

## **Monitoring of the work of courts in criminal proceedings**

### ***Introduction***

The Report on monitoring of the work of courts in criminal proceedings was created as a result of activities within the project “Towards better results of the reform of judiciary” funded by the Delegation of the European Union in the Republic of Serbia and the Office for cooperation with civil society of the Republic of Serbia Government.

During one year monitoring of the court work in criminal proceedings has been performed through analysis of criminal proceedings and proceedings upon extraordinary legal remedies. The analysis was performed based on criteria representing the core of fundamental human rights, above all the right to fair trial, but also other rights such as the right to freedom and security of the person, the right not to be tried or sentenced twice for the same offence and fight against discrimination.

Goal of this report is contribution to judicial reform through enhancement of court performance in the Republic of Serbia in criminal proceedings, directed at acceptance of the highest international standards of human rights respect.

Reform of judiciary is not goal in itself; it is being realized, above all, by change of awareness and by adoption of set of rules and procedures, providing as a result respect of rights of citizens and equality of all parties before the court.

Methodological distinction of this research was represented in the approach “from specific (individual, citizen, party in the proceedings) to general (institution, laws – in effect or how to enhance them)”, by analyzing individual court proceedings as a result of work of judiciary and their harmonization with national legislation and practice from one aspect, and achieved international standards of fair trial, from the other.

The judiciary will not be harmonized with desirable standard until it provides full respect of rights of all parties in the proceedings as a result.

This report provides data on faults and violations existing in this moment and recommendations for overcoming these faults.

## Summary on research procedure and results

During project realization 187 cases were received.

**1** – Research findings are results of analysis of the data collected from criminal cases closed with irrevocable judgments, as well as from cases upon extraordinary legal remedies. The analysis encompasses period 2000-2013, where the highest number of cases dates from the period 2006-2013. Total number of processed cases in the research is 139.

**2** – Criterion for case collection was existence of statement of the convicted persons while serving a sentence and of those who have already served a sentence, that during the criminal procedure some their right had been violated, which would enable application of the extraordinary legal remedy.

**3** – Out of total 139 processed cases, the extraordinary legal remedies were declared in 12 proceedings. In 3 proceedings a motion for reopening of the proceedings has been filed, and in one proceedings a motion for modification of the irrevocable judgment without reopening of the criminal proceedings (so called irregular reopening of the proceedings). The initiatives have also been filed in order to make the Republic Public Prosecution Office to declare extraordinary legal remedy, in four cases it was the initiative for filing a request for protection of legality. In two cases were filed petitions for pardon. In five cases the convicts themselves had previously declared the extraordinary legal remedy, and from those proceedings the data were used within the analysis. Two requests for protection of legality were filed to the Supreme Court of Cassation.

**4** – After the initiative of the convicted persons and direct communication with them by the our team member, the documentation and the addition to the documentation from the case has been submitted by the convicts, members of their families, and a number of cases was provided based on direct insight into court files by a team member. In the prevailing number of cases, first instance and second instance decisions have been analyzed and also third instance decisions in a few number of cases. As additional resource in the analysis, whenever available, the indictments, appeals and other portions of documents in the case have been used.

### **5 – Project groups:**

For the analysis needs, all cases were classified by the type of the criminal offence that was the subject of the judgment in the following project groups:

I/ Criminal offences against life and limb (murders and aggravated murders) / Chapter XIII of the CC, 38 used cases

II/ Criminal offences against property (theft, aggravated larceny and robbery) / Chapter XXI of the CC, 48 cases

III/ Criminal offences against human health (unlawful production, keeping and circulation of narcotics) / Chapter XXIII of the CC, 11 cases

IV/ Criminal sexual offences (rape, sexual intercourse with a child) / Chapter XVIII of the CC, 6 cases

V/ Other (counterfeit, offences against legal traffic, abuse of office...), 36 cases.

The second group of information source are cases where submitted the extraordinary legal remedy.

### **6 – Subject of the analysis:**

## **6.1. The criteria encompassed by the analysis of all the collected cases:**

The analyzed cases within each of the criteria are those in which in the previous selection were established omissions related to the stated criterion. That is the reason for the different number of processed cases for each of the criteria.

