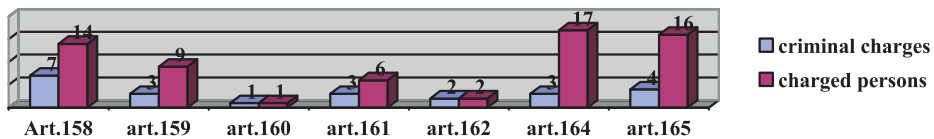
<sup>22</sup> In the municipality of Radovis, one woman tried by using a serious threat to force another woman to exercise the voting right in a certain sense, threatening her that she will be replaced from her job (controller) if she does not place a picture of a certain candidate for mayor in her home where she lives and if she does not vote for him, and after she refused to do that, she was removed from her job to another job, cleaner of thread, as an example to the other employees if they do not vote for that candidate for mayor.

## 2. Charged, indicted and convicted persons for criminal acts against the elections and the voting committed during the local elections in 2005

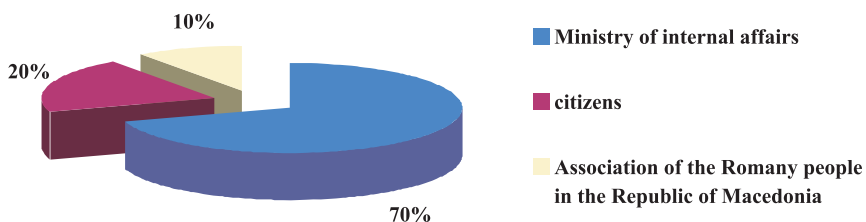
### Charged persons

20 criminal charges were filed against 65 persons for criminal acts against the elections and the voting in 2005.

The number of criminal charges and charged persons, separately for every criminal act against the elections and the voting, can be seen from the chart below:

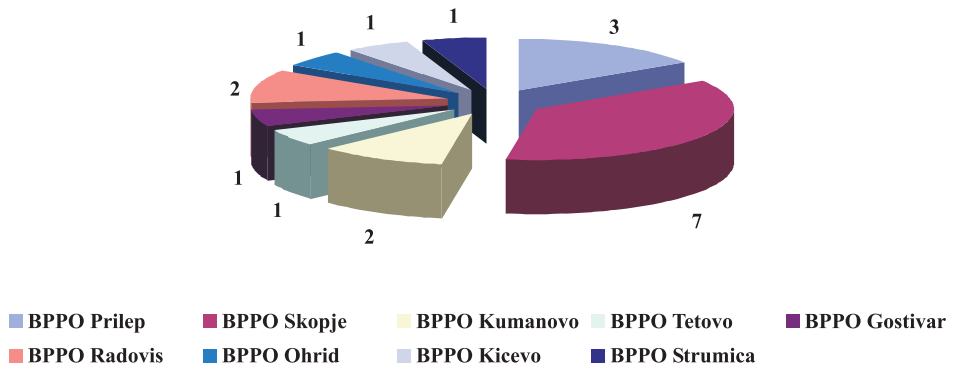


Regarding the submitters of the criminal charges, the data analysis, showed that out of a total of 20 criminal charges, 14 criminal charges were filed by the Ministry of Internal Affairs, 4 criminal charges were filed by citizens, and 2 criminal charges were filed by the Association of the Romany people of the Republic of Macedonia.

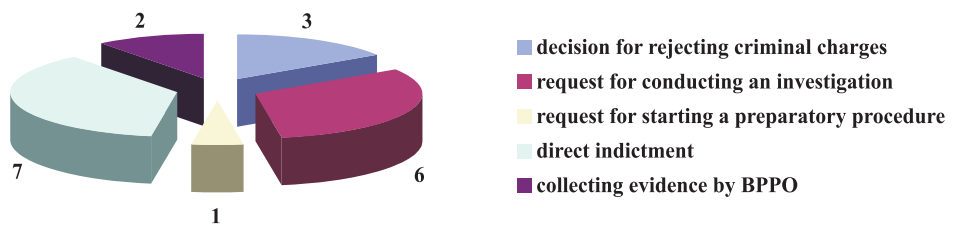


After receiving the criminal charges, nine Public Prosecutor offices instigated 19 cases out of which seven were opened in Basic Public Prosecutor office (BPPO) - Skopje, and one case in Basic Public Prosecutor office Tetovo, one in Gostivar, one in Ohrid, one in Kicevo and one in Strumica.





Regarding the proceeding of the Public Prosecutor offices in 6 cases a request to conduct an investigation was submitted<sup>23</sup>, in 7 cases direct indictments have been raised<sup>24</sup>, in one case a request for initiating a preparatory proceeding is submitted<sup>25</sup>, three cases are closed with a decision to reject criminal charges<sup>26</sup>, and for two cases the proceeding is at a stage of gathering evidence by the Public Prosecutors offices<sup>27</sup>.



