TRANSPARENCY INTERNATIONAL
the global coalition against corruption

TRACKING ANTI-CORRUPTION PROGRESS IN SERBIA

2015 – 2018

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and operate with partners in government, business and civil society to develop and implement effective measures to terminate it.

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INTRODUCTION

In 2015, Serbia published its National Integirty System (NIS) assessment[1]. The NIS assessment provides a comprehensive analysis of the key strengths and weaknesses of Serbia's anti-corruption and governance system and offers recommendations for reform. By examining both the formal framework and actual practice of a key set of state and non-state institutions, it highlights discrepancies between the formal provisions and reality on the ground, making it clear where there is space for improvement.

This report provides an update on anti-corruption progress in Serbia since the NIS assessment was published, by analysing:

i. the extent of utilising the legal mechanisms at its disposal to investigate, prosecute and sanction corruption in Serbia
ii. the extent to which selected key recommendations from the NIS assessment have been implemented by relevant stakeholders.

A combined analysis of these two areas provides a strong indication of the extent of progress that has been made since 2015 and the depth of the government´s commitment to fighting corruption in Serbia. The report uses a range of data sources including existing research, interviews and official statistics.

[1] http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf

KEY FINDINGS

In overal, the progress in implementation of anti-corruption plans in Serbia is very slow. This largely affects implementation of Transparency Serbia NIS recommandations, that seek for even greater results than national and EU related strategic acts.

During this three-year period, the most of Government activities were dedicated to the normative level, with improvements related to the repression of corruption, financial investigations, public debates in legislative process, administrative procedure, budget reporting and e-government. On the other hand, Government, Parliament and ministries failed to adopt Law on Lobbying, to ammend Law on Anti-corruption Agency, Law on Financing of Political Activities, Law on Public Procurements, Law on Public – Private Partnerships, Law on Free Access to Information of Public Importance - all of them planned for this period. Planned reforms were finalized neither in area of judiciary (in order to decrease political influence) nor in media domain.

The implementation of existing legislation was even bigger problem. Among other, the number of unfulfiled final decisions of Commissioner for information of public importance increased (such decisions are often related to the public finances).Mechanism to punish wrongdoings in public procurements does not function at all. Campaign and party finance control is even weaker than it use to be. State owned enterprises and public administration are still governed by political appointees, instead of competitively recruited proffessionals. Anti-corruption rules are not implemented for biggest infrastructure projects, due to inter-state agreements. Government is not following it's anti-corruption Council reports, and recommendations of independent authorities only selectively. Parliament does not oversee the Executive. Media are still under strong political influence, in particular on local level. Law on Whistlebloweer Protection is implemented and court protection granted in hundreds of instances – however, the amount of reported and investigated corruption cases did not increase.

Institutional framework for fighting against corruption is somehow improved with introduction of four specialized prosecution offices and courts in charge for this type of crime. The situaiton worsened significantly when it comes to the level of activity of Anti-corruption Agency and Ombudsman, while Commissioner's for Information position worsened due to ungrounded attacks from MPs for the alleged politization of his work. Various coordination bodies in the area of anti-corruption proofed to be totally ineffective.

On the side of repression of corruption, data is not fullly transparent nor presented in a comprehensive way. In that regards, the situation improved by distinguishing public and private sector abuse of power in relevant criminal offences. However, it is safe to say, that there has been no significant progress in uncovering, investigating and punishing corruption. In the structure of reported corruption, dominant offence is still the one of the widest definition - "abuse of public office". Active and passive bribery is significantly lesser reported, while indictements for trading in influence and for other corruptive criminal offences (such are abuse in pulic procurements, voters' bribery, illicit party financing, fake assets declarations) are still rare exception or virtually non-existing. Altoughly a bit lesser frequently than in the past, top level politicians of the rulling party are commenting on on-going criminal procedurs. On the other hand, public prosecution offices are totally passive when it comes to the investigation of cases affecting interests of those in power. Pro-active approach is not implemented. There is no progress in punishing high level corruption.

I. PROGRESS ON ANTI-CORRUPTION REFORMS

In 2015, Transparency Serbia published an assessment of Serbia´s National Integirty System with a range of recommendations for strengthening the country´s anti-corruption system. Since 2015, Transparency Serbia has been tracking a selection of those recommendations to identify whether they have been implemented by the relevant stakeholders[2].