### **6.1.1. Regularity of the substantive law implementation**

*a/ Number of cases: 12*

*b/ Information from the case: (1) case; (2) type of court (first instance, second instance court); (3) qualification of the offence; (4) pronouncement of the sentence.*

Subject of the analysis were court criminal proceedings where the project team noted that substantial law was not applied regularly in terms of the offence qualification and the pronouncement of the sentence. Issue of the offence qualification was examined by the project team only from the aspect of implementation of the general institute "extended criminal offence" that appeared in the numerous cases. The project team did not deal with the issues whether the court should have differently qualified an offence, for which the accused had been irrevocably convicted, since that is the court decision based on discretion of a judge and depends on legal stand point of the trial court panel of judges in each individual case. The issue of pronouncement of the sentence in line with the law was examined from the aspects whether the pronounced sentence was unitary, when there were several court proceedings against the same accused during the same period of time and whether the severity of the punishment was chosen in line with the law. These two questions are interdependent, in the opinion of the team, the sentence was not pronounced in line with the spirit of the law in every case in which the court did not implement the institute of the extended criminal offence, and the grounds for that were present.

### **6.1.2. Custody**

*a/ Number of cases: 93*

*b/ Information from the case: (1) type of the court (first instance, second instance court); (2) whether the custody lasted until the irrevocability and whether it was extended into serving the sentence; (3) severity of deciding on the need for custody and whether it was seriously examined existence of reasons for custody; (4) how long did the custody last, are there indications that duration of the custody influenced on absence of the acquittal, from which it could have been claimed damages for the accused.*

The proceedings have been analyzed from the aspect of determining the custody, its duration, whether the custody was extended into serving of the sentence, seriousness of deciding on reasons for determining the custody and possible existence of influence of the custody duration to the final decision of the court. The custody duration means period of time from the moment of deprivation of liberty until the custody suspension against the accused, or his/her referral to serving of the sentence without the custody suspension.

Related to seriousness of deciding on the need for custody, into consideration were taken stipulated reasons for determining the custody stated in the suggestion for determining the custody, reasons stated in the decision on determining the custody, as well as elaboration of justification of reasons for the custody. The analysis also encompassed the court decisions on criminal responsibility and decisions on the custody. The team established that this aspect was important since the custody duration could influence on not pronouncing an acquittal or conviction to prison sentence lasting less than time spent in the custody.

### **6.1.3. Duration of the proceedings (trial within a reasonable time)**

*a/ Number of cases: 106*

*b/ Information from the case:* (1) type of the court; (2) duration of the investigation; (3) duration of the first instance proceedings; (4) duration of the second instance proceedings; (5) duration of the third instance proceedings; (6) total duration of the proceedings; (7) complexity of the proceedings; (8) duration of the sentence.

The cases were analyzed based on duration of each individual phase during the criminal proceedings, as well as on total duration of the criminal proceedings until effective irrevocable court decision. Duration of the proceedings was analyzed also in the context of the proceedings complexity; therefore, the cases were qualified as complex, medium complex or simple proceedings. As complex proceedings were qualified those cases where cumulatively appear elements such as: aggravated criminal offence, multiple criminal offences, multiple accused, injured parties and large number of procedural activities performed during the criminal proceedings. The cases where appear only some of the stated elements were considered as cases of medium complexity, while cases proceed in summary proceedings or those where are present a few process activities taken by the court are considered as simple criminal proceedings. This analysis also encompassed duration of the sentence, which, examined in the context of duration of the proceedings, can represent the indicator whether the proceedings had been conducted within the reasonable time.

### **6.1.4. Equality of arms (equality between the parties)**

*a/ Number of cases: 6*

*b/ Information from the cases:* (1) type of the court; (2) are the evidentiary proposals of the defense and the injured related to crucial facts; (3) which type of the evidence the issue; (4) the court elaboration.

Key aspects of the analysis within this criterion were the questions whether the evidentiary proposals of the defense and the injured are related to the crucial facts, which type of the evidence is the issue, as well as the method of the court elaboration of its decision. The evidence that can lead to determination of the different factual conditions related to the committed act and the guilt were considered by the team as the evidence on crucial facts. The evidence proscribed by the Criminal Procedure Code is considered as the type of evidence. The team also analyzed the court elaboration related to the decision on not sustaining the proposals of the parties, from the aspects of existence of the elaboration and whether it contained sufficient and relevant reasons for such decision.

### **6.1.5. Violations of the proceedings**

*a/ Number of cases: 20*

*b/ Information from the case:* (1) type of the court (first instance, second instance court); (2) was the right to defense violated; (3) were the evidence collected and provided in line with the law; (4) quality of the decision elaboration; (5) did the court comply with the order of the second instance court; (6) are the decision and the elaboration contradictory; (7) non-conducting the unitary proceedings.