<sup>23</sup> In accordance with article 151 of the Law on Criminal Procedure of the Republic of Macedonia (Official Gazette no.15/97, 44/02 and 74/04)

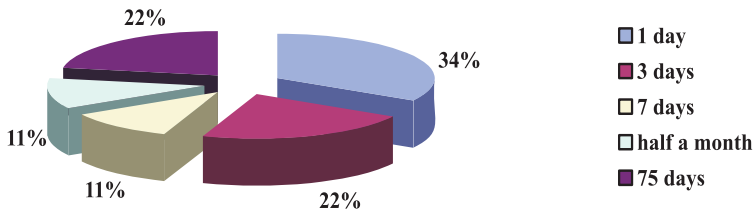
<sup>24</sup> In accordance with article 153 of the Law on Criminal Procedure of the Republic of Macedonia (Official Gazette no.15/97, 44/02 and 74/04)

<sup>25</sup> To a judge for minors of Basic court Skopje II Skopje, the Basic Public Prosecutor Office Skopje has submitted a request for conducting a preparatory procedure against one minor for a criminal act – prevention of elections and voting (In accordance with article 455 of the Law on Criminal Procedure of the Republic of Macedonia, Official Gazette no.15/97, 44/02 and 74/04)

<sup>26</sup> The Basic Public Prosecutor Office Skopje has rejected 2 criminal charges (one for destruction of electoral documents and electoral deceit against 12 persons, and another for misuse of the voting right against one person), the Basic Public Prosecutor Office Radovis has rejected one criminal charge for bribery at elections and voting against one person, and with a decision by the Basic Public Prosecutor Office Ohrid a criminal charge for bribe at elections and voting against one person is rejected. In all four cases the decision for rejecting the criminal charges is made based on the same legal grounds: non-existence of a reasonable doubt that the charged has committed the criminal act (Article 144 paragraph 1 of the Law on Criminal Procedure of the Republic of Macedonia Official Gazette no. 15/97, 44/02 and 74/04)

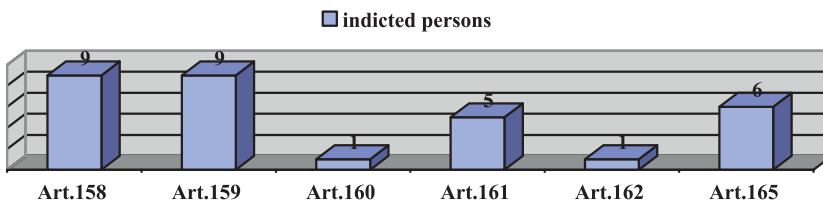
<sup>27</sup> The Basic Public Prosecutor Office of Tetovo gathers evidence against four persons for whom there is a suspicion that they committed a criminal act-electoral deceit. The Basic Public Prosecutor Office of Gostivar gathers evidence against two persons for whom there is a suspicion that they committed a criminal act – prevention of elections and voting.( In accordance with article 144 of the Law on Criminal Procedure of the Republic of Macedonia, Official Gazette no.15/97, 44/02 and 74/04)

Regarding the time that has passed from the moment of receipt of the criminal charges until the moment of raising the indictment, the analysis of the gathered data shows that in one case prosecution act was submitted the same day when the criminal charges were received in the Public Prosecutors office.<sup>28</sup> In 34% of the cases pre-trial procedure lasted only one day, in 22% 3 days, in 11 % 7 days, in 11% half a month, and in 22%-75 days.



## Indicted persons

31 persons are indicted for committing criminal acts against the elections and the voting during the local elections in 2005, 9 persons are indicted for prevention of elections and voting and 9 persons for violation of the voting right, one person is indicted for violation of the freedom of choice of the voters, also one person is indicted for destruction of electoral documents. No one was indicted for bribery during elections and voting, or for violation of the confidentiality of voting.



<sup>28</sup> On 22.03.2005 to the Basic Public Prosecutor Office Radovis criminal charges were filed against one person for criminal act- violation of the freedom of choice of the voters, and on the same day the Public Prosecutor office has raised a prosecution proposal to the Basic court Radovis.-Written notification by the Basic Public Prosecutor Office Radovis Ko no. 49/05 dated 09.09.2005.

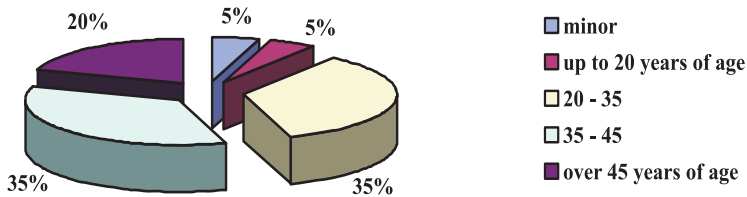
## Profile of the indicted

### Gender

With respect to the gender of the persons indicted for criminal acts against the elections and the voting regarding the local elections in 2005, only one person is a woman, and all the other 30 indicted persons are men.

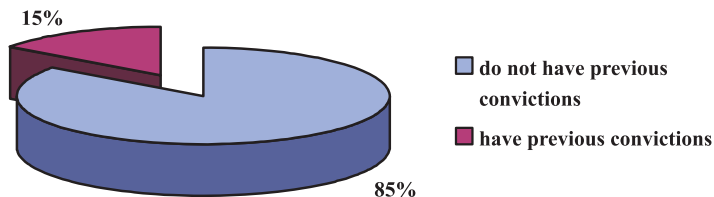
### Age

The statistical processing of the gathered data, which refers to the age of the indicted, showed that the youngest indicted person is a minor 17 years old at the moment when committing the criminal act, and the oldest indicted person is 61 years old. 5% of the indicted are less than 20 years old, 35% of the indicted are from 20 to 35 years old, 35% of the indicted are from 35 to 45 years of age, and 20% of the indicted are over 45 years old.



