Macedonian Young Lawyers Association

REPORT ON THE PERCEPTIONS AND EXPECTATIONS OF THE NEW CRIMINAL PROCEDURE CODE IN THE REPUBLIC OF MACEDONIA

June 2014

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PREFACE

In the "Report on the perceptions and expectations of the new Criminal procedure code in Republic of Macedonia", Macedonian Young Lawyers Association in collaboration with the American Bar Association – Rule of law initiative carries out the views, perceptions and opinions of the key actors in the criminal law system: judges, public prosecutors and defense lawyers for their expectations of the implementation of the new Criminal procedure code. The report is product of a three month research within the project: Assessment of the perceptions and expectations of the new Criminal procedure code in Republic of Macedonia supported by the American Bara Association – Rule of law initiative.

The need for this report was imposed by the latest reforms in the Criminal policy in Republic of Macedonia. Almost entirely modified criminal procedure, the changes in the criminal offences and sanctions and the newly introduced mechanisms for equalizing the penalties are part of the legal reforms Macedonia faced in very short period of time. The dilemmas and debates which were present in the public strengthened even more the importance for conducting a research on this topic.

In 2010 a new Law on Criminal procedure was adopted[1] (hereinafter referred as the New Law) and was scheduled to start with the implementation two years after it entered into force. The period of two years was left to implement the necessary reforms and trainings and establish the compulsory conditions in terms of staff and premises. This is because the law made crucial changes of the previous criminal proceedings. The biggest novelty introduced was the principle of accusatory, i.e. changing the previous concept of the procedure designed as formal investigation of the court with the new concept of fusing and complementing between the police and prosecutors investigation. However, due to unfulfilled conditions the implementation was delayed and the new law started to implement as of 01.December 2013.

At the same time amendments of the Criminal code of Republic of Macedonia[2] were taking place, from which some represent novelties regarding criminal offences and sanctions and others tend to become mechanism for equalizing of the penalties policy in the country. Thus, the new amendments of the Criminal code anticipate the determination of the sentences to be carried out by a special act of the Supreme Court of Republic of Macedonia – "Rulebook on the manners of determining the sentences"

Although the period after these core reforms in the criminal policy in Republic of Macedonia is very short to get a more comprehensive picture of the results of the implementation of the new legislative, the report attempts to identify and analyze the perceptions and expectations of the judges, public prosecutors and defense lawyers about the new criminal policy provisions. The conclusions should provide understanding of the realistic problems these people face during the application of the new legislation and their expectations from the new law, and consequently, serve as guideline for intervention aiming for smooth and effective implementation of the criminal policy legislation.

[1] Law on Criminal Procedure, Official Gazette of Republic of Macedonia No.150/10, 51/11, 100/12

[2] Criminal code of Republic of Macedonia, Official Gazette of Republic of Macedonia No. 37/96, 80/99, 04/02, 43/03 , 19/04, 81/05, 60/06, 73/06, 07/08, 139/08, 114/09, 51/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14

INTRODUCTORY REMARKS

The following will focus on the crucial amendments of the criminal procedure introduced with the new law.

The biggest change in the new law concerns the approach toward the investigation, i.e. the entire investigative procedure. Unlike the old law, according to which the investigation curt as separate authority lead the investigation and undertake all the necessary investigation activities, now the investigation is completely take by the prosecution. The aim of the new investigation procedure is to be initiated against a person when there is a reasonable doubt of having committed a criminal offence that is persecuted ex officio or with proposal which is carried out by the public prosecutor who has the judicial police at his disposal.

Hence, the foundation of the judicial police is also a novelty presented with the new law. The judicial police is composed of police officers from the Ministry of internal affairs and members of the financial police and legally authorized personnel of the Customs engaged on detecting criminal offences. Its authorizations are to undertake measures and activities ex officio or upon public prosecutors order. The judicial police is accountable to the competent public prosecutor.

Differences between the two laws exist also regarding the subsidiary prosecution. While the old law permitted the possibility for subsidiary prosecution after cancelation of the public prosecutor, and the prosecutor's obligation to inform the damaged party about the cancellation and refer that he may take over the prosecution, the new Criminal procedure code does not provide that opportunity.

Another important innovation are the activities of the defense. Unlike the previous procedure when they were more going in line of maintaining the formal investigation rather than representing the real and factual needs of the defense, now the activities of the defense consist of: delivering suggestions through collecting evidences, collecting evidences, conversations, receiving and gathering of statements, notifying the statements and reports, access to private premises or premises not open to the public, records and the possibility to prepare the defense.

Also, there are changes in the measures for securing attendance of persons and smooth running of the procedure where are introduced: the measures of precautions, the arrest, the detention, short custody and house custody.

Alongside managing the pretrial investigation and investigation, with the new law the public prosecutor has power to find, propose and provide evidences. On other hand, the defense can provide the public prosecutor with proposals to undertake certain investigation to collect evidences and undertake activities to find and collect evidences which are in favor of the defense throughout the entire procedure.

The new law defines the special investigation measures among which the new are: monitoring and recording of communications, monitoring and recording at home, secret surveillance and recording of persons and object, secret spotting and search of the computer system, search and comparison of personal data, oversight of conducted communications, simulated purchase of objects, simulated giving and receiving bribes, controlled delivery and transportation of persons and objects, using undercover agents for surveillance and collecting information or data, opening simulated bank accounts and simulated registration of legal entities or use of the existing entities for data collection.

Important novelties are the investigation activates that can be taken during the investigation, such as hearing, temporary seizure of objects and property, taking statements from the accused, taking statements from witnesses, forensics, spotting and reconstructing and special investigation measures. However, the public prosecutor is obliged to notify the defense attorney, the victim or the suspect about the time and place of the investigation, unless there is a risk of delay.

The new legal provisions anticipate starting of the main hearing with introductory statement of the parties, where it's determined first to speak the public prosecutor and then the defense lawyer or the defendant. In the opening statement, the parties can bring the crucial evidences which they intent to prove, reveal the evidences which will be presented and establish the legal issues to be argued. Unlike the plaintiff who must give an opening statement, the defendant is entitled to not give an opening statement if he chose to do so.

Moreover, new methods of examination are introduced: direct, cross and additional examination, which are used by the public prosecutor and the defense attorney to build their own theory of the case by examining the witnesses, experts, and the accused and directly present the evidences. In addition, the direct examination is performed by the party who proposes the witness, expert or the technical advisor while the opposite side carries the cross examination. The additional examination is performed by the side who has called the witness or expert and the questioning is limited only to issues raised by the other side during the hearing. Only after the examination of the parties, the president and the members of the council are entitled to ask questions to the witness or expert.

Finally, innovation represent the foundation of the possibility for plea bargaining (guilt settlement) between the public prosecutor and the suspect in the presence of his defense lawyer. This means that the public prosecutor and the suspect may submit a proposal settlement requesting from the judge of previous procedure to apply criminal sanction determined according to the type and amount.

In contests of the previously mentioned, following the concept of the procedural legislation, the most recent reform of the criminal legislation is made with adaptation of the Regulation on the manners of determining the sentences[3] by the President of the Supreme Court which regulates the manner and actions in determining the type and the amount of the sentences. The Regulation has been adopted as a result of the needs to meet the new procedural solution in the criminal legislation system in Republic of Macedonia, and primarily to the plea bargaining as a new legal institute whose application would be impossible because of the wide frame of sanctions in the Criminal code. The Rulebook contains a table of categorization of criminal offences and Graphic presentation of circumstantial impact for determination of sanctions which contains general and specific rules for determination of sanctions that judges should apply in cases.

[3] "Regulation on the manners of determining the sentences", President of the Supreme court of RM, Skopje, 2014

GENERAL FINDINGS OF THE RESEARCH

With the purpose of assessing the expectations from the implementation of the Law on criminal procedure a questionnaire was prepared and distributed among the basic courts and basic public prosecutors in Republic of Macedonia in hard copy through mail together with letter addressed to the presidents of the courts and coordinators of the public prosecutors explaining the intention and purpose of this research, as well as to defense lawyers via email.

The questionnaire consisted of 20 questions aiming to identify the respondent's opinions about the new provisions regulating the criminal procedure in Republic of Macedonia. Certain questions refer to the changes of the competences of the court, public prosecutor and defense attorneys, some refer to the new investigations and measures and some to the Rulebook for the manners of determining sentences.

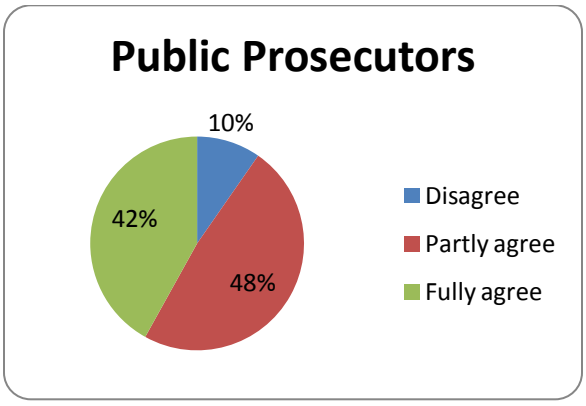
From a total of 96 completed questionnaires, 45 questionnaires were answered by judges of the basic courts in Republic of Macedonia which represent 46.87% of the completed questionnaires, 31 questionnaires were answered by the public prosecutors from the basic public prosecution offices in Republic of Macedonia or 32.29% of the completed questionnaires and 20 questionnaires were submitted by the defense lawyers or 20.83% of the completed questionnaires.

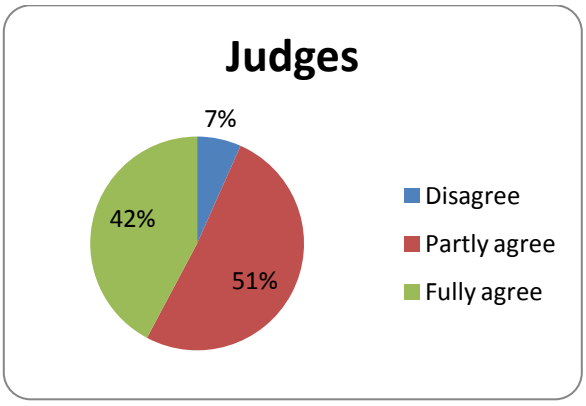
ASSESSMENT OF THE RESULTS

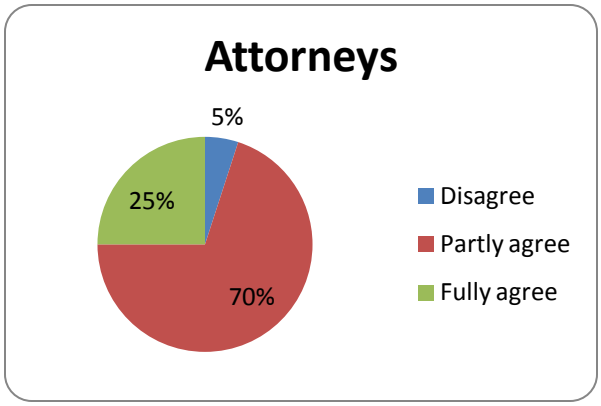
Question No.1

On the first question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 3 answered with „disagree", 15 with „partly agree" and 13 with „fully agree". Among the judges, from total of 45 submitted questionnaires, the situation is as following, 3 answers were given with „disagree", 23 with „partly agree", and 19 with „fully agree", while among the attorneys at law, from total of 20 submitted questionnaires, the situation is the following, 1 answered with „disagree", 13 with „partly agree", and 5 with „fully agree".

Graphic display of responses received by the interviewees individually by category

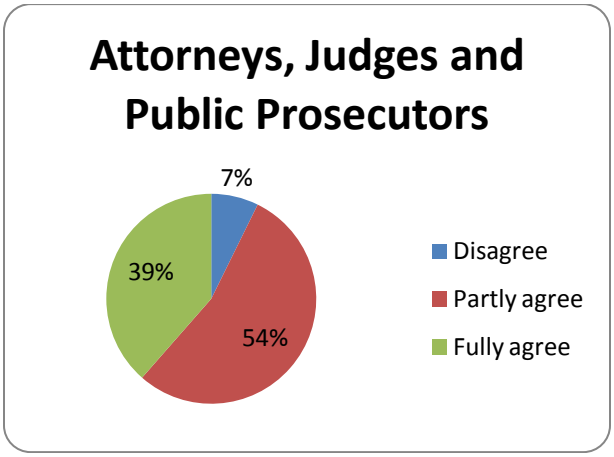






If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 7 answered with „disagree“, 52 answered with „partly agree“ and 37 answered with „fully agree“.