Not only those violations, determined by the Criminal Procedure Code as important, were considered by the project team as violations of the proceedings, but also those colliding with the international principle of fair proceedings. Violations of proceedings in the analyzed cases are related to violation of the right to defense, presentation of evidence in line with the law, quality of the judgment elaboration, proceeding of the first instance court in line with the orders of the second instance court,

contradictions of elaboration and enacting terms of the judgment and conducting the unitary proceedings.

From the aspect of violation of the right to defense, for the need of this analysis, was examined whether the accused had a defense counsel at the time stipulated specifically by the law, as well as whether the accused had the defense counsel when that was appropriate and when required by the reasons of fairness. Presentation of the evidence in line with the law was examined in those proceedings where the court based its decision on the evidence collected in contrary to the law and general rules of international law related to fair trial.

The judgment elaboration was examined from the aspect of giving clear and logical evaluation by the court, contradictory evidence and giving clear reasons from which the court did not take into consideration proposals of the parties.

Related to proceedings of the first instance court upon orders of the second instance court, the subject of the analysis were judgments passed in reopened proceedings after revocation of the first instance judgment. The subject of these proceedings analysis was elimination of errors made by the first instance court, which were the reason for revocation of the first instance decision.

Contradiction between the enacting terms of judgment and elaboration is related to the issue whether the factual description in the enacting terms of judgment is contradictory to the reasons given by the court in the elaboration.

When conducting unitary proceedings for multiple committed offences, the analysis was related to the situation where multiple proceedings were conducted against the same accused, and at the same before the same court. The team analyzed in these cases whether there had been a possibility for trial for all offences in one proceedings.

#### **6.1.6. Evaluation of evidence**

*a/ Number of cases: 5*

*b/ Information from the case: (1) type of the court (first instance, second instance court); (2) method of evidence collection; (3) type of evidence; (4) elaboration of evidence evaluation.*

Subjects of the analysis upon this criterion were court proceedings where the project team found evidence evaluation to be disputed. Related to method of evidence collecting it was evaluated whether the evidence was collected in line with the Criminal Procedure Code and whether the legality of the evidence collection was contested during the proceedings. The evidence stipulated by the CPC are considered as type of evidence. Evidence evaluation by the court was analyzed based on elaboration given by the court in the judgment and is related to each concrete evidence.

#### **6.1.7. Juvenile protection in the proceedings**

*a/ Number of cases: 6*

*b/ Information from the case: (1) type of the court (first instance, second instance court); (2) was the public excluded; (3) special qualification of the parties in the proceedings; (4) did the juveniles have the authorized representative/defense counsel.*

In all analyzed cases, the juveniles have been appearing as the injured party. The following issues: whether the public had been excluded, whether the panel had been formed in line with the law and whether the juvenile parties had the authorized representative during the entire course of the proceedings have been examined as key questions, important for the analysis. The analysis was

conducted upon those questions because the current Code, regulating participation of juveniles in the criminal proceedings, proscribes that every juvenile, participating in the proceedings, must have authorized representative or defense counsel, that the public must be excluded from the proceedings when a juvenile is being interrogated, and that judges, prosecutors and lawyers (both defense counsels and representatives) must have special knowledge within the area of criminal legal protection of juveniles.

#### **6.1.8. Pronunciation of the unitary sentence**

*a/ Number of cases: 14*

*b/ Information from the case:* (1) type of the court (first instance, second instance court); (2) was the unitary sentence pronounced; (3) was the unitary sentence pronounced regularly; (4) does the unitary sentence include all the offences; (5) was the unitary sentence pronounced based on request of the accused or ex officio; (6) is the severity of the pronounced unitary sentence closer to the sum of all determined penalties or to the highest individual penalty; (7) was there possibility of one trial for all offences.

Subject of the analysis were criminal proceedings where the accused was sentenced to the single imprisonment, as well as cases where the court did not pronounce a single prison sentence, although legal terms for that were met.