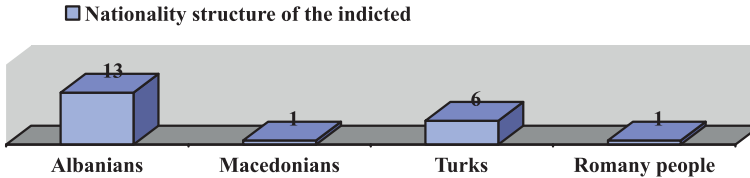
### Previous convictions

Regarding earlier convictions of the indicted, a larger part ( 85%) of the indicted do not have a criminal record, while a smaller part (15%) of the indicted are repeaters i.e. persons previously convicted for other criminal acts.



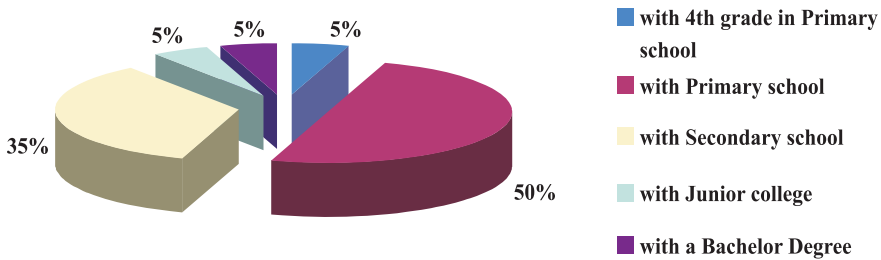
## Nationality structure

With respect to the nationality structure of the indicted, 61% of the indicted are Albanians, 26% are Turks, 5% are Romany people, and 5% are Macedonians.



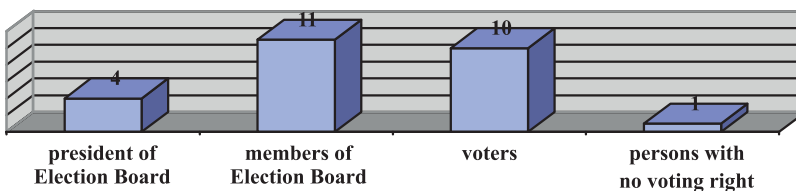
## Education

In regard to the education level of the indicted, the data analysis showed that half of the indicted have finished primary school, 35% have finished secondary school, and 5% of the indicted have finished the fourth grade in primary school, 5% have a junior college diploma and 5% have a Bachelors Degree.



## Membership in the bodies that are conducting the local elections (election boards, municipal election committees and state election committee)

The list of indicted for the criminal acts against the elections and the voting regarding the local elections in 2005 includes voters, persons with no voting right and the largest number of the indicted at the moment of committing the act were members of the bodies for conducting the local elections (election boards, municipal election committees and state election committee).



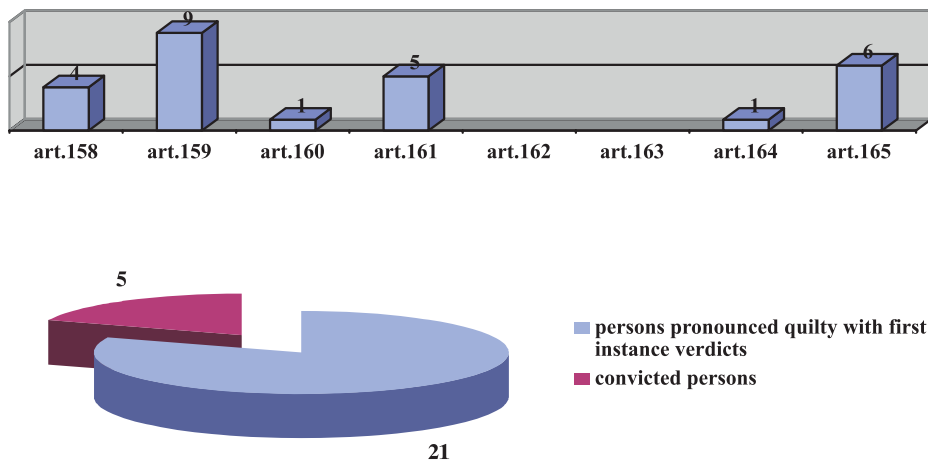
Although a large number of the criminal acts are committed by members of the bodies responsible for conducting the local elections, there are also cases when the members of the bodies responsible for conducting the elections have been attacked by the perpetrators of the criminal acts against the elections and the voting, when trying to prevent the committing of the criminal acts.<sup>29</sup>

Furthermore, there is one case when the members of the election board largely contributed in discovering the criminal act.<sup>30</sup>

## Convicted persons

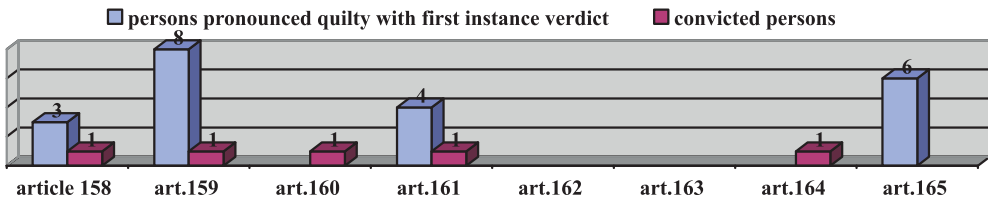
For criminal acts against the elections and the voting committed during the local elections in 2005 in the Republic of Macedonia, in first-instance procedure 21 persons were found guilty, and by enforced verdict 5 persons were convicted.