Graphic display of the responses from all respondents:

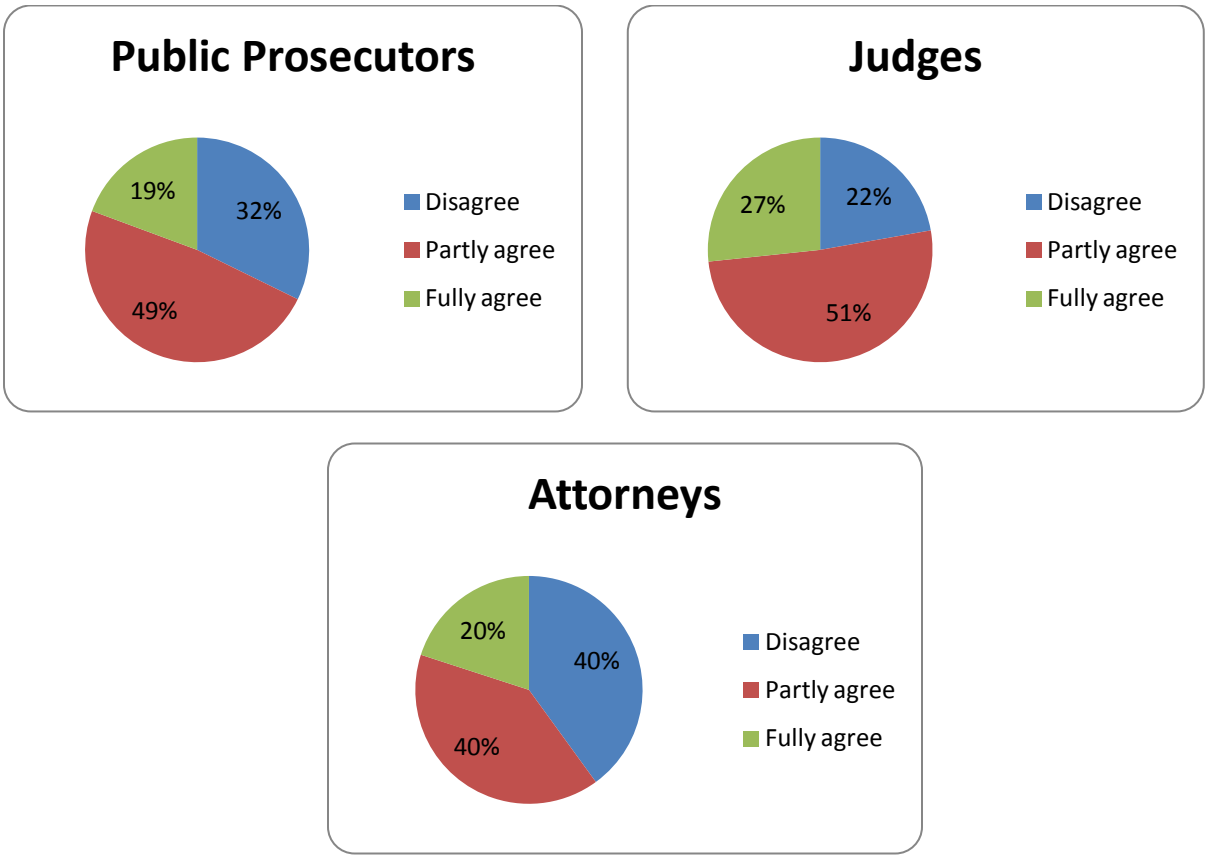


Conclusion: From the information obtained can be concluded that the majority of people who are directly involved in the implementation of the new CPC (Judges, Attorneys at law and Prosecutors) are reserved in terms of the efficiency of the new Code, versus a fraction who do not believe in this reform. As a conclusion it can be stated that more than half of the respondents thought that we should wait and see how the implementation of the new law will perform in practice, and then to assess whether the Criminal procedure will be more effective comparing with the old law. On the other hand, a large proportion of the respondents (almost half) see with optimism on this reform, and their expectations are that the new Code will bring a significant contribution in efficiency of the Criminal procedure in Republic of Macedonia, as one of the most significant reforms in this field.

Question No.2

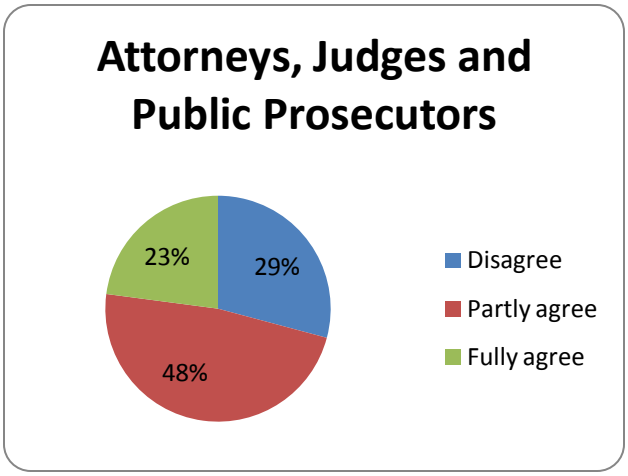
On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 10 answered with „disagree“, 15 with „partly agree“ and 6 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 10 answered with „disagree“, 23 with „partly agree“, and 12 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires 8 answered with „disagree“, 8 with „partly agree“, and 4 with „fully agree“.

Graphic display of responses received by the interviewees individually by category



If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered from all institutions, 28 answered with „disagree“, 46 answered with „partly agree“ and 22 answered with „fully agree“.

Graphic display of the responses from all respondents:

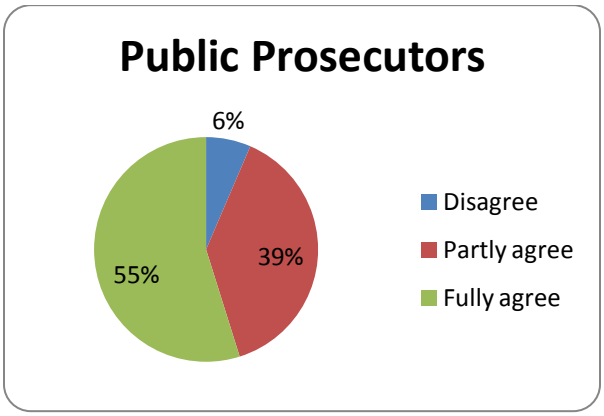


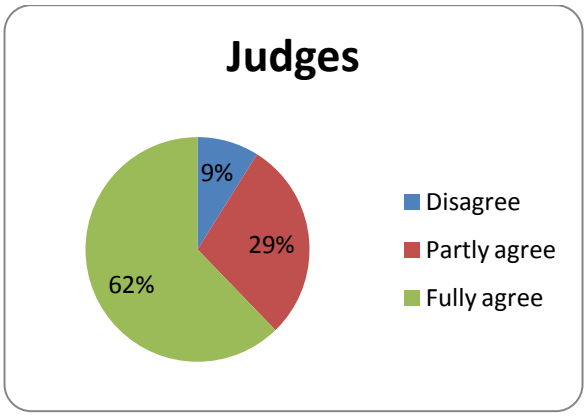
Conclusion: From the information obtained can be concluded that almost half of the interviewees consider that the passive role of the court in the pre trial investigation and investigation could have certain impact on the fairness of the proceedings versus one third who considered that it would not have an impact on the fairness of proceedings. In the previous system the Court, who had more competencies during the pre trial investigation and investigation was supposed to be the guarantee that there won't be any influences concerning the fairness of procedure.

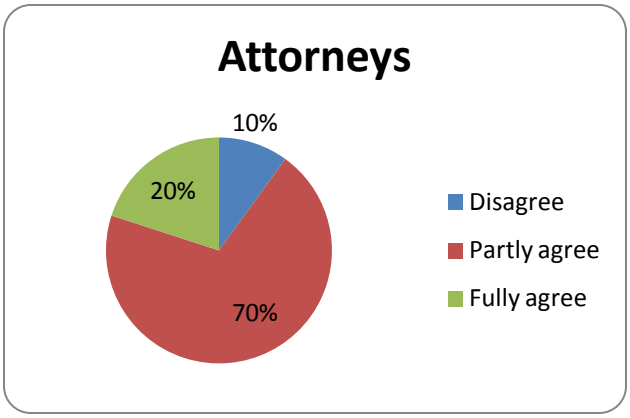
Question No.3

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 2 answered with „disagree", 12 with „partly agree" and 17 with „fully agree".
Among the judges, from total of 45 submitted questionnaires, 4 answered with „disagree", 13 with „partly agree", and 28 with „fully agree", while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree", 14 with „partly agree", and 4 with „fully agree".

Graphic display of responses received by the interviewees individually by category

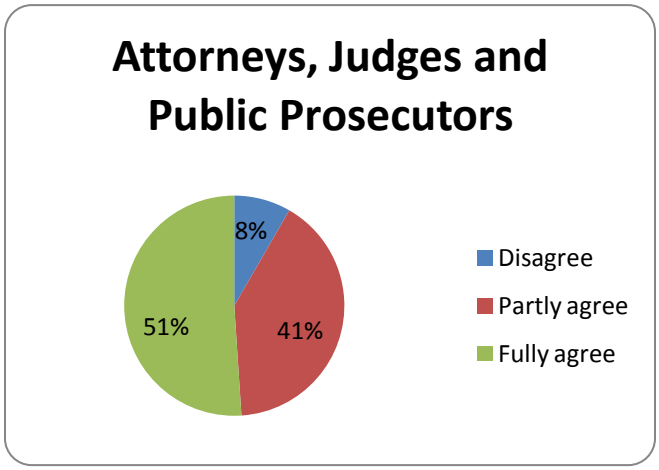






If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 8 answered with „disagree“, 39 answered with „partly agree“ and 49 answered with „fully agree“.

Graphic display of the responses from all respondents:

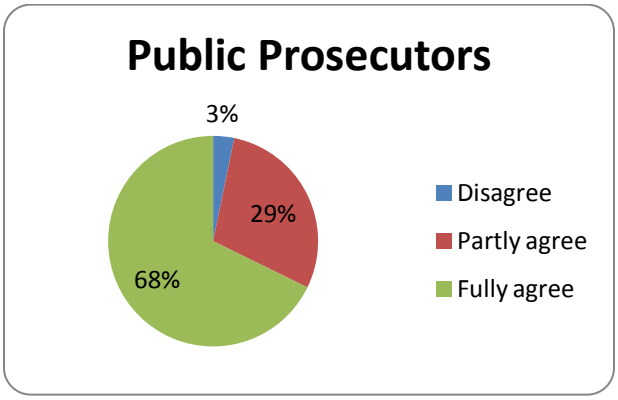


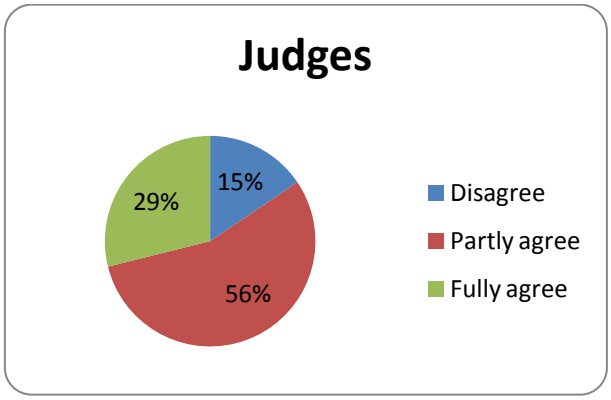
Conclusion: From the information obtained can be concluded that the majority of the respondents believe that with the foundation of the judicial police the investigation will be improved and should be fast and efficient. On the other hand, there are a large number of the respondents who partly agree regarding the foundation of the judicial. The Attorneys at law are the only category where the majority of the respondents are reserved regarding the foundation of judicial police which should contribute to greater efficiency in the investigation.

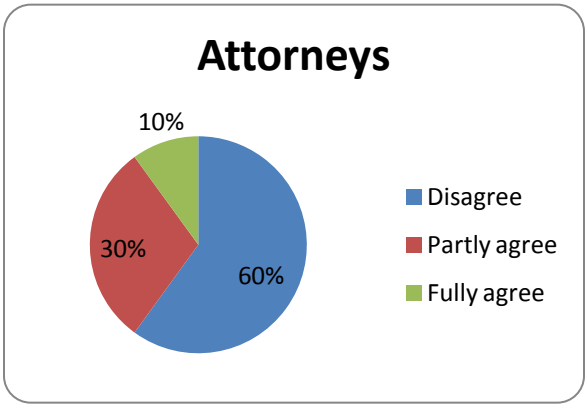
Question No.4

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 1 answered with „disagree“, 9 with „partly agree“ and 21 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 7 answered with „disagree“, 25 with „partly agree“, and 13 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 12 answered with „disagree“, 6 with „partly agree“, and 2 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

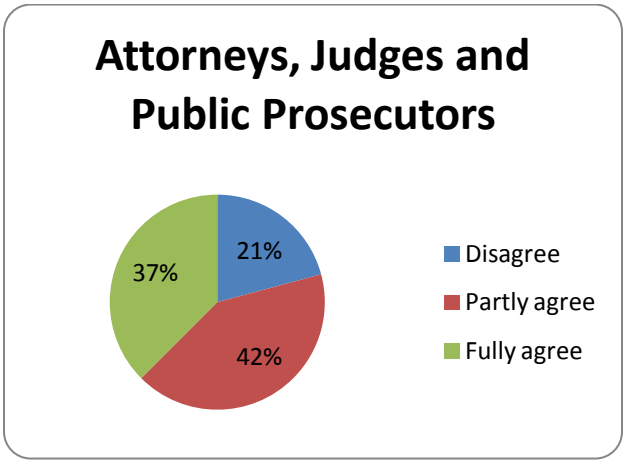






If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 20 answered with „disagree“, 40 answered with „partly agree“ and 36 answered with „fully agree“.