The question, “Was the single sentence pronounced” refers to prison sentences pronounced when trialed in one proceedings for multiple offences, or when against one accused there were previous irrevocably pronounced prison sentences, that were not enforced at the time of the trial. The question “Was the unitary sentence pronounced regularly” is referred to whether the court meted out duration of the single sentence in line with the law. In relation to the question “Does the unitary sentence include all the offences”, it was analyzed whether the court when pronouncing the single sentence adequately applied legal provisions and included all of the offences for which the accused had been irrevocably convicted and for which there were conditions for pronouncing the single sentence. With reference to the the question “Was the unitary sentence pronounced based on request of the accused or ex officio”, it was analyzed whether the court determined ex officio or based on penal records if there were other sentences pronounced in previous irrevocable judgments, or the court had been proceeding based on request of the accused for alteration of the irrevocable judgment without reopening of the criminal proceedings. The question “Was there possibility of one trial for all offences” is related to whether the court applied legal rule to trial against the accused in one proceedings for all the offences. For the question “Is the severity of the pronounced unitary sentence closer to the sum of all determined penalties or to the highest individual penalty” was analyzed duration of the pronounced single prison sentence, in line with the legal provision proscribing that the duration of the single sentence cannot surpass sum of all individually determined sentences.

#### **6.1.9. Form and content of the judgment**

*a/ Number of cases: 115*

*b/ Information from the case:* (1) type of the court; (2) verdict (clearness, universality); (3) elaboration (clearness, universality).

The team examined language clearness and logical precision as clearness of the verdict, as well as elaboration for the need of the analysis, while universality of the analyzed verdicts refers to existence of all portions of the verdict, foreseen by the law in effect at the time of drafting of the judgment. In relation to the judgment elaboration, detail analysis and explanation of the each presented evidence, as well as context of their causality relation are related to universality of elaboration.

## **6.2. Analysis of procedures for revision of irrevocable judgments**

### **6.2.1. Analysis of cases with exercised right to extraordinary legal remedy**

Due to relatively small number of processed cases compared to large number of various reasons for seeking to implement extraordinary legal remedy, it is not possible to make any conclusions related to the most common reasons for declarations of extraordinary legal remedies.

Referred to the prosecution work, the team concluded that the Republic Public Prosecution Office showed in not a single case willingness to revise legality of work of the lower prosecution offices and courts. Moreover, the same conclusion can be drawn from the fact that the Republic Public Prosecution Office rejected initiatives for protection of legality within a very short period of time and without any explanation.

The courts have more seriously been examining the reason for asking reopening of the proceedings, but there was no proceedings where was acted fully in line with the Criminal Procedure Code.

#### **- Number of accepted proposals for reopening of the proceedings**

Out of 4 filed requests for reopening of the proceedings in total (regular and irregular reopening) two have been sustained irrevocably, and two have been rejected irrevocably.

#### **- Speed of deciding upon the request**

In all cases, but in one, the institutions to which the requests for reopening of the proceedings were filed, the decisions were brought within the reasonable time. The case in which the decision was not brought within the reasonable time was relatively simple and it was irrevocably closed before the first instance court which is why the procedure had to last less than seven and a half months.

### **6.2.2. Analysis of the decisions upon requests for revision of the irrevocable judgments**

Elaboration quality, sufficiency of reasoning: Number of cases where the Center for Human Rights – Nis has represented the accused in proceedings upon extraordinary legal remedies and requests for pardon is insufficient, and reasons for filing the requests are various to provide grounds for drawing sustainable conclusions from the collected information.

### **6.2.3. Availability of information on the case to the accused and defense counsel with a view to exercise the right to defense**

**Number of cases:** 13 copying of the case documents, one insight into the case documents

It was performed copying of documents of all of the cases. In 8 cases the copying was performed easily and within a short period of time. In 5 cases copying of the case documents was performed with more difficulty and within a longer period of time.

Easy obtaining of copies of the case documents means that the requested documentation was submitted only based on the request and without additional engagement of the defense counsel within a short period of time. Difficult obtaining refers to collecting the documents when the defense counsel needed to write additional request, or to write a complaint to the court work, or to wait too long for submitting of the requested documents.

The request for insight into the case documents, which was archived, was filed in one case. Within 15 days insight into the case documents was provided to the defense counsel, which can be regarded as acceptable.

## **7 – Criteria on which the analysis was performed: determined faults and recommendations**

### **- Regularity of the substantial law implementation**

#### **7.1.1. Determined faults/summary of the collected information:**

In 4 cases the offence was wrongly qualified by the court. In a case, the pronounced penalty was in line with the law, but in all the remaining cases (11), the pronounced penalty was not in line with the law.