■ Graphic view of the persons pronounced guilty of criminal acts against the elections and the voting committed during the local elections 2005

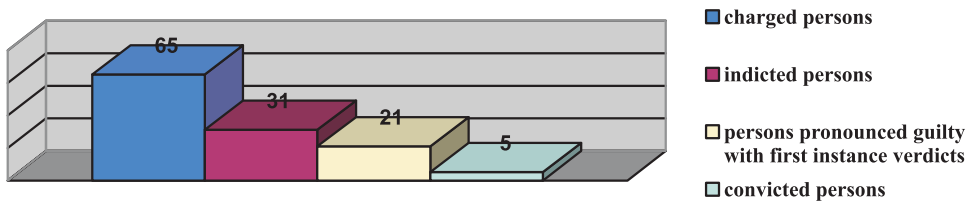


<sup>29</sup> During the first election round a minor went inside the room of the polling station in the municipality of Suto Orizari and tried to take a larger number of ballots, and when a member of the election board tried to stop him, the minor physically attacked the member of the election board, hitting him with his fist in the face, and after the rest of the members of the election board opposed the minor, he left the polling station.

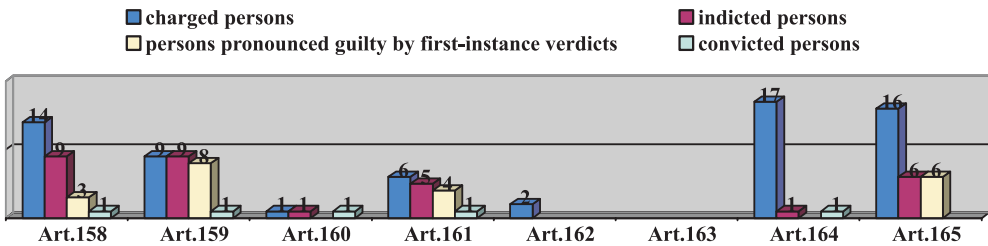
<sup>30</sup> The members of the election board at the polling station Vasilevo before the start of the voting under suspicion that something is wrong (after the weak and old persons voted, the indicted as a president of the election board, took the voting material, and kept it in his house that night), went through the ballots and established that 17 of them are invalid, i.e. on 17 ballots the candidates for mayors were circled under points (1 and 2).



The ratio between the numbers of charged, indicted, persons found guilty by first-instance verdicts and convicted persons can be seen from the following table:

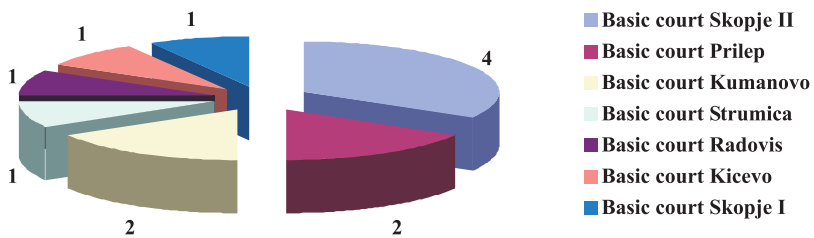


Regarding their ratio, separately for every criminal act against the elections and the voting, the following data have been established:

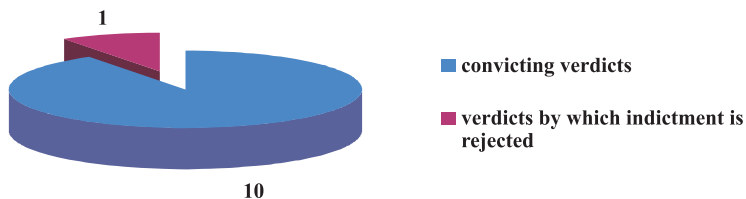


### 3. Sanctioning the perpetrators of the crimes against the elections and the voting

Acting upon the charges brought by the Basic Public Prosecutor offices, six Basic Courts have opened 12 cases. The largest number of cases, a total of 5 refers to the criminal act-prevention of elections and voting, three cases refer to criminal acts - violation of the voting right and misuse of the voting right, two cases refer to electoral deceit, one case refers to destruction of electoral documents and one case refers to violation of the freedom of choice of the voters.