Graphic display of the responses from all respondents:



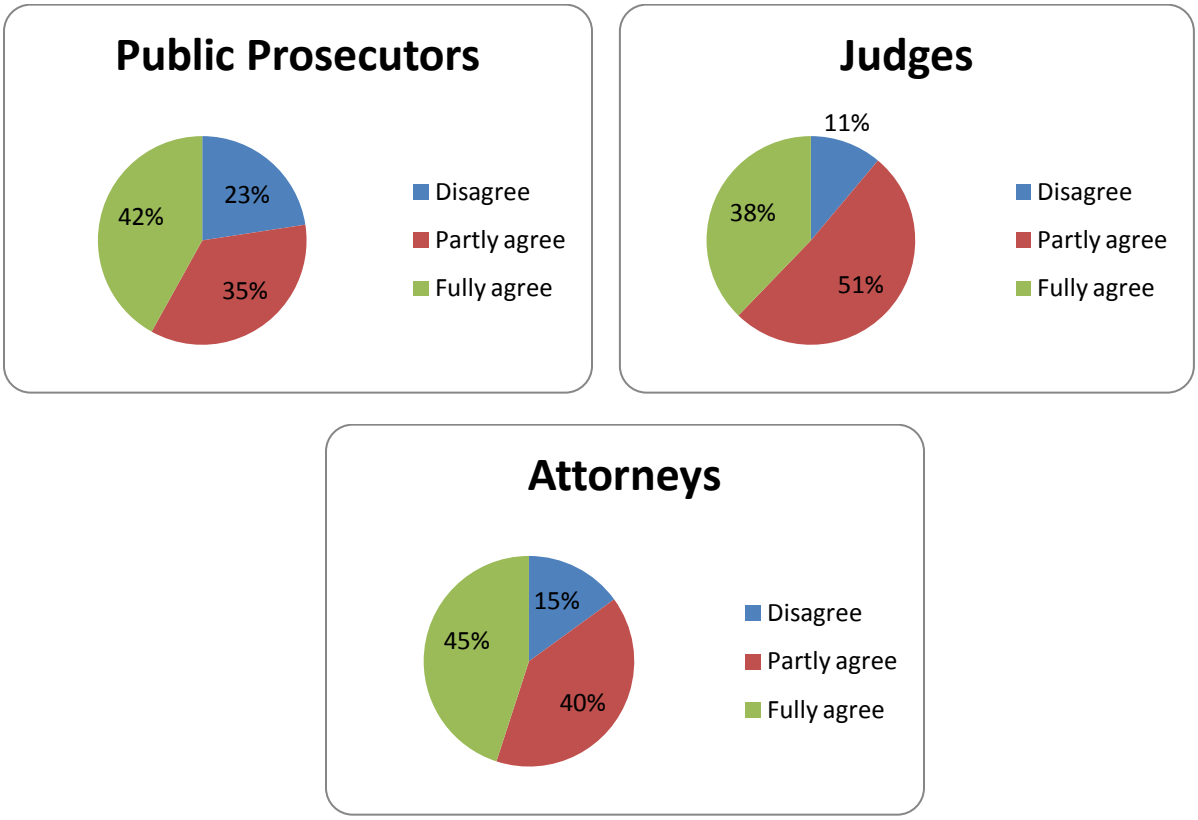
Conclusion: From the information obtained can be concluded that high percentage of the respondents are reserved and partly agree regarding the collection of evidence which favor the suspect and the

prosecutors acting based on the proposals of the defense attorney. At the same time, more than one third believe that the public prosecutor will consistently do its work in accordance with the powers prescribed in the new CPC and collect evidences in favor of the defense, against 21% who do not believe that the public prosecutor will collect evidence in favor of the defense. If we consider the answered questionnaires individually, it can be found that unlike the public prosecutors, the judges and attorneys at law are not optimistic about the fulfillment of obligations by public prosecutors. The attorneys at law do not believe that public prosecutors will collect evidence which will favor the defense, while among the judges a sense of reservation is present regarding this question. It is obvious that the public prosecutors, alone, consider that they will uphold the new CPC and act accordingly with defense lawyers proposals.

Question No.5

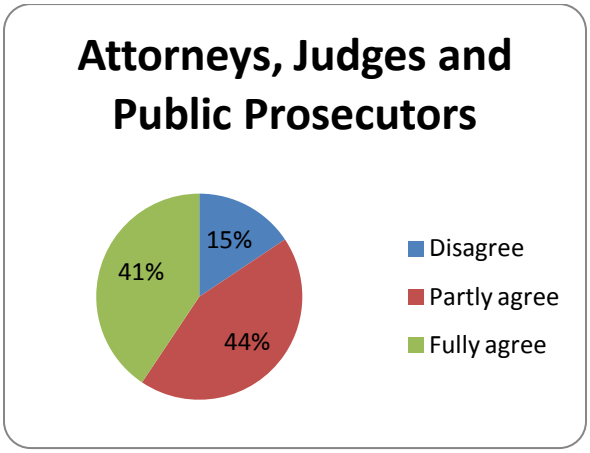
On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 7 answered with „disagree“, 11 with „partly agree“ and 13 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 5 answered with „disagree“, 23 with „partly agree“, and 17 with „fully agree“, while among the attorney at law, from total of 20 submitted questionnaires, 3 answered with „disagree“, 8 with „partly agree“, and 9 with „fully agree“.

Graphic display of responses received by the interviewees individually by category



If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 15 answered with „disagree“, 42 answered with „partly agree“ and 39 answered with „fully agree“.

Graphic display of the responses from all respondents:

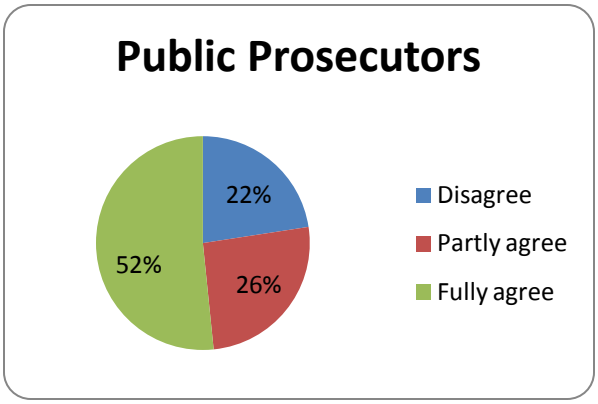


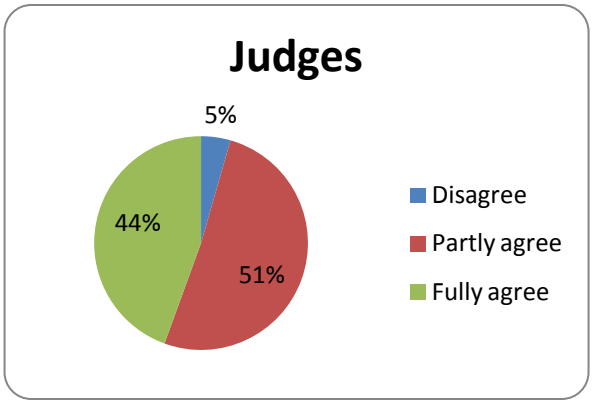
Conclusion: From the information obtained can be concluded that the majority of the respondents believe that defense lawyers use or will use the mechanisms for gathering evidences the new law contains. Regarding this issue, it is interesting that certain number of respondents believe that the defense lawyers will not use these mechanisms foreseen with this law due to the fact that in the previous system this mechanism was, either not used by the attorneys at law or not entirely functional, which could be a reason for the reservations of the respondents for this question. However, in absence of practice, we still cannot say with certainty whether and to what extent the possibilities provided with the new law will or will not be used.

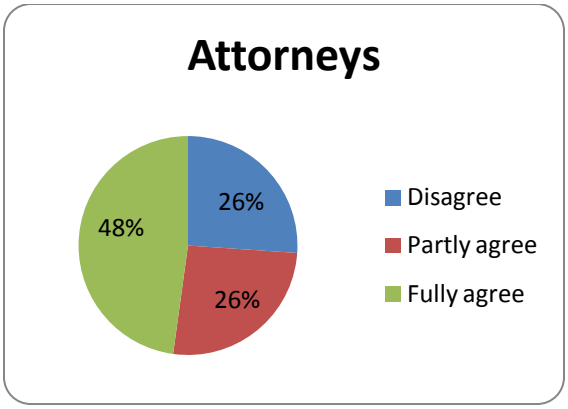
Question No.6

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 7 answered with „disagree“, 8 with „partly agree“ and 16 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 2 answered with „disagree“, 23 with „partly agree“, and 20 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 3 answered with „disagree“, 6 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

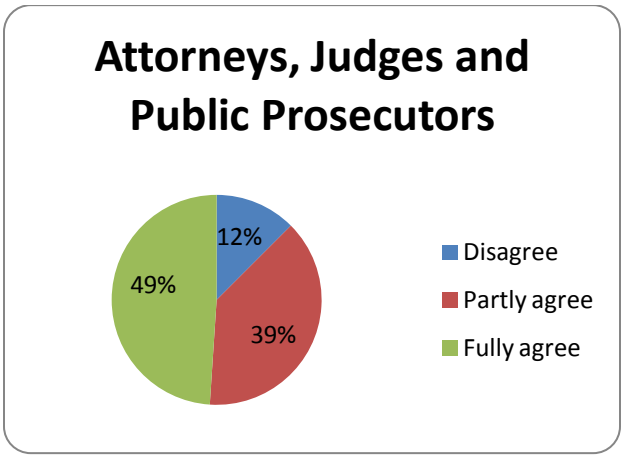






If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 12 answered with „disagree“, 37 answered with „partly agree“ and 47 answered with „fully agree“.

Graphic display of the responses from all respondents:



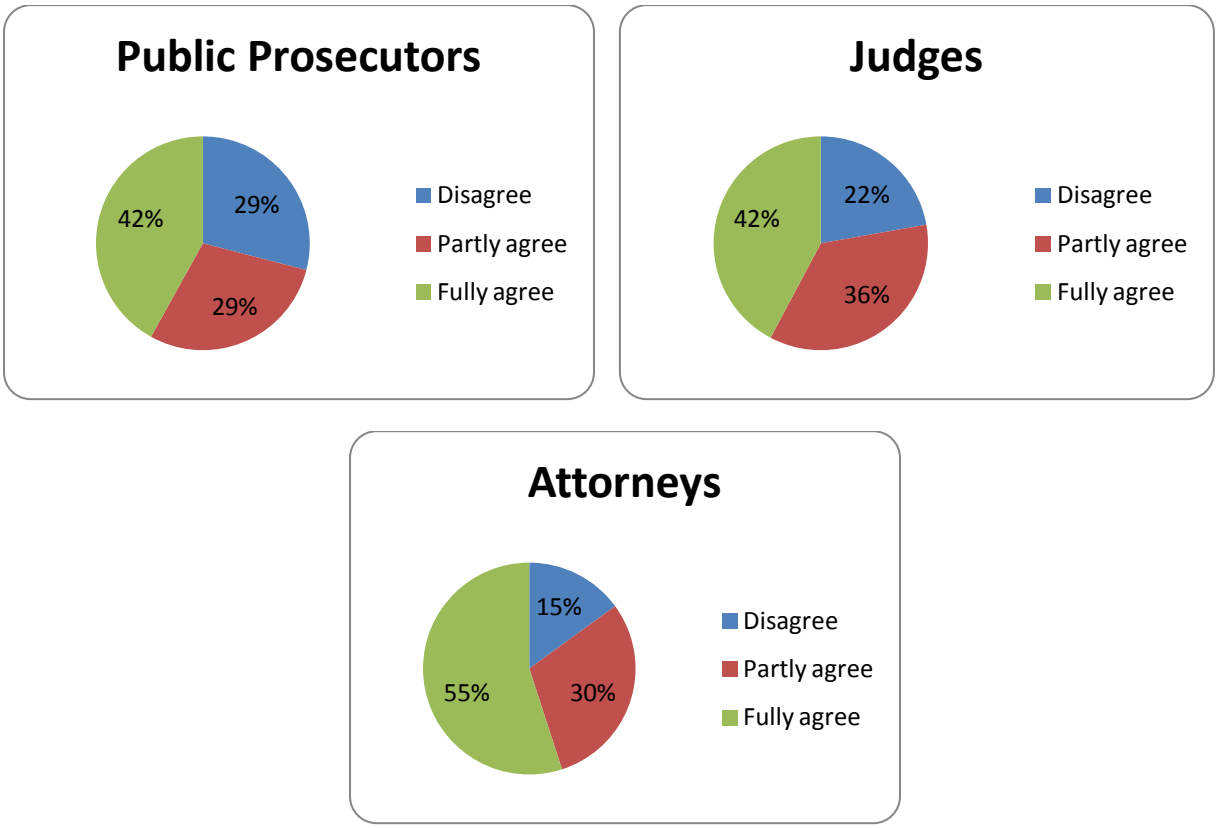
Conclusion: From the information obtained can be concluded that half of the respondents consider that not informing the suspect, that against him an investigation has been initiated, could mean a violation of procedural rights. On the other hand, a large number of the respondents partly agree regarding the

notification of the of suspects for initiation of investigation, which can be concluded that if in some cases the suspect is not notified, it will not constitute violation of procedural rights for the suspect.