Cases in which the court wrongly qualified the offence were dealing with offenders of multiple congenial criminal offences committed within a short period of time, thus the court had to apply the institute of extended criminal offence.

In three cases in which the team determined that the institute of extended criminal offence was not applied by the court, the accused did not have the defense counsels. In addition to that, in all special criminal procedures led against these three accused, the competent prosecutor filed special indictment for each of the offences, although there was possibility to file single indictment for all of the offences.

Illegal sentencing encompasses cases (7) where the court did not pronounce a single sentence, while in one case did not apply correctly the amnesty provisions, and in one case the convicted person was punished twice for the same offence.

The unitary sentence is severe compared to the committed offence in two cases; in one case the sentence is inappropriate (too high) compared to the degree of violation of the protected good. Individual punishments included in the unitary sentence are also too high (in two cases).

#### **7.1.2. Recommendations:**

1. To recommend law amendments in order to provide the defense to the poor in each case for every criminal offence punishable by prison sentence, regardless of his/her personal request.
2. To consider possibility of issuing obligatory instruction to lower prosecution offices by the Republic Prosecutor to collect information from the internal affairs bodies, as well as from the records of the prosecution and the court for every investigated accused on facts whether there are other offences for which is suspected the same accused, and to file a single indictment for all of the offences against the same accused.
3. To introduce the criminal department presidents of all the Republic of Serbia courts with the obligation to apply the institute of extended criminal offence and to lead the single proceedings, as well as with consequences for the accused resulting from wrong application of substantial law regarding these institutes. These institutes are speeding up court proceedings and burdening fewer judges and at the same time increasing efficiency of the court work.
4. To harmonize case law related to sentencing for the same offences.

### **- Custody**

#### **7.2.1. Determined faults/summary of collected evidence:**

For the criminal offences against life and limb the custody comes as a rule, while not ordering the custody is the exception. Research results show that almost in all cases the custody was ordered. In one case, the custody was not ordered because the accused had committed the offence while serving the prison sentence. These are cases with the most severe criminal offences with elements of violence. In four cases the custody lasted between 4 years and 6 years and 6 months.



In the project group of criminal sexual offences in all cases, but one, the custody was determined and seriously discussed, but there are no indications that the custody duration had influenced to determination of the guilt or the penalty.

Within the project group of criminal offences against human health, the custody was ordered in slightly more than half of the cases and it lasted until the irrevocable judgment.

At criminal offences against property, the custody was not ordered in most of the cases, but it was ordered in one quarter of the cases.

In proceedings for the other criminal offences, number of ordered custodies and cases where the custody was not ordered was approximately the same.

There are indications that the custody duration in one case influenced on the sentence duration, while in all other cases there are no such indications.

In one case the accused did not have the appointed defense counsel, and he was placed in the custody by order of the other court, and not the one before which the proceedings was being led and which interpreted the fact that he had been in the custody as if he had been free.

### **7.2.2. Recommendations:**

5. To promote (in sense of relevancy for social desirability and usefulness) and to educate judges on alternative measures foreseen within the new CPC as measures for providing presence of the accused. The CPC amendments that entered into force on October 1, 2013 foresee multiple measures for providing presence of the accused in the criminal proceedings that can be determined prior to the custody or serve as milder measure when applied instead of custody, than it was the case with the previous CPC. In case when custody is determined and lasts longer, it is necessary to carefully examine reasons for extending the custody measure, and provide in every case detailed reason for extending custody, and not to copy reasons from the previous decision. In that manner will be prevented that custody becomes the punishment, instead of being a measure for providing presence of the accused.
6. To provide sensitivity and training for judges on content of values which are grounds for international standards.

- **Duration of the proceedings (trial within a reasonable time)**

### **7.3.1. Determined faults/summary of the collected information:**

It is determined in analyzed cases that, as rule, the proceedings have been closed within the reasonable time, and the too long cases were exception. This means that duration of the proceedings is influenced by the following factors: measures for providing presence of the accused at the main hearing (summons, bringing, custody), presence of other participants at the criminal proceedings (the defense counsel, the prosecutor, the witness, the expert), changes in composition of the panel of judges, overburden of judges by the number of cases, revocation of the first instance verdict, etc.

More often deviation from the average determined duration of the proceedings can be found at criminal offences against life and limb (murder and attempt of murder) where proceedings last longer, which can be explained by the severity of the offence, high punishable sentence, gravity of the consequence and complexity of the proceedings in general. Deviations in terms of longer duration of the proceedings at criminal offences against property (theft and larceny) can be explained by complexity of the procedures conditioned by numerous activities of the offence, numerous injured parties and process activities that need to be conducted during the proceedings.