The Basic courts deciding upon the cases, have reached conviction verdicts in 10 cases (verdicts by which the indicted are found guilty and criminal sanctions have been pronounced), in one case a rejected verdict has been reached<sup>31</sup> (a verdict by which the indictment is rejected), and for one case the first-instance procedure is ongoing.<sup>32</sup>



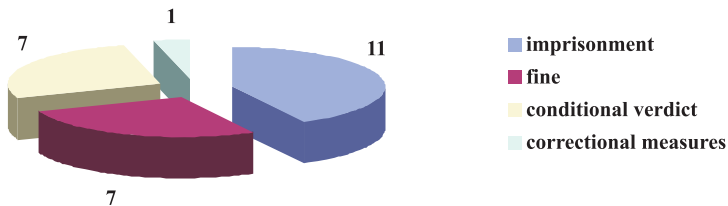
<sup>31</sup> In accordance with article 341 point 3 of the Law on Criminal Procedure of the Republic of Macedonia (Official Gazette no.15/97, 44/02 and 74/04), the Basic Court Skopje I Skopje has reached a verdict by which the indictment is rejected, i.e. a verdict by which the charges against one person charged with criminal act - prevention of elections and voting are rejected, because the deputy Basic Public Prosecutor has withdrawn the charges during the main trial.

<sup>32</sup> A criminal case against 4 persons indicted for qualified (a more serious) form of criminal act – prevention of elections and voting according to article 158 paragraph 2 of the Criminal Law of the Republic of Macedonia. The main trial for this case is held before Basic court.

## Types of criminal sanctions

To the persons who have been found guilty, three types of criminal sanctions have been pronounced (imprisonment and fine); alternative measures (conditional verdict) and correctional measure (enhanced supervision by the parents under control of a social body).

Imprisonment has been pronounced to 11 persons, 7 persons are fined, to 7 persons a conditional verdict is pronounced, and to one person – a minor, a correctional measure (enhanced parental supervision under auspice of a social body) was pronounced.



## Legal minimum, legal maximum and a judicial meting out of the criminal sanctions

*The legal minimum of the penalty foreseen for the perpetrator of the criminal act prevention of elections and voting is six months, and the maximum five years. On the other hand, if the elections and the voting are prevented by using weapons, explosive or other dangerous devices, by using force against two or more persons or in an organized group, or if the point in question is prevention of elections and voting in the district of two or more polling stations, then the legal minimum is 1 year, and the maximum of the punishment with imprisonment is 10 years.*

Four persons have been found guilty for committing a criminal act Prevention of elections and voting, and the following sanctions have been pronounced:

- One person is sentenced to eight months imprisonment;
- A conditional verdict has been pronounced to two persons – sanction imprisonment of one year and six months, which will not be enforced if the indicted do not commit a new criminal act for a time period of two years,<sup>33</sup>

<sup>33</sup> When meting out the sanction, the court has taken as extenuating circumstances the following: that the indicted are family men, that they do not have a criminal record and the good behavior of the indicted before the court, and as aggravating circumstances the court has taken the following: the seriousness of the criminal act, the way of committing it, the consequences of committing such a type of criminal act, the motive because of which the act is committed and the circumstances under which the act is committed.



- A correctional measure was pronounced to one minor - enhanced supervision by the parents under control of a social body.

*The perpetrator of a criminal act – violation of the voting right can be punished by the court **with a fine or imprisonment of up to one year.***

Nine persons have been found guilty for violation of the voting right and the following sanctions were pronounced:

- One person is sentenced with imprisonment of eight months,
- Imprisonment in a duration of two months was pronounced to three persons<sup>34</sup>
- Five persons were fined.

*If a person violates the freedom of choice of the voters, the court can pronounce **a fine or imprisonment of up to one year**, while the member of an election board, election committee, board for conducting a referendum or other official person when performing his duty in connection with the elections or the voting violates the freedom of choice of the voters can be sentenced **with an imprisonment of three months up to three years.***

One person convicted for violation of the freedom of choice was fined.

*According to the Criminal Code of the Republic of Macedonia, everybody who abuses the voting right can be punished with **a fine or imprisonment of up to one year.***

Five persons who during the local elections misused the voting right were sanctioned in the following manner:

- One person is sentenced to eight months of imprisonment,
- Three persons were sentenced to two months imprisonment,
- One person was fined.

*To the person who destroys electoral documents, the court can pronounce **a fine or imprisonment of up to one year**, while to a member of an election board, election committee, board for conducting a referendum or other official person, when performing his duty in connection with the elections or the voting, then the court can pronounce **a fine or imprisonment of up to three years.***

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<sup>34</sup> While meting out the type and the height of the sanction, the court has considered as aggravating circumstances: the social danger of committing such criminal acts and a more frequent committing of such criminal acts in the region where the indicted live, and as extenuating circumstances the court has considered the partial confession for the committed criminal act, the family's material condition and the circumstance that the indicted have not been convicted so far.

For destroying electoral documents, one person is sentenced to imprisonment for a period of six months.

*In accordance with article 165 of the Criminal Code of the Republic of Macedonia, to the perpetrator of a criminal act-election deceit a **sentence - imprisonment for a time period of three months up to five years** can be pronounced.*

Six persons found guilty for electoral deceit were sanctioned in the following manner:

- One person sentenced to six months imprisonment,
- A conditional verdict has been pronounced to five persons, – sanction imprisonment for a time period of five months, which will not be enforced if the indicted do not commit a new criminal act for a time period of one year.

## **4. Respecting international fair trials standards trials in the criminal procedure against the perpetrators of the criminal acts against the elections and the voting**

### **Right to a trial before a competent, independent, impartial and by law established court**

The structure of the court is one of the key issues to conduct an impartial and fair trial, via which the principle of equality of the citizens before the law and the courts is acquired. Within the frames of the project 4 court cases were observed, and based on the data of 9 questionnaires, it was established that 3 cases were tried/heard by a panel made of one judge and two lay judges (1+2), and one case was heard/ tried by a single judge.