Question No.7

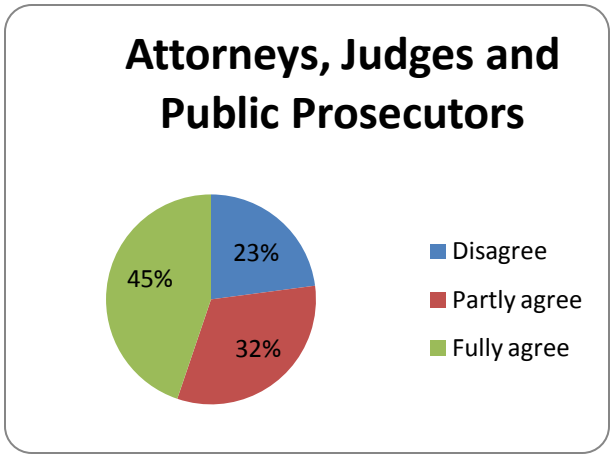
On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 9 answered with „disagree“, 9 with „partly agree“ and 13 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 10 answered with „disagree“, 16 with „partly agree“, and 19 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 3 answered with „disagree“, 6 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category



If we take into the account the total number of responses delivered by the respondents, from total of 96 questionnaires delivered by all institutions, 22 answered with „disagree“, 31 answered with „partly agree“ and 43 answered with „fully agree“.

Graphic display of the responses from all respondents:

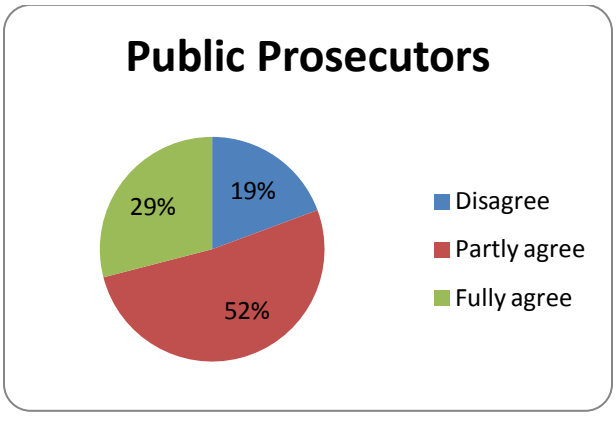


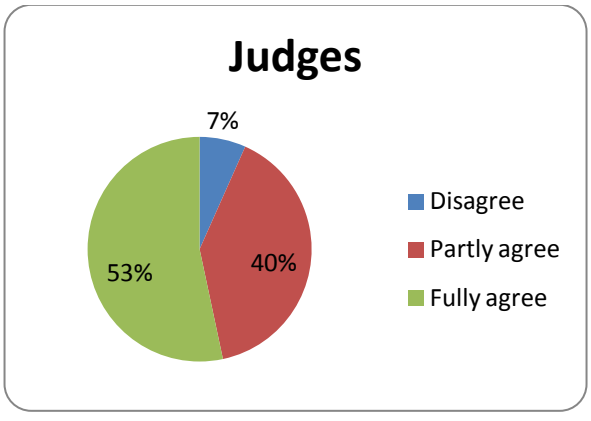
Conclusion: From the information obtained can be concluded that regarding the detention, one of the bitterest issues in the Country, respondents are divided in their opinions where approximately half of them consider that in a situation when an investigation is carried out against a suspect who is not familiar with the investigation, the detention would be unfounded. On the other hand, one third of the respondents partly agree regarding determination of the detention from which can be concluded that in certain situations detention will be founded even when the suspect is not familiar about the investigation.

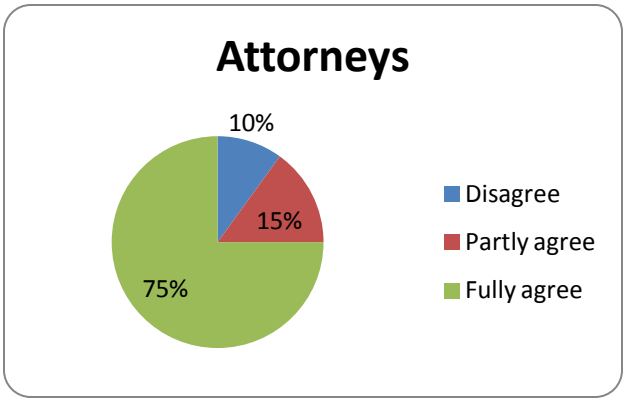
Question No.8

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors, 6 answered with „disagree“, 16 with „partly agree“ and 9 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 3 answered with „disagree“, 18 with „partly agree“, and 24 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 3 with „partly agree“, and 15 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

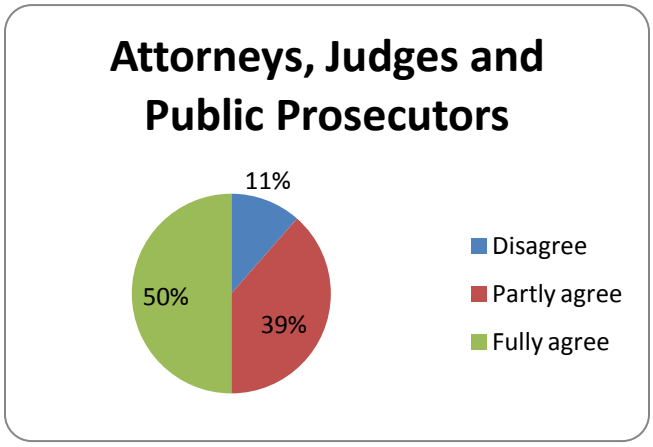






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 11 answered with disagree, 37 with partly agree and 48 with fully agree.

Graphic display of the responses from all respondents:

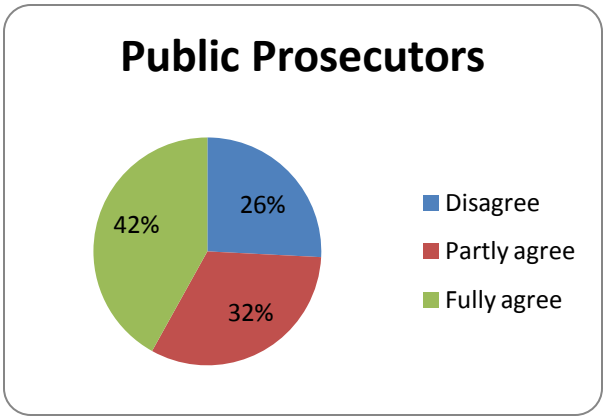


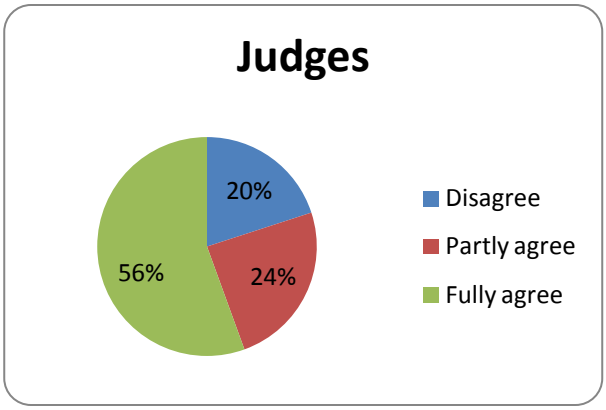
Conclusion: From the collected data could be concluded that the half of the respondents believe that the opening speech would contribute toward clarification of the factual and legal issues in the proceedings. This means that for the first time respondents have high expectations in terms of the criminal procedure which will enable an effective tool for resolving cases where the parties will have the major role during the entire procedure.

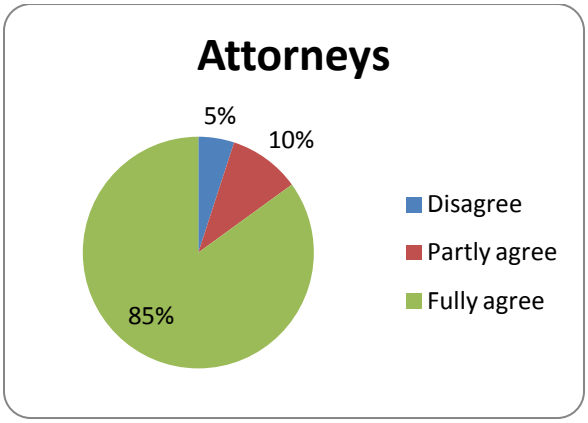
Question no. 9

n this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,8 answered with „disagree“, 10 with „partly agree“ and 13 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 9 answered with „disagree“, 11 with „partly agree“, and 25 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 3 with „partly agree“, and 15 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

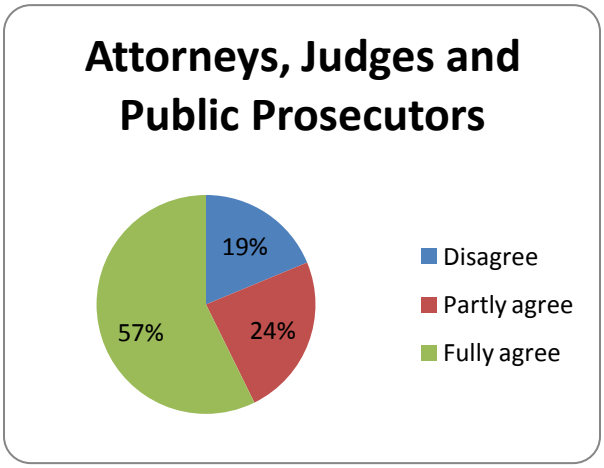






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 18 answered with disagree, 23 with partly agree and 55 with fully agree.

Graphic display of the responses from all respondents



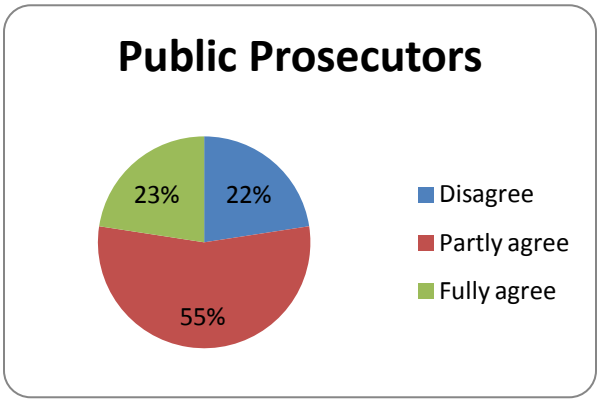
Conclusion: From the collected data could be concluded that more than a half of the respondents believe that the direct and cross examination will increase the possibility to fully establish the factual situation in the trial. Although it is new reform which is being implemented for the first time in

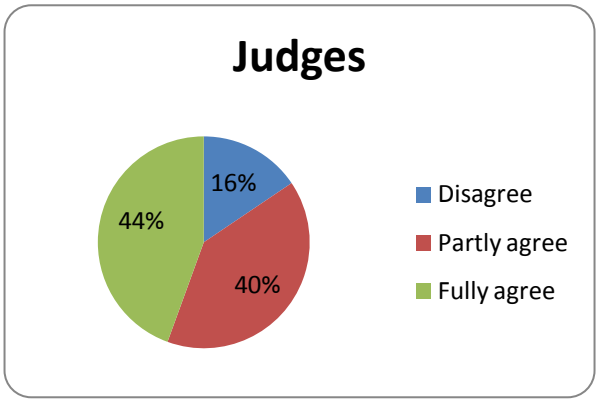
Macedonia, the respondents are completely positive and consider that this kind of investigation will contribute to a more efficient procedure, determinate the factual situation because solely from this and their willingness will depend what will be the outcome of the criminal procedure.