Below, we present a summary of our findings. Each recommendation is colour-coded depending on the level of progress witnessed, as follows:

Coding

Achieved

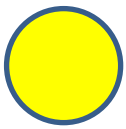
Substantial progress

Partial progress

No Progress

Regress

[2]Criteria for selecting recommendations for tracking include whether they: (a) address a key weakness in the country´s national integrity system, (b) result in strengthened laws and/or more effective enforcement of laws, (c) result in higher levels of integrity amongst organisations and people, (d) have clear and relevant solutions for change.

<table>
<tr><td>Recommendation 1</td><td colspan="2">The Parliament should further improve its transparency by publishing amendments, Government’s opinions on amendments, CV’s of candidates to be elected by the Parliament, documents adopted on committee sessions, documents being considered and adopted by committees and budget execution documents that are currently available to MPs only.</td></tr>
<tr><td rowspan="3">Indicators</td><td colspan="2">Parliament is publishing amendments and related Government opinions proactively</td></tr>
<tr><td colspan="2">Parliament is publishing CV’s of candidates</td></tr>
<tr><td colspan="2">Parliament is publishing documents adopted on committee sessions</td></tr>
<tr><td>Progress
  </td><td>Situation in 2015

Amendments and related Government opinions are available on request only, even if there is parliamentary Rules of Procedure, Article 260, providing pubishing of ammendments on the web, “by the rule”.

CV’s of candidates are available on request only, if at all, with rare exceptions.

Documents adopted on committee sessions are available on request only, with some exceptions.</td><td>Current situation

Amendments and related Government opinions are still available on request only.

There is still no general rule on publishing candidates’ CV’s. Exceptionally, in some instances, there is duty and/or practice to publish extracts from candidates’ biographies[3].

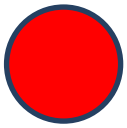
Parliament slightly increased number of published documents on various parts of it’s web-site (e.g. some of reports submitted by the government). It also regularly enables broadcasting oncCommittee sessions. However, it did not adopt any new general rule that would envisage publishing all documents adopted and approved on committee sessions.

Draft decisions, submitted by the parliamentary committees to the plenary of the Parliament for approval are published in allmost all cases.

Minutes from committees’ sessions contain information on topics discussed and documents adopted, but there is no practice to publish links to these documents as well[4].</td></tr>
</table>

[3] http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/2018/02-946_18_Lista%20kandidata.pdf

[4] Source of information: web-page of the Parliament, Rules of Procedure.

<table>
<tr><td>Recommendation 2</td><td colspan="2">Parliament should perform oversight on the basis of independent agencies' reports: The Parliament should improve the practice of monitoring of implementation of parliamentary conclusions upon reports of the independent state institutions. When the Parliament accepts the report that indicates the need to make or change regulations, it should initiate proceedings necessary to amend the legislation. When reports indicate a failure of Government or other executive bodies, it should request corrective measures and initiate the process for accountability of managers who failed to comply (e.g. ministers).</td></tr>
<tr><td rowspan="3">Indicators</td><td colspan="2">Independent bodies' reports are considered in a timely manner by parliamentary committees and committees conclusions are adopted by the Parliament</td></tr>
<tr><td colspan="2">Implementation of parliamentary conclusions is checked at least 6 months after adoption</td></tr>
<tr><td colspan="2">Parliament acts upon its conclusions and monitoring findings</td></tr>
<tr><td>Progress
  </td><td>Situation in 2015

Annual reports are considered by the parliamentary committees, usually with delay. Proposed conclusions based on these reports are not detailed enough.

Government did not submit report to the Parliament about implementation of conclusions adopted by the Parliament in 2014.

Parliament does not hold accountable Executive for the failure in implementation of conclusions.

In 2015 the Parliament did not adopt committees' conclusions.

Parliament does not consider implementation of conclusions when adopting legislation.</td><td>Current situation

Annual reports of the independent bodies were considered by the parliamentary committees, but conclusions had not been adopted and forwarded to the Parliament in most of cases during 2016 and 2017.

In 2018 parliamentary committees proposed conclusions related to some older and some of the latest reports of independent institutions, but failed to formulate appropriate measures to resolve problems identified by indpendent bodies.