### **Equal means**

One of the ways via which the standard of equal means is acquired, is the possibility of proposing evidence by the indicted and his/her Defense lawyer during the proceedings. Based on 10 filled in questionnaires, it was established that in two cases the Defense proposed new evidence, and the court in both cases has partially accepted the proposed evidence. In a criminal process held before Basic Court Prilep against four persons for a criminal act – prevention of elections and voting pursuant to Article 158 paragraph 2 v.v. paragraph 1 and article 19 of the Criminal code of the Republic of Macedonia, at the hearing the Defense proposed interrogation of three witnesses, and the court accepted two of the proposed witnesses to be interrogated, and at another hearing the Defense proposed interrogation of six witnesses, and the court deciding upon this proposal has partially accepted to interrogate two of the proposed witnesses.

## Right to be present at the Trial

Trying in absentia is possible only in the cases prescribed by the Law on criminal procedure of the Republic of Macedonia.<sup>35</sup>

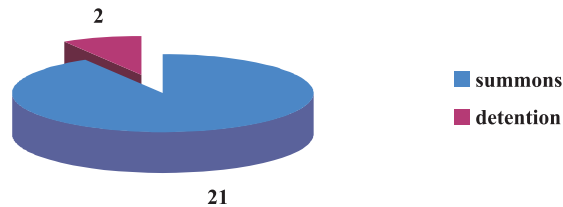
The statistical analysis of the gathered data regarding trying in presence (absentia) of the indicted, led to a conclusion that 21 indicted were tried in presence, and only two were tried in absentia-in a criminal case held before Basic Court Kumanovo out of a total of six indicted (all properly summoned in the Minutes), four were present, and two indicted were not present, so in accordance with article 454 paragraph 4 of the Law on criminal procedure the court has decided to try both the indicted in absentia.

The Law on criminal procedure of the Republic of Macedonia provides for several measures for providing presence of the indicted.<sup>36</sup>

The processing of the gathered data, showed that in the criminal procedures that are held for criminal acts against the elections and the voting, the presence of 21 indicted was provided by summons. Detention was ordered against two persons. Namely, on 25.04.2005 the Ministry of Internal Affairs filed criminal charges against three persons for violation of the voting right. Acting upon the criminal charges, the Basic Public Prosecutor Office in Skopje has submitted a proposal to undertake certain investigation activities with a proposal for detention measure to all the three charged persons, and an investigative judge at the Basic court Skopje II Skopje had ordered 8 days detention to all three charged persons, based on the same legal grounds (due to existing circumstances, which indicated danger that the three charged persons could escape, Article 184 paragraph 1 point 1 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia no.15/97, 44/02 and 74/04). After one of the charged appeared in court and was interrogated in the presence of a Defense lawyer, the investigative judge terminated the detention measure because he established that the reasons for which the detention had been ordered do no longer exist, and also Basic Public Prosecutor Office Skopje has made a decision to withdraw the criminal charges due to non-existence of well founded suspicion that this reported person has committed the criminal act.

<sup>35</sup> In accordance with article 292 of the Law on Criminal Procedure of the Republic of Macedonia (Official Gazette no.15/97, 44/02 and 74/04), at the proposal of the defendant, the court can reach a decision for trying in absentia, if the indicted is on the run or is not accessible to the state bodies, and there are especially important reasons to be tried in absentia. In a shortened procedure, in accordance with Article 428 paragraph 4 of the Law on Criminal Procedure of the Republic of Macedonia, if the indicted does not appear at the main trial, although he/she is regularly summoned and the summons could not be returned due to non-reporting to the court about the change of address or residence, the court can decide the main trial to be held in his/her absentia on condition his/her presence is not necessary.

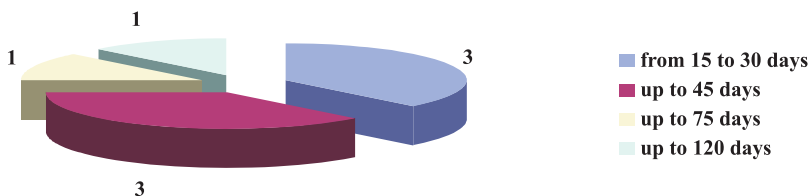
<sup>36</sup> Summons; bringing in; promise by the indicted that he/she will not leave the place of residence i.e. his/her whereabouts; other precautionary measures which provide the presence of the indicted (a prohibition on leaving the place of residence i.e. whereabouts, an obligation of the indicted to report from time to time to a certain official person or to a competent state body, temporary taking away of travelling or other papers for crossing the state border i.e. a prohibition of its issuance and temporary taking away of the driver's license, i.e. a prohibition of its issuance), guarantee and detention (Chapter XVII of the Law on Criminal Procedure Official Gazette no. 15/97, 44/02 and 74/04).



## Trial in a reasonable time

The right of a trial in a reasonable time means that the procedure, considering the right of the indicted to have enough time to prepare his/her defense, must proceed and the verdict must be reached without unnecessary delays, i.e. in a reasonable time.