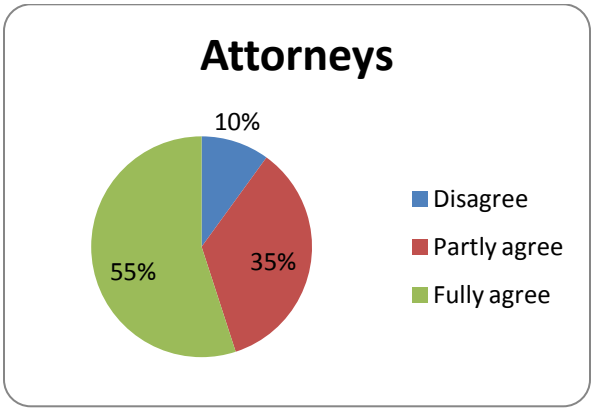
Question no. 10

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,7 answered with „disagree“, 17 with „partly agree“ and 7 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 7 answered with „disagree“, 18 with „partly agree“, and 20 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 7 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

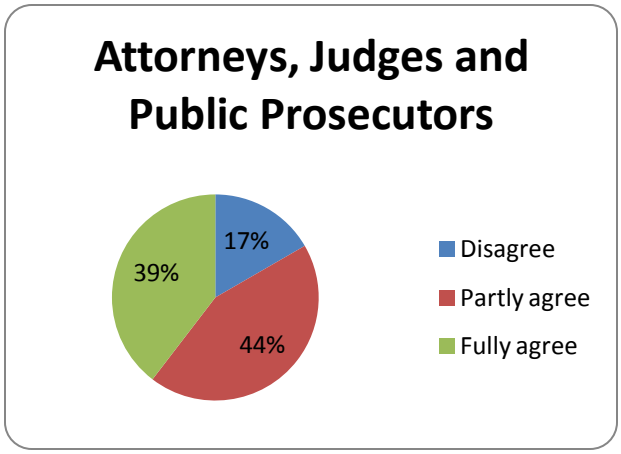






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 16 answered with disagree, 42 with partly agree and 38 with fully agree.

Graphic display of the responses from all respondents

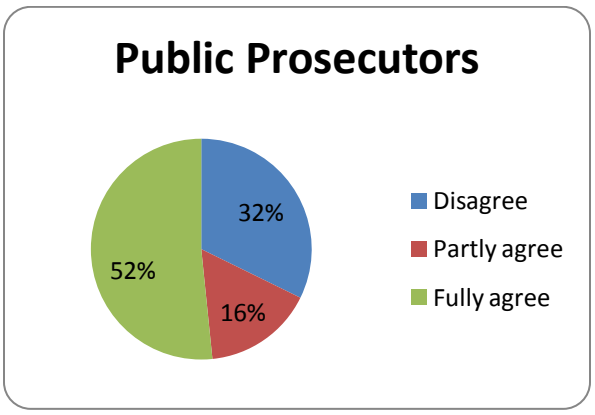


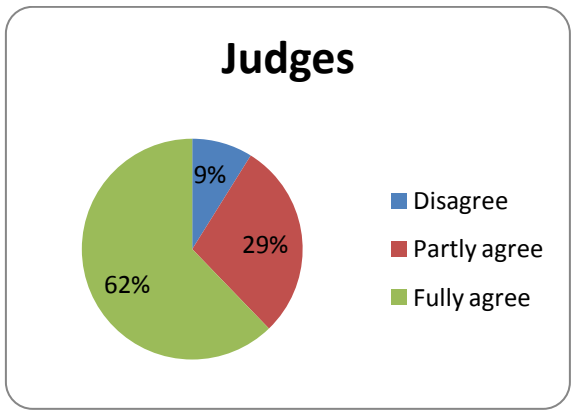
Conclusion: In conclusion, it could be stated that the majority of the respondents believe that the cross examination in certain situations may violate the dignity of witnesses and experts which confirms that they are reserved to this novelty. On the other hand, many respondents consider that cross examination will not violate the dignity of witnesses and experts. If we take into account that in the country there is no practice for this type of examination, it remains to be seen how this provision from the law will be implemented in the practice.

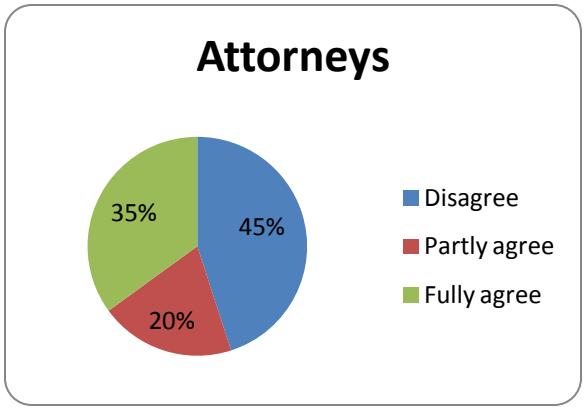
Question no.11

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,10 answered with „disagree“, 5 with „partly agree“ and 16 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 4 answered with „disagree“, 13 with „partly agree“, and 28 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 9 answered with „disagree“, 4 with „partly agree“, and 7 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

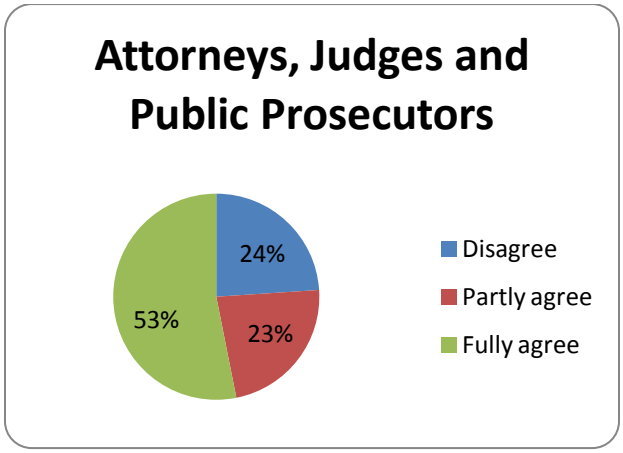






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 22 answered with disagree, 23 with partly agree and 51 with fully agree.

Graphic display of the responses from all respondents



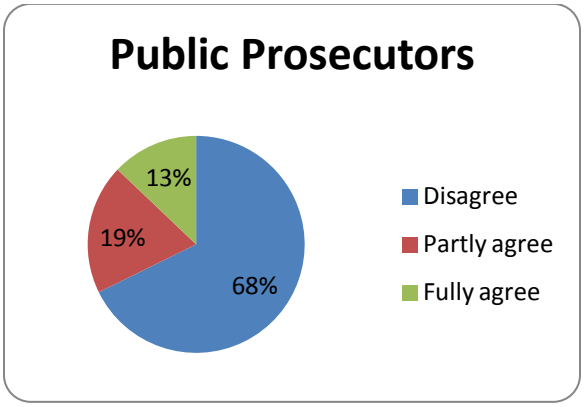
Conclusion: Half of the respondents think that the court should have more competences in order to contribute to the clarification of certain factual issues in the criminal procedure. Considering the fact that the old law provided more competences for the court to intervene in the procedure and the lack of practice under the new Law on Criminal Procedure which provides that the court is strictly neutral party and observer, the answers of the respondents were expected in terms of preserving certain court competences. This way of thinking dominates among judges and prosecutors against the majority of attorneys who believe that the court should not have competences, but only to be a neutral party in the proceedings.

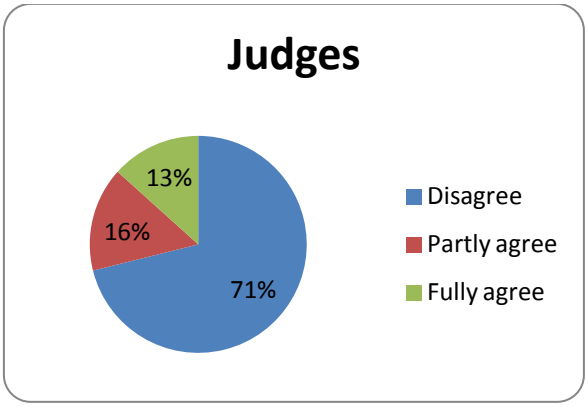
Question no. 12

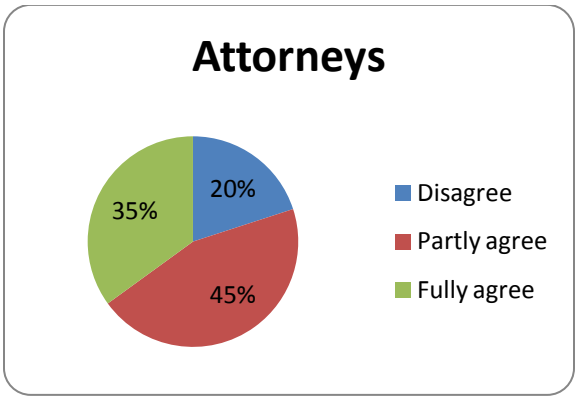
On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,21 answered with „disagree“, 6 with „partly agree“ and 4 with „fully agree“.

Among the judges, from total of 45 submitted questionnaires, 32 answered with „disagree“, 7 with „partly agree“, and 6 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 4 answered with „disagree“, 9 with „partly agree“, and 7 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

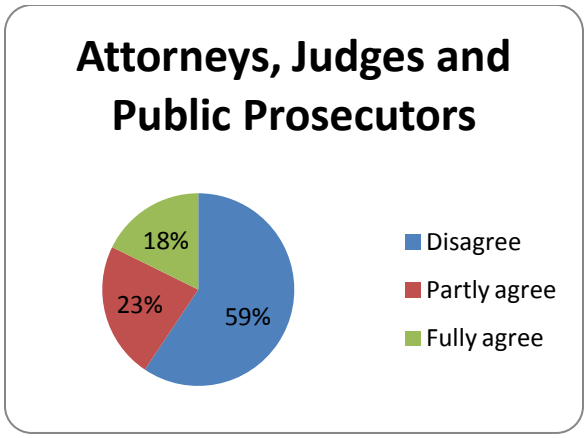






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 57 answered with disagree, 22 with partly agree and 17 with fully agree.

Graphic display of the responses from all respondents

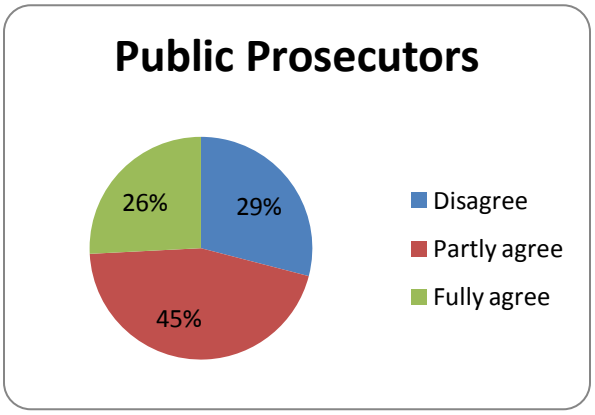


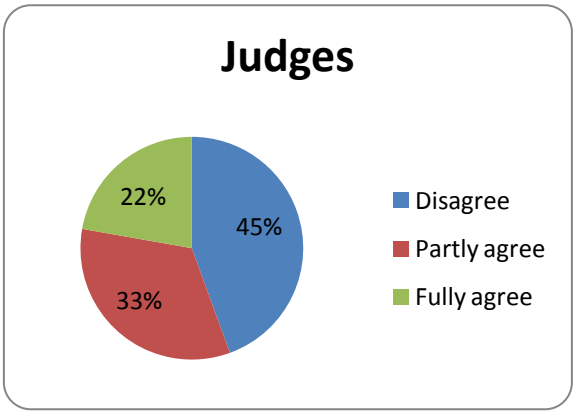
Conclusion: From the collected data it can be concluded that the majority of the respondents believe that the rights of the damaged are not reduced, even though it is eliminated the possibility of the damaged party to undertake subsidiary prosecution after the cancelation of the public prosecutor. This means that the public prosecutor under the new Law on Criminal Procedure would play the major role in the prosecution and in the decision whether there is sufficient evidence for a certain person to initiate a criminal procedure. If it is determined that there is insufficient evidence, no criminal procedure will be initiated, and the damaged will not be able to initiate and launch their own criminal procedure. If we consider the role of public prosecutor, then it makes sense that only the public prosecutor should decide if there are sufficient elements and evidences and whether to start a criminal procedure because his role is exactly that, to initiate a criminal procedure where there are evidence.