There are following commitees' conclusions "in procedure", i.e. waiting to be discussed by the Parliament: Republican commission for protection of rights in public procurement (for 2017 and 2016), Anti-corruption Agency (2017, 2016, 2014), Competition protection commission (2016), State audit institution (2016, 2015), Fiscal Council (2016, 2015), Commissioner for information of public importance (2014) and Ombudsperson (2014).

No other changes were identified[5].</td></tr>
</table>

[5] Committee minutes and conclusion proposals, www.parlament.gov.rs; Response of the Executive to the parliamentary questions; Minutes of parliamentary discussions and proposals.

<table>
<tr><td>Recommendation 3</td><td colspan="2">The Government should fulfil its obligations under the Anti-corruption Strategy and Action Plan.</td></tr>
<tr><td rowspan="3">Indicators</td><td colspan="2">Government either fulfills its duties set in the Strategy and Action plan for fight against corruption (2013), or initiates changes of these documents</td></tr>
<tr><td colspan="2">Government coordination body resolves problems arising in implementation of the Strategy and Action plan</td></tr>
<tr><td colspan="2">Anti-corruption Council collects information about problems in implementation of the Strategy and Action Plan</td></tr>
<tr><td>Progress
  </td><td>Situation in 2015

While there is Government coordination body for implementation of the Action plan, and Anti-corruption Council of the Government that follows it, Government did not fulfill most of its duties scheduled for 2013, 2014 or 2015.

The change is informally envisaged for some measures and activities, through adoption of EU negotiation Chapter 23, Action plan.

Coordination body is not performing its duties and rarely congregates.

Council does not hold consultative meetings regularly.</td><td>Current situation

Most of the duties remained unfulfilled. In April 2016th Government amended the Action plan. This revision prolonged substantially some of the deadlines. Government also removed all of the measures and activities which are integrated in the EU negotiation Chapter 23 Action plan, but also some that were not fully implemented and some that are not identical in the scope with Chapter 23 AP measures.

The level of implementation is rather weak (slightly more than 50%) in AP for Chapter 23 as well, as identified by official report of Governmental Council for implementation of AP 23. The achievement is even lower as identified by the alternative NGO reporting.

The situation with the Government’s Coordination Body and Anti-Corruption Council even worsened in the second half of 2017 and 2018, since they did not organized consultative meetings at all.

No other changes[6].</td></tr>
</table>

[6] Anti-corruption Agency’s report on Strategy implementation; CSO independent monitoring; Government’s annual report; Minutes of Coordination body meetings (web-page, FOIA request); Minutes from Council meetings (web-page)

<table>
<tr><td>Recommendation 4</td><td colspan="2">The Government should improve the legal framework for legislative public debates: The Government should define more precisely public debates –it should introduce the obligation to publish all received recommendations and suggestions and to provide explanations for possible rejection of proposals as well as promote public debate on legislative concept papers.</td></tr>
<tr><td rowspan="2">Indicators</td><td colspan="2">Regulations are amended requiring Ministries preparing draft legislation to publish all recommendations and suggestions</td></tr>
<tr><td colspan="2">Regulations are amended requiring Ministries preparing draft legislation to state reasons for rejection of proposals</td></tr>
<tr><td>Progress
  </td><td>Situation in 2015

There is no clear duty to publish any of these information, but there is possibility to do so.</td><td>Current situation

The situation stayed the same during 2016 and 2017.

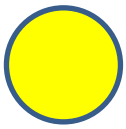
Ministry of state administration and local self - government prepared draft amendments to the Law on State Administration and the Law on Local Self-government regulating public debates. These ammendments were adopted in 2018, as well as the Law on Planning System, which all brought significant normative improvements. However, many issues, including those covered by TS recommendation, still have to be regulated by the Rules of Procedure of the Government and cities' statutes.

There is no significant progress in practice either, since the most of the ministries does not publish a comprehensive list of legislative proposals in public debate report. Furthermore, public debate is not organized in all instances where such duty exists in the law[7].</td></tr>
</table>

[7] Government Rules of Procedure, Law on State Administration, Law on Local – Self Government, Law on Planning system, web-sites of ministries, Government's portal e-Uprava.