Regarding the time duration of the criminal proceedings in first instance in 3 cases, the criminal proceedings lasted from 15 to 30 days, in 3 cases lasted up to 45 days, in 1 case it lasted 75 days and in one case it lasted up to 120 days, which points to the fact that the persons indicted for criminal acts against the elections and the voting committed during the local elections in 2005 in the Republic of Macedonia, were tried in a reasonable time.



## Right to remain silent

The right to remain silent is the most important guarantee that forced methods will not be used on the indicted for getting his statement or confession. Considering whether the indicted has used the right to remain silent, based on the statistical analysis of the gathered data it was noted that 17 indicted did not use the right to remain silent, but they have presented their defense.

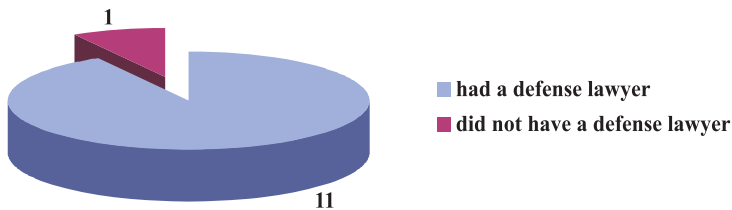
## Right to an interpreter

The members of the communities which are not a majority in the Republic of Macedonia, have the right to equality and non-discrimination before the court, a right to use their language and alphabet in the proceedings and a right to an interpreter when

they do not understand the Macedonian language and its Cyrillic alphabet. Considering that 20 indicted are members of the communities that are not a majority in Republic of Macedonia (13 Albanians, 6 Turks and 1 Romany person), it is an interesting fact that all of them have used the Macedonian language in the criminal proceedings.

## Right to defense

The indicted has a right to defend himself/herself by himself/herself or with the help of a lawyer that he chooses. If the indicted cannot bear the expenses for the defense and if the proceedings are held for a criminal act for which a sanction imprisonment for more than one year is prescribed, then he/she is entitled to a free legal assistance and in cases precisely stated by law, the indicted must have a defense lawyer. In a total of 4 observed cases, based on the data received from 9 filled in questionnaires, it was established that one indicted did not have a defense lawyer, and 11 indicted had a lawyer who they chose themselves.



## CONCLUSIONS

1. General evaluation of the accredited domestic and foreign observers is that the local elections in the Republic of Macedonia in 2005 were fair, democratic and in accordance with the OSCE Copenhagen Document and the other international standards for democratic elections, but with serious irregularities (stuffing the ballot boxes, group voting, violation of the confidentiality of the voting, family voting, not conducting the procedure to check the identity of the voters etc.) in a significant number of municipalities in the western and northwestern part of the country that has an impact on the integrity of the whole election process.
2. A large number of complaints (submitted to the municipal election committees) and appeals (filed to the Supreme Court of the Republic of Macedonia) are an objective indicator of the irregularities and the violations during the elections process. As a result of the complaints and the appeals (the irregularities) a re-voting process was held on March 27, April 10, April 24, May 8, as well as early elections in the municipality of Suto Orizari.
3. During the local elections 49 criminal acts were committed against the elections and the voting, out of which 61% were committed during the first election round, 27% during the second election round, 8% during the re-voting on 10.04.2005, and 4% during the re-voting on 24.04.2005.
4. Criminal acts were committed in 11 municipalities, and the largest number of criminal acts was committed in the municipality of Suto Orizari.
5. In total 95% of the criminal acts were committed inside the electoral premises (in the polling stations no. 1117 and 1119 in the municipality of Lipkovo, no. 1470 and 1473 in the municipality of Dolneni, no. 2968 and 2971 in the municipality of Suto Orizari, no. 1391 in the municipality of Prilep, no. 2905 in the municipality of Butel and in the polling station no. 2343 in the municipality of Studenicani), and the remaining 5% were committed outside the polling stations.
6. Large number of the criminal acts were committed by members of the bodies that conducted the local elections. Namely out of a total of 31 indicted, 15 were members of the bodies that conducted the local elections, out of which 4 of the indicted

at the moment of committing the criminal act were presidents of the election boards, and 11 indicted were members of the election boards.

7. The Ministry of internal affairs reported 70% of the criminal acts during the local elections, only 10% were reported by the citizens, and 20 % by the Association of the Romany people of the Republic of Macedonia.
8. During the local elections in 2005, 65 persons were charged for criminal acts against the elections and the voting. Out of a total of 65 reported persons, the criminal charges were dropped for 15 persons, and that is on the same legal grounds – non-existence of a well founded suspicion that the reported has committed the act, against 13 persons an investigation is carried out, for 6 persons evidence is collected by the Public Prosecutor Office, and 31 persons were indicted.
9. Out of 31 indicted, against 4 persons the first-instance procedure is ongoing, for 1 person a verdict is reached by which the indictment is rejected, 21 persons are found guilty, and 5 persons are convicted.
10. Based on analyzing the data for the kind and height of the criminal sanction pronounced to the perpetrators of the criminal act against the elections and the voting related to the local elections, it was determined that the Macedonian courts were within the frames of the legal maximum and minimum, except in two cases where the sanctions were below the legal minimum.
11. In regard to respecting the international fair trial standards in the criminal proceedings against the perpetrators of the criminal acts against the elections and the voting, on the basis of the gathered data it was established that the perpetrators were tried in presence (except two indicted), in a reasonable time before a competent, independent, impartial and by law founded court. The indicted did not use the right to remain silent, or the right to an interpreter, and they used the right to propose evidence in their defense as well as the right to defend themselves with the help of a defense lawyer at their own choice.
12. Large part of the irregularities recognized by the domestic and foreign observers, represent criminal act.
  - Breaking ballot boxes; existence of tension, unrests and intimidation inside and outside the polling stations; the violent behavior and fights in the polling stations; the assaults on voters are a criminal act – prevention of elections and voting;
  - Voting instead of other persons; the family voting – are a criminal act – misuse of the voting right;