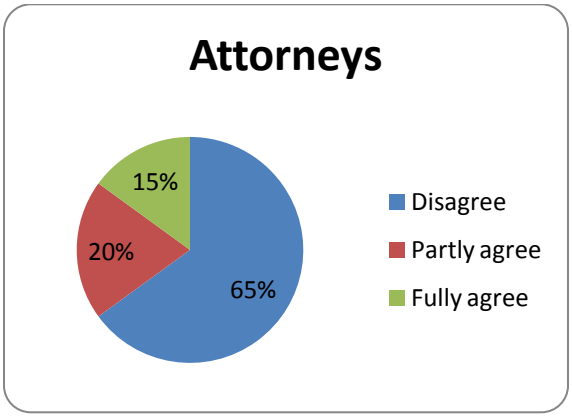
Question no. 13

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,9 answered with „disagree“, 14 with „partly agree“ and 8 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 20 answered with „disagree“, 15 with „partly agree“, and 10 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 13 answered with „disagree“, 4 with „partly agree“, and 3 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

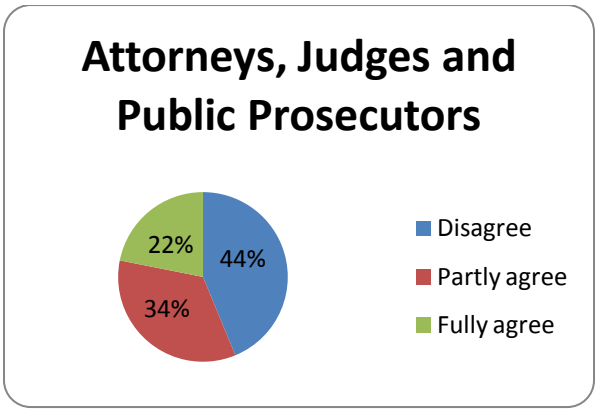






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 42 answered with disagree, 33 with partly agree and 21 with fully agree.

Graphic display of the responses from all respondents

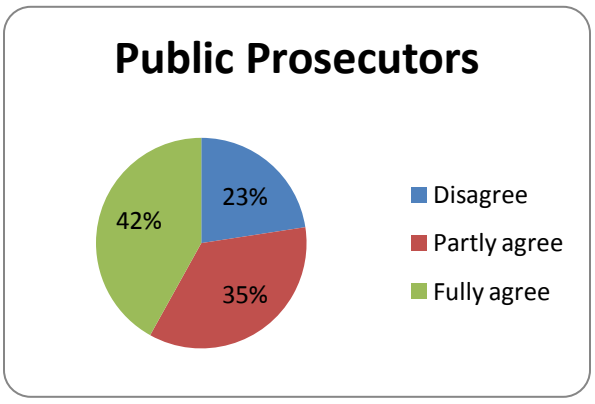


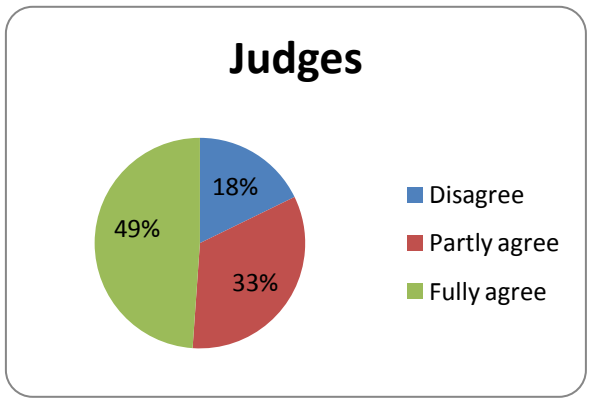
Conclusion: From the collected data it could be concluded that the majority of respondents believe that the Guidelines on the manner of determining of the sentences will not contribute toward fairness of the procedure and will not prevent the subjectivism in the determination of the sentences by the judges. It is interesting to note that this answer dominates among the judges and attorneys. On the other hand, one-third of the respondents have reservations regarding the Guidelines on the manner of determining of the sentences, which leads to the conclusion that they have not take particular position because this is a novelty which awaits to be introduced and applied in Republic of Macedonia.

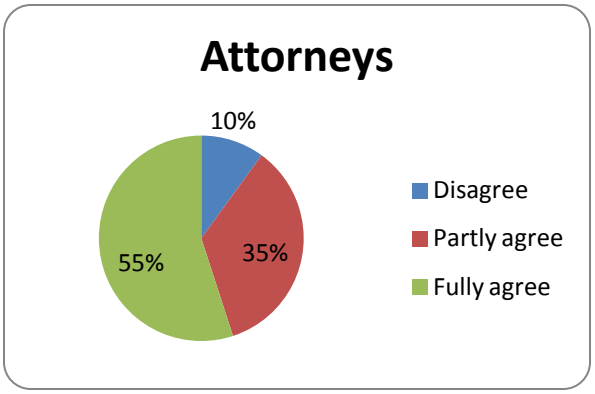
Question no. 14

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,7 answered with „disagree“, 11 with „partly agree“ and 13 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 8 answered with „disagree“, 15 with „partly agree“, and 22 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 7 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

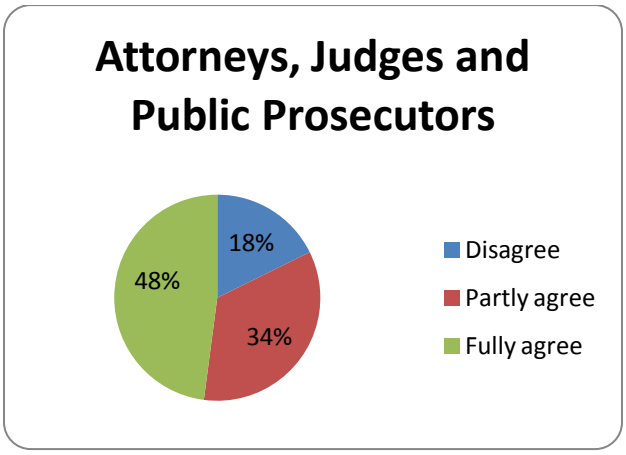






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 17 answered with disagree, 33 with partly agree and 46 with fully agree.

Graphic display of the responses from all respondents



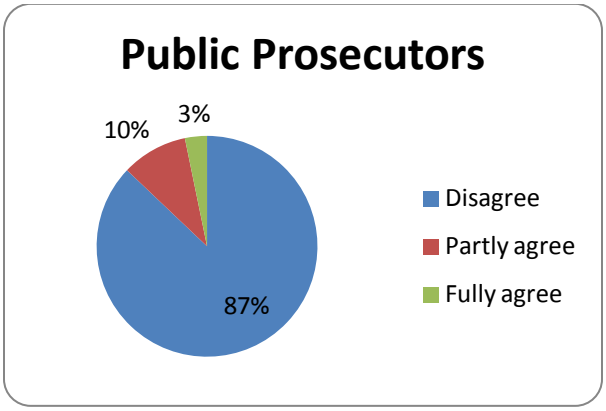
Conclusion: From the collected data, it can be concluded that half of the respondents consider that the Guidelines on the manner of determining of the sentences would retain on the right of free judicial decision and evaluation of evidences in court procedure. From the answers it can be concluded that the judges will not be able to properly apply the law and freely evaluate the evidences because the Guidelines on the manner of determining of the sentences will not allow them. On the other hand, one-third from the respondents partly agree that the Guidelines on the manner of determining of the sentences would affect the independence of judges in evaluating the evidence, while there are only a few respondents who believe that this Guidelines will not be an obstacle for the judges when evaluating the evidences and determining the penalties.

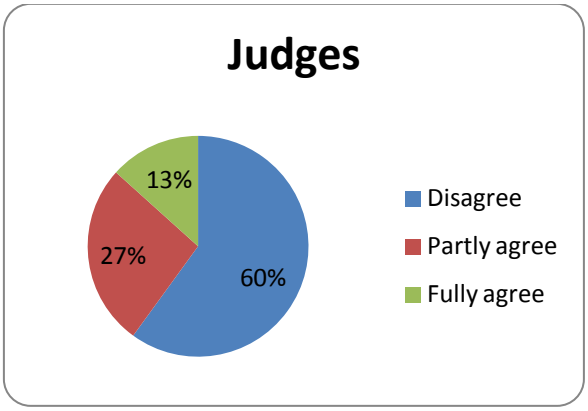
Question no. 15

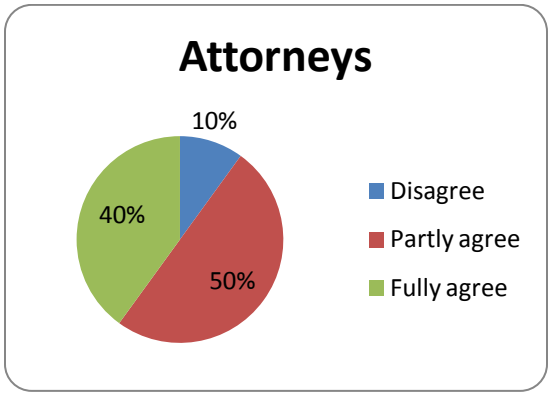
On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,27 answered with „disagree“, 3 with „partly agree“ and 1 with „fully agree“.

Among the judges, from total of 45 submitted questionnaires, 27 answered with „disagree“, 12 with „partly agree“, and 6 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 10 with „partly agree“, and 8 with „fully agree“.

Graphic display of responses received by the interviewees individually by category







If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 56 answered with disagree, 25 with partly agree and 15 with fully agree.

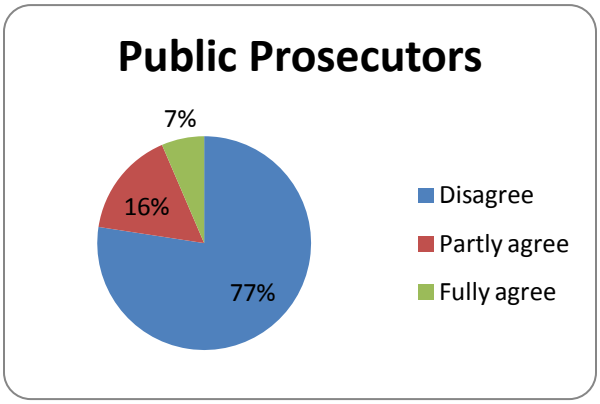
Graphic display of the responses from all respondents

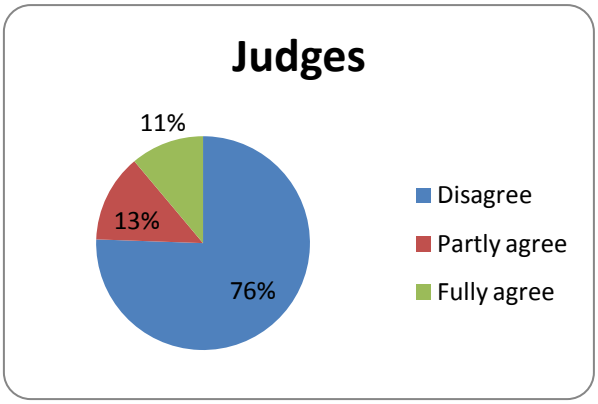
Conclusion: It can be concluded that the majority of the respondents believe that the inauguration of the possibility for plea bargaining will not leave a space for abuse by the public prosecutor. It is interesting that the majority of the respondents have certain reservations about the fact that the public prosecutor may abuse his position or he would abuse his position in some cases. Although this attitude prevails among attorneys, it remains to be seen how the implementation of the new Law on Criminal Procedure regarding the plea bargaining will be performed and what will be the reaction of the parties, if there is any, in terms of the approach during the plea bargaining by the public prosecutor. It should be noted that among the respondents there are judges and public prosecutors who consider that nevertheless these competences will be abused.