Recommendation 5	**The Executive should publish its anti-corruption agenda: When setting up each new government, the Government should establish and publish priorities in the fight against corruption area. These priorities would be in accordance with the general Anti-corruption Strategy and action plan for its implementation.**	
Indicators	*Anti-corruption agenda of Executive complies with the country's Anti-corruption Strategy*	
Progress 	**Situation in 2015** Executive's plan is not elaborated. Annual action plans of the Government does not elaborate expose. Annual action plans of the government does not correspond to Anti-corruption strategy.	**Current situation** The situation is either the same as in 2015 or even worse. Some improvements in the future are possible, based on the provisions of the Law on the Planning System (2018). Each subsequent Prime minister's expose provided less reference to anti-corruption than the previous one. In his 2016 expose, Prime minister claimed that "anti-corruption strategy is being successfully implemented", although the official data of Anti-corruption Agency provide clear evidence for the totally opposite conclusion. In 2017, in the expose of new Prime minister, there is a promise to adopt two anti-corruption laws (much more planned in the Strategy). However, one of those two is not mentioned in strategic acts (Law on Investigation of Property Origin). The 2017 expose, in overall, ranks anti-corruption lower on priority list than it was in its 2012, 2014 and 2016 counterparts. Annual government plans only occasionaly reffer to the anti-corruption strategic acts and do not elaborate Prime-minister's expose.[8]

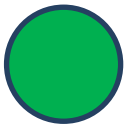
[8] Expose of Prime minister, annual plans of the government, Anti-corruption Strategy and Action plan implementation reports.

Recommendation 6	**Strengthening integrity in the police force: the police and ISC should establish a mechanism for reporting and checking declarations of assets and income for members of police. Police and ISC should introduce and clearly define a procedure for integrity tests for police officers exposed to high corruption risks.**	
Indicators	*A mechanism for reporting is established*	
	A mechanism for checking is established	
	The procedure of testing is clearly defined	
	Corruption risk exposure is identified through testing	
Progress 	**Situation in 2015** Draft law on Police introduced reporting for higher officers, by-law is still missing. Draft law on Police introduced control by ISC for higher officers, by-law is still missing. Draft Law only introduced possibility for such testing. Some risks are identified, but not clearly linked with integrity testing.	**Current situation** The new Law on Police was adopted in 2016 and worsened through 2018 ammendments. Relevant by-laws, on integrity testing and on the way how internal control should be performed, were adopted only in May 2018, but there are flaws in legal provisions, in particular in terms of reasons to conduct integrity testing. There is still no information available about the implementation of integrity testing[9].

Recommendation 7	**All prosecution authorities should post on their websites and in their premises a clear explanation for persons that want to report corruption – what one needs to do, what to expect in further proceedings, when they can receive further notice of the proceedings etc.**	
Indicators	*Accurate information about reporting posted on web*	
	Accurate information about reporting posted in premises	
Progress 	**Situation in 2015** Information not published nor posted.	**Current situation** The situation has slightly changed since 2015.There are information on some prosecutions' websites about service for injured parties, there are some forms available, but nothing specific about corruption. There is no specific reference to the Law on Whistle-blowers' protection either, even if this is mandatory by the law[10].

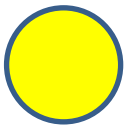
[9] Web-page of Police, internal regulation, interview, Legal database, Annual report, reports of Police to the Agency for fight against corruption, Agency's annual report, CSOs' assessment of legislation.
[10] Web pages of public prosecutions offices, random visits.

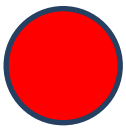
Recommendation 8	**The Ministry of Justice, the Government and the Parliament should fulfill the measure envisaged in Anti-corruption Strategy - introduction of the "illicit enrichment" criminal offence into the legal system.**	
Indicators	*Legal analyses conducted*	
	Provisions drafted, discussed and adopted	
Progress 	**Situation in 2015** Analyses not conducted, various ideas discussed in the public (e.g. separate law that would deal with "property origin"). Provisions not drafted.	**Current situation** The situation stays the same. Action plan for Chapter 23 of EU integration (2016) does not clearly envisage adoption of "illicit enrichment" concept as a criminal offence, unlike previous AP, developed for National anti-corruption Strategy (2013). Duty to prepare analyses about possibilities of introduction of such concept is transferred to IPA funded project. This analyses is not available yet. Adoption of separate Law on Property Origin, that may have some simmilarities with the concept announced in Prime – minister's expose[11].