- The violation of the confidentiality – represents a criminal act – violation of the confidentiality of the voting;
- The Agitation on the voters in front of the polling stations – represent a criminal act – violation of the freedom of choice of the voters;

As opposed to the large number of persons who during the local elections in 2005: have voted instead of others, have broken ballot boxes, have violated the confidentiality of the voting etc.<sup>37</sup> the number of persons against who criminal charges have been filed is very small, and even smaller is the number of indicted persons, which justifies the conclusion that the assessment of the criminal prosecution of the perpetrators of criminal acts against the elections and the voting during the local elections during 2005, is negative.

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<sup>37</sup> Report, local elections 2005, May 2005, Association of citizens MOST; Final report of the Observing mission of OSCE/ODIHR on the elections, Warsaw, June 8, 2005

## RECOMMENDATIONS FOR ALTERATION OF THE ELECTION LEGISLATION

1. In order to create conditions for conducting fair and democratic elections, the establishment of politically independent bodies to conduct the elections is very important, so in that direction, it is necessary, the new Law on elections to foresee the following:

The members of the State election committee, the municipal election committees and the election boards to be appointed by the courts but not upon proposal of the political parties in power, who in the last elections for parliament representatives won the most votes nor at the proposal of the political parties in opposition who in the last elections won the most votes.

2. In accordance with Article 62 of the Law on local elections, while verifying the results of the voting at the polling stations, the unused ballots are placed in a special envelope which is closed, sealed and the number of the polling station and the total number of the unused ballots are written on it.

The legal provision like this leaves a possibility for the unused ballots to be misused, and the new law on elections should foresee:

After verifying the number of unused ballots, on the unused ballots a mark of some kind should be put (notching with scissors, marking by a marker etc.), which leaves no possibility to misuse the unused ballots.

3. In accordance with article 81 of the Law on local elections, every submitter of a list of candidates for Council members and a list of candidate for Mayor and every voter in the procedure for voting, summing up and verifying of the results of the voting has a right to file a complaint to the election committee.

This legal provision excludes the domestic observers from the procedure for protection of the voting right, which is unjustified because the domestic observers are directly present during the voting, the summing up and the verifying of the results of the voting. That is why, besides the submitter of the list of candidates for Council members and a list of candidate for Mayor, the new Law on elections should provide for a right for submitting complaints and appeals to the competent bodies, and for the non-governmental organizations too which appear as domestic observers.

4. The new Law on elections should prohibit members who were convicted for criminal acts against the elections and the voting, to be elected in the future again as members of election bodies (State Election Committee, Municipality Election Committee, and Election Board).

5. The new Law on elections should provide an obligation for the State Election Committee and the Municipality Election Committee, to submit the election material to the Public Prosecutor offices, if the election material can be used as evidence in the procedure for prosecuting the perpetrators of criminal acts against the elections and the voting.

6. The criminal prosecution of the perpetrators of criminal acts against the elections and the voting will be more efficient if the new law on elections draws a more precise line between election irregularities and criminal acts against the elections and the voting. The new Law on elections must not contain a provision which is contained in the Law on local elections, article 97 paragraph 1 "A physical entity will be punished with a fine of 40.000 to 50.000 denars for an offence of voting instead of other persons or voting on behalf of another person, as well as for prevention of presence of police, if there was need for that.") because with this provision the voting instead of more persons and the voting on behalf of somebody else are determined as an offence, and those activities (the voting instead of more persons and the voting on behalf of somebody else) in accordance with the Criminal Code represent a criminal act – misuse of the voting right, due to what there is a danger that the person could be punished both for an offence and for a criminal act concerning the same activity, which is contrary to the principle of a prohibition for a repeated trial (non bis in idem)<sup>38</sup>.

7. In the new Law on elections, besides the election irregularities which are criminal acts against the elections and the voting (breaking ballot boxes, family voting, voting instead of somebody else, violation of the confidentiality of the voting etc.), all the other election irregularities should be treated as offences. For the purpose of successful handling and prevention of these election irregularities, the new Law on elections, should authorize an election board (after it establishes that some person has committed such an irregularity) to inform the police which secures the facility where the polling station is located, and the police should be authorised to compile a record and based on the same to file offence charges.

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<sup>38</sup> "No one can be tried again for an act for which he/she has already been tried and for which a legally binding court verdict has been reached." Article 14 paragraph 2 of the Constitution of the Republic of Macedonia.  
"No one can be tried again or punished for an act for which he/she has already been tried and for which a legally binding court verdict has been reached ."Article 5 of the Law on criminal proceedings of the Republic of Macedonia.



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