It is determined in analyzed cases that the average total duration of the proceedings is identical in criminal offences against life and limb and in criminal offences against property. At criminal offences linked to narcotics the average duration of the proceedings is slightly shorter. This can be explained by the fact that at all cases of criminal offences against life and limb and at criminal offences related to narcotics the accused persons were in custody during the entire proceedings, that entailed legal obligation of the court to proceed with special urgency, while on the other hand, at criminal offences against property the proceedings were mostly dealing with the accused persons who were defending themselves from freedom, which certainly influenced to extension of the proceedings duration.

It is distinctive that the proceedings led for criminal sexual offences were closed in average within 10 months.

The proceedings duration was not influenced by revocation of the judgment by the second instance courts, except in two cases dealing with criminal offence against life and limb.

### **7.3.2. Recommendations:**

7. To completely separate technical preparation of the trial from the trial itself, therefore technical part will be performed by services within the court, thus creating conditions for judges to deal with the essence of the case and the proceedings.
8. To recommend establishment of special service within each court, that would be dealing exclusively with providing presence of all participants of the proceedings, who were not notified on the process activity directly at the hearing.
9. To set time limit, including minimum-maximum deadline, for performance duration of technical activities (preparation and other), which would lead to more expedient conduct of the proceedings.

- **Equality of arms (equality of parties at the proceedings)**

### **7.4.1. Determined faults/summary of the collected information:**

In all 6 analyzed cases the courts did not accept motions for presentation of the evidence by the defense, although it the evidence were about determining key facts. In one of those proceedings it was about the evidence that had been subsequently discovered and which was the ground for request for reopening of the proceedings. In two cases it was about the evidence related to psychiatric condition of the accused at the time of committing the criminal offence, while in the remaining four cases the evidence was linked to the facts related to activities of the committed offences. In three proceedings it was about evidentiary activities of expert testimony, in two proceedings about hearing the witness and in one about identification documents.

As elaboration for refusal of a motion for presentation of evidence, the court stated in one case that presentation of the evidence would lead to stalling of the proceedings, and in two cases related to expert testimony on psychiatric condition of the accused the court only determined that there had been no doubt in his accountability, not providing further special reasons related to explanation for refusal of the defense request. In two proceedings the court elaborated in detail its decision, however, the given reasons were not in line with the spirit of the law and they represent breach of the equality of parties (e.g. the court refused request for reopening of the case filed by the accused based on new evidence. The convicted person initiated motion and received the findings and the opinion of the expert, from the Military Medical Academy, colliding with the findings and the opinion of the expert brought in the first instance proceedings, based on which, among other things, he had been convicted. The court refused proposal for reopening of this proceedings because the said evidence was not obtained upon order of the court, regardless the fact that the evidence could have led to acquittal). In one proceedings the court did not elaborate reasons for refusing the defense motion for presentation of the evidence at all.

#### **7.4.2. Recommendations:**

10. When deciding, the court should be guided by the principle of fairness and to present with equal attention evidence proposed by the parties. The evidence presentation with equal attention must have priority compared to duration of the proceedings.
11. To implement directly international standard in every case where national legislation or case law provide weaker protection of some right.
12. To provide education of judges related to implementation of international standards related to equality of parties in the proceedings.
13. To draft overview of the European Court practice in the area of equality of arms for practical use, easily accessible for every judge leading criminal proceedings.

#### **- Violations of the proceedings**

##### **7.5.1. Determined faults/ summary of the collected information:**

Violation of the right to defense was determined in 3 cases where the accused persons were not appointed with the defense counsel by the court, although that was necessary in the best interest of justice.

In 10 cases violation of the proceedings is related to collection and provision of the evidence and it is mainly consisted of the fact that the court did not accept the defense evidence, or that the evidence were not obtained in line with the law.

In 11 cases enacting terms of judgment and elaboration of judgment were not drafted with quality, more specifically, the court did not include all the elements of the criminal offence in its enacting terms or the elaboration was not universal and clear.

In three cases the first instance court did not comply with orders of the second instance court, which at least led to unnecessary delay of the proceedings, at detriment of the accused.

In one proceedings the enacting terms of judgment and elaboration are in direct contradiction with identification documents placed in files as evidence, while in other case the judgment elaboration is contradictory to the enacting terms of judgment.