Recommendation 9	**Republic Election Commitee (REC) should update information on its web-page, including the Information Directory.**	
Indicators	*REC publishes regularly all accurate and relevant information about its work*	
	Information directory of REC is up-to-date, complete and accurate	
Progress 	**Situation in 2015** Some of information are inaccurate, in particular about finances. Not regularly updated, some mandatory information is missing.	**Current situation** The situation has been improved. Most of the reports about REC financing are published on its website, along with minutes from REC sessions and most of documents adopted at sessions. However, the progress is not sustainable yet, since there was no legal change in transparency rules. Some important documents are still missing. Regarding Information Directory of REC, significant progress has been noted also. Information directory contains all mandatory chapters and it is updated once a year (it should be on monthly level)[12].

[11] Ministry of Justice web-page, requests for information, Anti-Corruption Agency report, Government and Parliament web-page.

[12] http://www.rik.parlament.gov.rs/aktivnosti-sednice.php
http://www.rik.parlament.gov.rs/dokumenta-prihodi-i-rashodi.php

Recommendation 10	**The State Audit Institution (SAI) should focus on strengthening its Department for Performance Audit in order to increase the scope and volume of work of this Department**	
Indicators	*Department fully staffed*	
	Increased number of performance audits	
Progress 	**Situation in 2015** Department not fully populated Only two reports published until now.	**Current situation** State Audit Institution is still not fully staffed. By the April 2018, it had 320 employees instead of 431, envisaged by the plan. There has been, however, improvement since 2015. Two performance audit reports were published in 2016, additional two in 2017, but none till October 2018[13].

Recommendation 11	**The Government should increase the legal powers of the Anti-corruption Agency in the field of control (assets declarations, party financing), as envisaged by the Anti-corruption Strategy's Action Plan and Model Law proposed by the Agency.**	
Indicators	*Powers of the Agency enable its effective work in asset declarations checking - direct access to documents and premises*	
	Powers of Agency enable its effective work in party financing control - direct access to documents and premises	
Progress 	**Situation in 2015** Only two reports published until now. The process of law drafting is still in progress.	**Current situation** Draft new Law on Agency was published by the Ministry of Justice in October 2016, providing greater powers to the Agency in access to the documents and premisses. Ministry of Justice published new draft Law (on Prevention of Corruption) in July 2018. It doesn't contain provision which would enable Agency's direct access to documents and premises[14].

[13] http://dri.rs/documents/annual-activity-reports.181.html
https://goo.gl/yVwS87
[14] https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

Recommendation 12	**The Agency should make all its registers more user friendly (e.g. possibility to sort data from assets declarations) and to make it clear to what extent declarations are accurate. Also, to link all public registers or parts of registers managed by the Agency for easier search of data.**	
Indicators	*An open data register on asset declaration established*	
	An open data register on party financing is established	
Progress 	**Situation in 2015** Registers are not user-friendly and sorting of data from various reports is not enabled.	**Current situation** The situation remains the same[15]. Althought establishing of open data registers is being considered, there are still no results.

Recommendation 13	**The Government should propose and the Parliament should adopt amendments to the laws which would regulate the misuse of office by public officials to promote their parties in election campaigns.**	
Indicators	*Use of public office for promotion in election campaign is regulated more precisely*	
	Use of public office for promotion in election campaigns is discussed in public	
Progress 	**Situation in 2015** None of current laws (on party financing, on Anti-corruption Agency, on election) covers indirect use of public office for the purpose of election campaign. TS produced monitoring reports in 2012 and 2014, which attracted great interest of public.	**Current situation** The interest of public raised further after this topic was included in OSCE/ODIHR report on elections and EC report on Serbia. After five years of continuous Transparency Serbia's pressure on this subject, other CSOs also raised this issue (CRTA, Birodi and other). However, apart from some media and CSOs, there has not been involvement of the authorities or political parties representatives' in this debate.[16] Draft of the Law on Prevention of Corruption (July 2018) does not bring improvements in this area as it includes provisions as the current Law on Anti-corruption Agency[17].