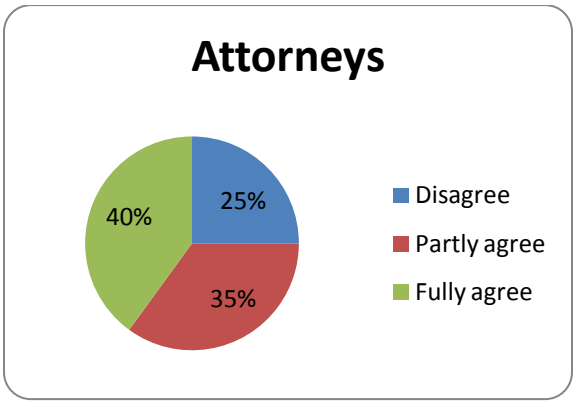
Question no. 16

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,24 answered with „disagree“, 5 with „partly agree“ and 2 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 34 answered with „disagree“, 6 with „partly agree“, and 5 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 5 answered with „disagree“, 7 with „partly agree“, and 8 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

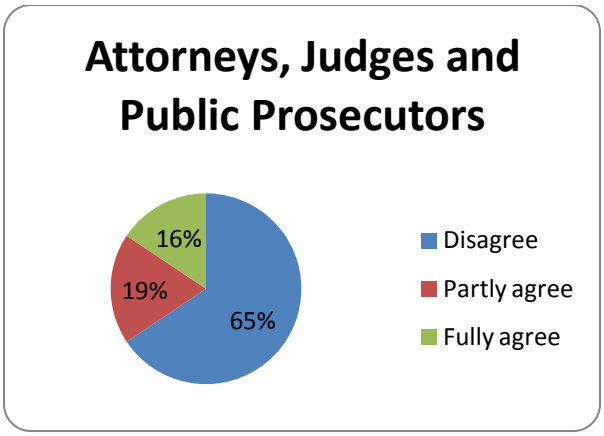






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 63 answered with disagree, 18 with partly agree and 15 with fully agree.

Graphic display of the responses from all respondents

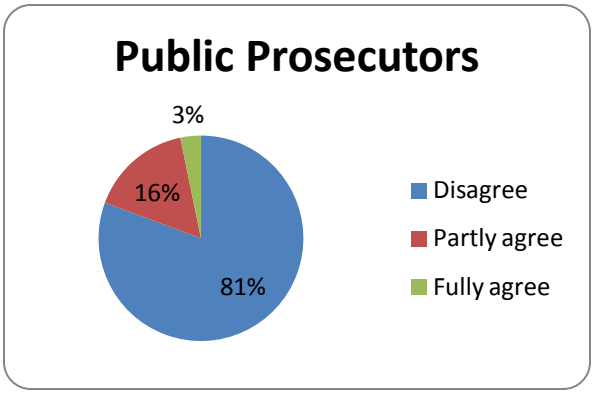


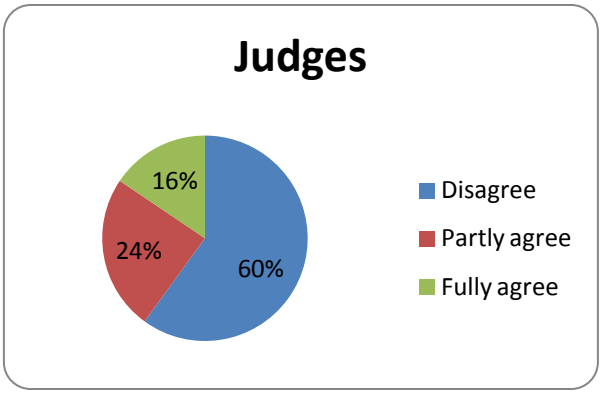
Conclusion: Similar to the previous question, for this question from the collected data it can be concluded that the majority of the respondents agree that there will not be a violation of the rights of the accused regarding the plea bargaining and he would not be forced to admit the guild to receive lower sentence even in situations where he is not guilty for the crime. On the other hand, one-third of the respondents believe that violation of this kind might happen or will happen during the procedure of plea bargaining between the public prosecutor and the attorney. It is interesting the fact that in the collected data there are public prosecutors and judges that consider that there is possibility for violation of the rights of the accused during the plea bargaining. Since there is a diversity of the respondents' opinions and their perceptions, we consider that the law should have the opportunity to become operational in practice and later monitor and assess the reactions and recommendations of the parties, if there are such.

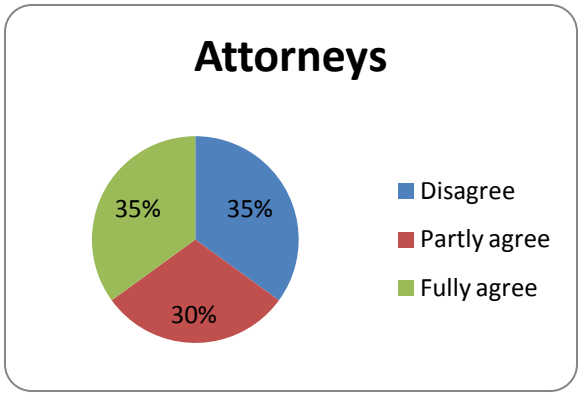
Question no. 17

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,25 answered with „disagree", 5 with „partly agree" and 1 with „fully agree".
Among the judges, from total of 45 submitted questionnaires, 27 answered with „disagree", 11 with „partly agree", and 7 with „fully agree", while among the attorneys at law, from total of 20 submitted questionnaires, 7 answered with „disagree", 6 with „partly agree", and 7 are with „fully agree".

Graphic display of responses received by the interviewees individually by category

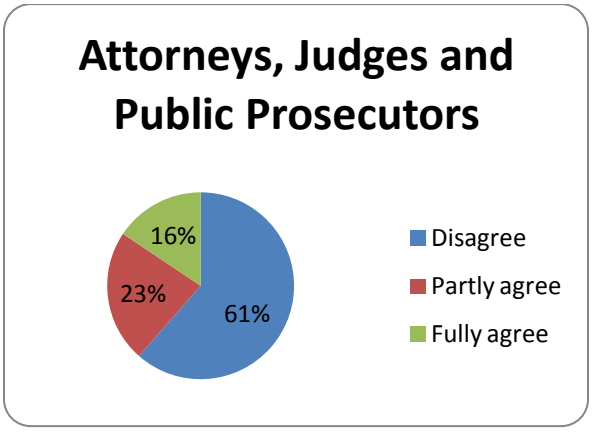






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 59 answered with disagree, 22 with partly agree and 15 fully agree.

Graphic display of the responses from all respondents



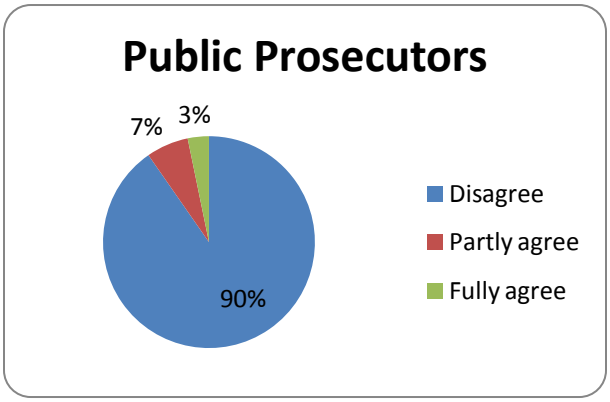
Conclusion: From the collected data it can be concluded that settling before bringing formal charges does not violate the principles of the ECHR and human rights in criminal procedures. Therefore it can be stated that the plea bargaining will be of mutual benefit of the parties in the proceedings because the parties will renounce the maximalist demands and will only receive the agreed. On the other hand, one-third of the respondents believe that the plea bargaining could violate human rights and the principles

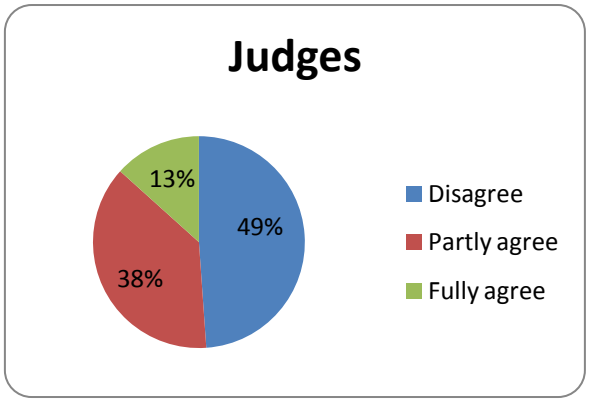
of the ECHR or that the plea bargaining automatically means violation of human rights and principles of the ECHR because a person would be declared guilty without granting him the possibility to be declared guilty in public court hearing.

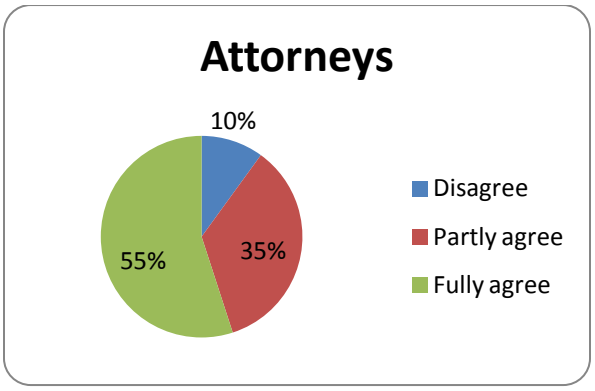
Question no.18

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,28 answered with „disagree“, 2 with „partly agree“ and 1 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 22 answered with „disagree“, 17 with „partly agree“, and 6 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 2 answered with „disagree“, 7 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

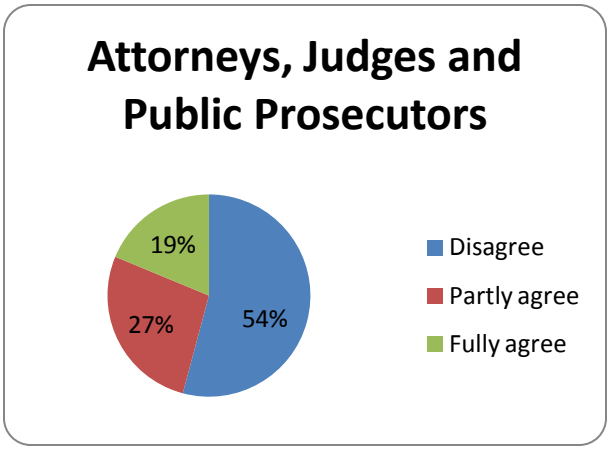






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 52 answered with disagree, 26 with partly agree and 18 with fully agree.

Graphic display of the responses from all respondents

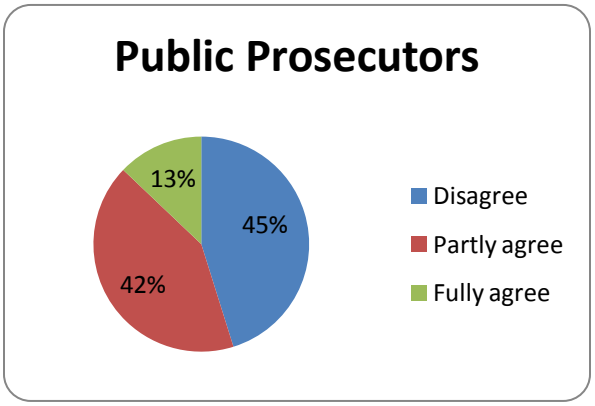


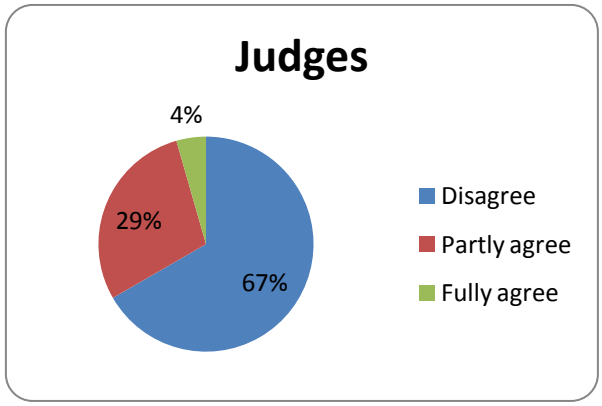
Conclusion: From the collected data it can be concluded that half of the respondents believe that despite the increased powers of the public prosecutor in pre-trial proceedings and the application of the special investigation measures, there will be no possibility of violation of the right in privacy. This way of thinking dominates among the public prosecutors and judges where half of the respondents agree with this conclusion. On the other hand, half of the attorneys think that there will be violation of the right in privacy. From the gathered data it can also be concluded that the number of respondents who think that there might or will be violation of the right in privacy of the parties during the pre-trial proceedings is very high taking into account the increased powers of the public prosecutors.