In one case the unitary proceedings was not conducted. The analysis determined that in one case against the accused had been led 42 proceedings before the same court and at the same time, while in other case against the accused 25 proceedings were led, and in third case at least 10 proceedings.

#### **7.5.2. Recommendations:**

14. To implement consistently rule on leading unitary proceedings always when there are grounds for that.
15. To determine disciplinary responsibility of judges in cases where they evidently refuse to comply with orders of the second instance court or do not implement legally binding decisions of the Constitutional Court or the European Court for Human Rights.

#### **- Evidence evaluation**

##### **7.6.1. Determined faults/summary of the collected information:**

In one case the evidence was not collected correctly (in line with the law). The illegal was the fact that material traces and objects found at the crime scene were transferred and stored inappropriately. The

court failed to determine precisely type of the container where the evidence had been stored, since a witness, a police officer, said that that it was a paper bag, and the other witness, a police officer, that it was a nylon bag. In four cases evidence was collected in line with the CPC. In two cases it was about public hearings in two cases about expert testimony, and in one case about identification documents, crime scene investigation and hearing of the witness. In three cases the court did not elaborate evidence evaluation, and in two cases it did.

In most of the cases the court did not clearly and in detail elaborate evidence evaluation, the reason for accepting some and rejecting the other, although they were seriously disputed by the defense in all cases.

Along with listing the presented evidence, the court did not state concrete facts determined by the presentation of respective evidence, which is its obligation according to the law.

#### **7.6.2. Recommendations:**

16. To enhance and regulate with precision the procedures of collecting, transferring and storing material evidence in order to ensure their authenticity and to guarantee their inviolability.
17. To provide harmonization of case law related to elaboration of every individual evidence, starting from admissibility, method of collection, until method of presentation at the main hearing.

#### **- Protection of juveniles at the proceedings**

##### **7.6.1. Determined faults/ summary of the collected information:**

Out of six analyzed cases, in four the injured juveniles did not have a legal representative – lawyer with special knowledge in the area of child rights. From this small sample it was determined high level of contempt of law, related to not appointing legal representative to juveniles.

In all four cases not even the second instance court did react to this irregularity, although the panel was composed of member that have fulfilled request for appropriate expertise or work with juveniles.

#### **7.6.2. Recommendations:**

18. To provide respect for juvenile and child rights as injured parties, as foreseen by the Act on Juvenile Offenders and Criminal Law Protection of Juveniles.
19. To provide sensitivity for respect of child rights as injured parties for all parties in the proceedings.
20. To provide continuous education for all relevant participants in the proceedings on obligations foreseen with a view to protect juveniles in the proceedings.

#### **- Pronouncing the unitary sentence**

##### **7.7.1. Determined faults/summary of the collected information:**

Pronouncing of unitary sentence was performed in 11 cases, and in 3 was not. In 10 cases the unitary sentence was pronounced in line with the law, and in one it was not. Out of 11 cases where the unitary sentence has been pronounced, in 5 cases the unitary sentence included all of the offences, in 4 cases the team did not have data, and in 2 cases the unitary pronounces sentence did not include all of the offences. In 9 cases the unitary sentence was pronounced at request of the accused, and in 2 cases ex officio. In 10 cases the pronounced unitary sentence was close to the sum of all determined sentences, and in one case the pronounced sentence was close to the longest pronounced individual sentence. In 5

cases there was a possibility of one trial for all of the offences, and in 6 proceedings that possibility did not exist.

### **7.7.2. Recommendations:**

21. To make single database for the Serbia territory containing data whether the criminal proceedings are being led against the accused and before which court, time of irrevocable convictions, served sentences and not served. The database must be simple for the search (filtered by identification number) and use of the database must be compulsory for all bodies conducting the proceedings.
22. To define in detail content of the preparation for conducting the proceedings, this would be competence of professional services within bodies conducting the proceedings. Work of these services would also include verifying information on other proceedings in order to avoid violation of the accused rights, stipulated by the law.
23. The court should apply pronouncing unitary sentence in the spirit of this institute, whose intent is not to make unitary sentence slightly shorter than the sum of all individual sentences. When defining duration of the unitary sentence, the court must take into consideration purpose of punishing, i.e. as proscribed by the Criminal Code.
24. To define in more detail in appropriate manual or by-law the method of determination of the sentence in stipulated limitations when pronouncing unitary sentence, in order to avoid formal implementation of the law, i.e. that unitary sentence is slightly shorter than the sum of all individual sentences. This method would provide significant harmonization of the court decisions, it would speed up the proceedings, make the judges work easier and provide space for every judge for more constructive use of time for work on the case.