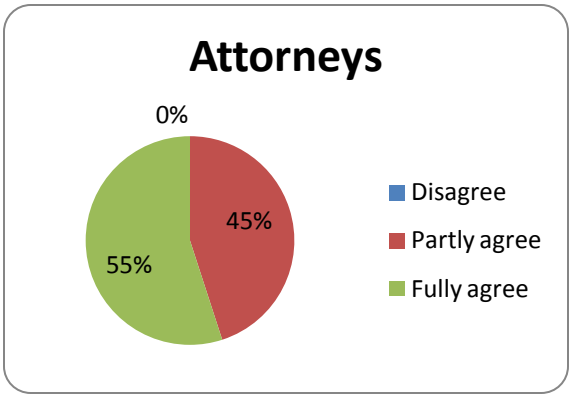
Question no.19

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,14 answered with „disagree“, 13 with „partly agree“ and 4 with „fully agree“.
Among the judges, from total of 45 submitted questionnaires, 30 answered with „disagree“, 13 with „partly agree“, and 2 with „fully agree“, while among the attorneys at law, from total of 20 submitted questionnaires, 0 answered with „disagree“, 9 with „partly agree“, and 11 with „fully agree“.

Graphic display of responses received by the interviewees individually by category

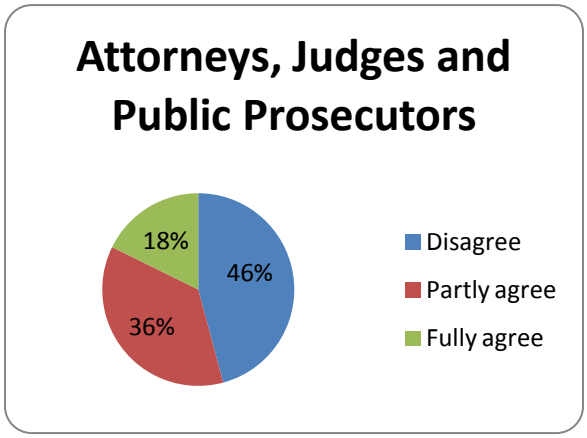






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 44 answered with disagree, 35 with partly agree and 17 with fully agree.

Graphic display of the responses from all respondents

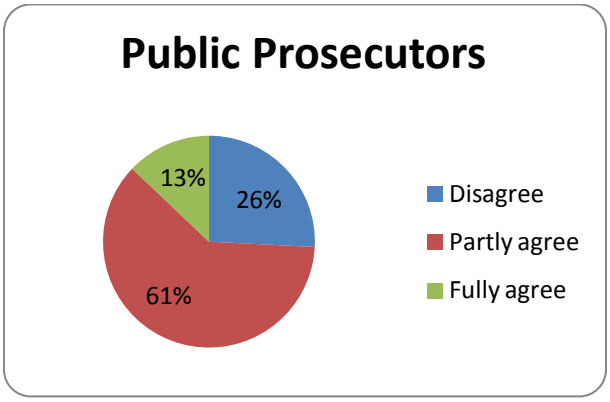


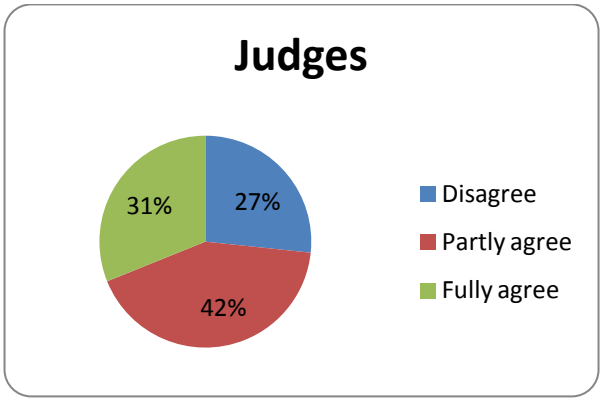
Conclusion: From the responses it can be concluded that almost half of respondents believe that if the court refuses to allow submission of certain evidences, the parties would not be damaged. This answer dominates to the responses received by the judges and public prosecutors. Also, one-third of the respondents believe that the court's refusal to allow submission of certain evidences might or will damage the parties during the proceedings which is confirmed by the large number of judges and public prosecutors who expressed reservations on this issue because they believe that in such cases there is no possibility to influence proceedings and to damage the parties if the court does not permit the submission of certain evidence.

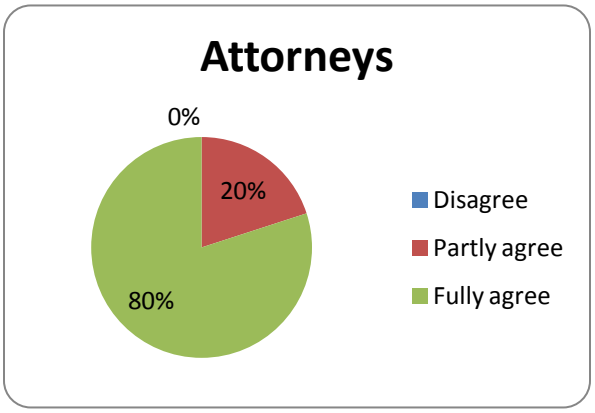
Question no. 20

On this question of the survey, from total of 31 questionnaires submitted by Public prosecutors ,8 answered with „disagree", 19 with „partly agree" and 4 with „fully agree".
Among the judges, from total of 45 submitted questionnaires, 12 answered with „disagree", 19 with „partly agree", and 14 with „fully agree", while among the attorneys at law, from total of 20 submitted questionnaires, 0 answered with „disagree", 4 with „partly agree", and 16 with „fully agree".

Graphic display of responses received by the interviewees individually by category

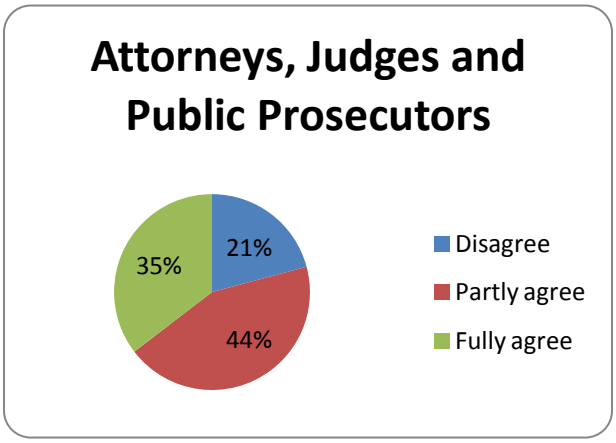






If we take into account the total number of responses delivered by the respondents, from the 96 questionnaires delivered by all institutions, 20 answered with disagree, 42 with partly agree and 34 with fully agree.

Graphic display of the responses from all respondents



Conclusion: It can be concluded that more than a third of the respondents believe that apart from detention, the other foreseen measures for securing attendance are applied, but not in the same

intensity as detention, while one-third think that beside detention, while one third believes that the other foreseen measures for securing attendance are not applied or are applied rarely. It should be mention that there is a large number of respondents among the judges and public prosecutors who do not agree that apart the detention, the other foreseen measures for securing attendance are applied rarely, which leads to the conclusion that this category of respondents believe that the other measures for securing attendance are applied simultaneously.

FINAL CONCLUSIONS

Overall, the persons who are directly involved in the implementation of the new Law on criminal procedure are reserved in terms of the performance of the novelties in the criminal procedure, while a small number believe in this reform. However, almost half of the respondents view with optimism on the latest changes and expect that they will contribute to the efficiency of the Criminal procedure code in Republic of Macedonia. It should be taken into consideration that unlike judges and public prosecutors who express higher level of satisfaction for the changes, the defense lawyers in large part (70%) are reserved regarding the new legislative solutions.

The situation is similar regarding the foundation of the judicial police where more than half of the judges and public prosecutors agree that it will contribute toward more effective investigation, while 70 % of the defense lawyers express their reservation toward this reform.

In addition, it's important to notify that although most of the public prosecutors agree that the prosecutor will consistently collect evidences that are in favor of the suspect and will act in accordance with proposals of the defense lawyers for collecting certain evidences, still, a significant part of them only partly agree with this conclusion. The judges are mostly reserved toward this issue, while the defense lawyers consider that the public prosecutor will not collect evidences and will not act according to the proposals of the lawyers for collecting certain evidences.

The respondents are unanimous in their opinions that the detention will be unfounded in cases when the public prosecutor conducts investigation against a suspect who is not familiar with the allegations of the warrant for investigation and has not been presented with the evidences against him.

It should be noted that, while the public prosecutors are reserved in terms of the opening statement and express certain amount of reserve toward the new methods of examination, the defense lawyers and judges are their major supporters.

Regarding the Rulebook, there are almost equal opinions among the respondents that it will not be in favor of fair procedure and will not prevent subjectivism in delivering sentences by the court, but rather the opposite, and will affect the right of free judicial belief and evaluation of evidences while deciding on a case.

It is obvious that although the plea bargaining is positively evaluated, there is a small number of public prosecutors that consider that this will open the possibility for abuses by the public prosecutor. The defense lawyers express bigger amount of reservation toward this change, especially in terms of possible violations of the rights of the accused during the plea bargaining.

Finally, the special investigation measures under the public prosecutor competencies encounter to approval by public prosecutors, unlike the defense lawyers who consider that they open the opportunity of violation of the right to privacy. However, it should be noted that also a small number of public

prosecutors see opportunity of violation of the right to privacy. The defense lawyers are skeptical also in terms of the use of the additional measures for ensuring attendance apart from detention.

This leads to the conclusion that those who are directly affected by the changes have different requests and expectations in terms of legal solutions regulating the criminal procedure, especially the public prosecutors from one side and the defense lawyers on other side. In the future reforms it is essential consultation with the practitioners to improve these solutions so the implementation could be more effective.

Prepared by:

Macedonian Young Lawyers Association

Annex 1

Questionnaire on the expectations of the implementation of new Criminal Procedure Code

May, 2014

Status of the respondent:

a) Judge
b) Public prosecutor
c) Attorney at law

1. The Criminal Procedure Code will contribute to more efficient criminal procedure?

   - I disagree
   - Partly agree
   - Fully agree

2. The passive role of the court in the pre trial proceedings and investigation will affect the fairness of the procedure?

   - I disagree
   - Partly agree
   - Fully agree

3. The inauguration of the judiciary police contributes to effective investigation?

   - I disagree
   - Partly agree
   - Fully agree

4. The public prosecutor will consistently collect the evidence which are in favor of the suspect and will act in accordance with the suggestions of defense lawyer to collect certain evidences?

   - I disagree
   - Partly agree
   - Fully agree

5. The defense lawyers use the mechanism for obtaining evidences prescribed with the law (expertise, proposing witnesses, etc)?

    - I disagree
    - Partly agree
    - Fully agree

6. Non information of the suspect that an investigation against him has been launched could mean violation of his procedural rights in certain cases?

    - I disagree
    - Partly agree
    - Fully agree

7. The detention will be inadmissible in cases where the public prosecutor is investigating a suspect who is not familiarize with the allegations of the investigation warrant and are not presented the evidences against him?

    - disagree
    - Partly agree
    - Fully agree

8. The introduction of the possibility the parties to give an opening speech before the beginning of the main hearing will contribute toward clarification of the factual and legal issues?

    - disagree
    - Partly agree
    - Fully agree

9. The direct and cross examination of witnesses increases the possibility to establish the facts?

    - disagree
    - Partly agree
    - Fully agree

10. The cross examination will create the possibility to completely discredit the witnesses and experts without compromising their dignity?

    - disagree
    - Partly agree
    - Fully agree

11. During the main hearing the court should have more power in resolving factual issues?

    - Disagree
    - Partly agree
    - Fully agree

12. The elimination of the possibility the damaged to undertake subsidiary prosecution, after the cancelation of the public prosecutor, substantially reduces their rights in the procedure?

    - Disagree
    - Partly agree
    - Fully agree

13. The adaptation of the Guidelines on the manner of determining of the sentences will be in favor to the fair procedure and thus it will prevent the subjectivism determination of sentences by the judges?

    - disagree
    - Partly agree
    - Fully agree

14. The application of the Guidelines on the manner of determining of the sentences will retain on the right of free judicial conviction and evaluation of evidences in court procedure?

    - Disagree
    - Partly agree
    - Fully agree

15. The inauguration of the possibility for plea bargaining opens space for abuse by the public prosecutor?

    - Disagree
    - Partly agree
    - Fully agree

16. The inauguration of the plea bargaining opens the possibility for violation of the rights of the accused, because he will be forced to admit the guilt to receive lower sentence even in situations where he is not guilty of the crime?

- Disagree
- Partly agree
- Fully agree

17. Settling before bringing formal charges is not compatible with the ECHR and violates the human rights?

    - disagree
    - Partly agree
    - Fully agree

18. Increasing the powers of the public prosecutor in pre-trial proceedings and the anticipated special investigation measures open the possibility of violation of the rights in privacy?

    - disagree
    - Partly agree
    - Fully agree

19. The court will damage the parties if it refuses to allow submission of certain evidences because it considers them irrelevant?
    - disagree
    - Partly agree
    - Fully agree

20. Beside detention, the other foreseen measures for securing attendance are applied extremely rare?
    - disagree
    - Partly agree
    - Fully agree