#### **- Form and content of judgment**

### **7.8.1. Determined faults/summary of the collected information:**

All first instance judgments were analyzed within this criterion. Most of the analyzed judgments (85 out of 117) contain enacting terms of judgment and elaboration, which are, in opinion of the team, clear and complete. That means that enacting terms of judgment contained in most of judgments all elements proscribed by the law and at the same it was clear both linguistically and logically. Among these cases are also those which are very complicated, where activities of the offence are very complex, there are several offenders and it lasted for longer period of time.

With reference to analyzed cases that have some determined fault regarding the criterions of clearness and completeness, the fault was related only to one element, enacting terms of judgment or elaboration. Total number of judgments containing some of the faults is 34. Some of the noted faults are, for example, that court failed to elaborate why it had considered certain facts already determined, why it refused certain proposals of the parties, and in some cases accepted, without serious verification, obviously illogical (in sense of physical unfeasible) description of events.

In very small number of cases (3) both enacting terms of judgment and elaboration were completely unclear and incomplete.

When analyzing criminal proceedings where the trial was for criminal offence against life and limb, the team concluded that in approximately half of the cases both enacting terms of judgment and elaboration were drafted clearly and completely. In half of the analyzed cases enacting terms of judgment and elaboration do not satisfy standards related to both criterions (clearness and completeness), taken cumulatively.

In all cases related to criminal sexual offences the judgments were drafted precisely and completely, although these offences belong to more severe and complex criminal offences related to determination and proving of the facts.

The cases related to criminal offences against human health were mostly dealing with complex situations with multiple accused persons and activity of the offences lasted for longer period of time. In all cases enacting terms of judgment were clear and complete, while in 2 cases elaboration was unclear. Term unclear is related to insufficiently elaborated refusal of proposals of the parties as well as to contradictions between elaboration and enacting terms of judgment.

When analyzing criminal offences against property, the team determined totally 20 completely clear judgments, regarding to both enacting terms of judgment and elaboration. In 3 cases enacting terms of judgment and elaboration of the verdict satisfy not one of the criteria of clearness and completeness set by the team. In third of the analyzed cases faults are related to unclear or incomplete elaborations. These faults are mainly related to unused expert testimony on value of the subject of the committed offence, insufficient elaboration of accepting confession of the accused which was withdrawn in the subsequent phase of the proceedings, etc.

When analyzing criminal proceedings where the trial was for other criminal offences not encompassed by the abovementioned groups, the team determined with two exceptions, that in all cases were satisfied both of the criteria (clearness and completeness) taken cumulatively.

#### **7.8.2. Recommendations:**

25. To standardize necessary content and details of the judgment and to guarantee implementation by the courts.
26. To provide to judges, as auxiliary resource when drafting verdicts, assisting pattern with elaborations detailed enough that incorporates everything possible in order to plan in ahead, but leaving enough space for personal creativity of each judge. These patterns should be specially designed for each type of the proceedings.
27. To provide education to judges for implementation of technical instructions and auxiliary patterns.
28. To proscribe obligatory expert testimony in situations when legal qualification or existence of some element of criminal offence depend on value of the subject of the committed offence.

#### **8 – General recommendations:**

- 1 – To provide guarantee for competence of judges, related to their professional knowledge and moral features;
- 2 – To regularly control quality of work of judges and prosecutors, through insight into their documents, with a view to control whether they meet conditions of knowledge and ethics, taken into consideration at the time of their election, and stipulated by the law on judges and the law on prosecutors;
- 3 – To provide essential respect of existing laws, regardless of subsequent possible amendments directed at harmonization with European standards;
- 4 – To harmonize case law in relation to type and duration of the sentence for the same criminal offences where there are similar mitigating and aggravating circumstances;
- 5 – To establish measures for more efficient and shorter duration of the court proceedings;
- 6 – To implement consistently and without exceptions international standards related to equality of parties in the proceedings in case of weaker protection of the rights of the accused in national legislation;
- 7 – To provide all necessary databases and other auxiliary resources (publications, forms...), taking care about their inter-compatibility, in order to enable that information from one database make references, if needed, to data in another.