[15] http://www.acas.rs/pretraga-registra/
[16] Legal database; Press-clipping
[17] https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

Recommendation 14	**The Government should amend the Law on Public Information and Media in order to require media outlets to make public details on major financiers and advertisers.**	
Indicators	*A new Media Strategy envisages changes to the law regulating media which would require media outlets to make public details on major financiers and advertisers*	
	Amendments are drafted and adopted	
Progress 	**Situation in 2015** Current (outdated) strategy identifies the problem that was not fixed in Law on Public Information and Media. New strategy is being drafted. Changes are not planned.	**Current situation** After previous Strategy expired in 2016, the process of Strategy drafting was opened twice during 2018. The first version was not accepted by major journalist associations and Government re-opened the process. Current work started in August 2018, and working version contain refference to the need of greater transparency of media ownership. However, it is not predictable whether this issue will be regulated in final version[18].

Recommendation 15	**The Ministry, the Government and the Parliament should change the Law on Free Access to Information of Public Importance in order to allow the Commissioner to initiate misdemeanour procedures for the violation of that law and organize other matters of importance to increase the publicity of authority bodies' work.**	
Indicators	*The Law allows the Commissioner to initiate misdemeanour procedure*	
	Changes determine as an obligation of the proponent of the law and creators of by-laws to ask, during the drafting process , for the Commissioner's opinion regarding provisions that could influence the publicity of the authority bodies' work	
Progress 	**Situation in 2015** Ministry of State Administration is in charge to initiate misdemeanour procedure and Commissioner not. There is no obligation of the proponent of the law and creators of by-laws to ask, during the drafting process for the Commissioner's opinion regarding provisions that could influence the publicity of the authority bodies' work.	**Current situation** The draft changes of the Law are published in March 2018. There is a provision with potentially simmilar effect to this recommendations. It would grant Commissioner authority to issue opinions to the draft laws if there are questions relevant to the exercise of the right to access to information of public importance. However, there is no provision on misdemeanour/oversight powers of Commissioner. Furthermore, draft Law also includes provissions which, if adoped, would reduce the current level of free access to information.[19]

[18] Ministry of Culture and Parliament's web-page; media web – pages. Media and journalist associations. Anti-corruption council reports.
[19] http://www.mduls.gov.rs/doc/rasprave/220318/tekst%20nacrta%20zakona%20sa%20obrazlozenjem.docx ; http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_komentari_za_javnu_raspravu_o_slobodnom_pristupu_informacijama_april_2018.docx

Recommendation 16	**To improve accountability of State Owned Enterprises' directors, the Government should, to the extent to which it is possible, specify the criteria for determining whether a director acted contrary to due diligence, whether he/she was incompetent or negligent in performing his/her duty, and whether there was a (significant) deviation from reaching the main goal of a public enterprise operation.**	
Indicators	*More detailed regulations to establish accountability of SOE directors in place*	
	The Government monitors performance of SOE directors, applying accountability criteria	
Progress 	**Situation in 2015** Provisions of the law are vague. There is no systemic oversight of SOE's performance.	**Current situation** New Law on Public Enterprises was adopted in February 2016. However, provisions on directors' accountability are still vague.[20]

Recommendation 17	**Improved pro-active access to information about state – owned companies. (The Government and the Parliament would amend the Law on Free Access to Information of Public Importance, so that all public companies were required to prepare and publish the Information Booklet and be held accountable if they omit or fail to update the required information).**	
Indicators	*State – owned companies have to publish information booklets*	
	State – owned companies are fulfilling duty to publish information booklet	
Progress 	**Situation in 2015** Duty to publish information booklet exists for small number of SOE. SOE are not publishing information booklet or do not respect fully their duties.	**Current situation** There are no changes in adopted legislation. The March 2018 draft ammendments of the Law on Free Access to Information even envisage to exclude some of the SOEs from the obligation to comply with the Law. On the other hand, those still covered by the Law would have to publish information booklets.[21]

[20] Law on Public Enterprises; Ministry of Economy reports, requests for information.
[21] Law on Free Access to Information of Public Importance; Web-pages, TS analyses, Commissioner for Information reports. http://www.mduls.gov.rs/doc/rasprave/220318/tekst%20nacrta%20zakona%20sa%20obrazlozenjem.docx ; http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_komentari_za_javnu_raspravu_o_slobodnom_pristupu_informacijama_april_2018.docx

II. INVESTIGATION, PROSECUTION AND SANCTIONING OF CORRUPTION OFFENCES

This section presents an analysis of official statistics on the investigation, prosecution and sanctioning of corruption offences over the past 5 years in Serbia[22].

1. ACCESSIBILITY OF STATISTICS

Statistical data on the investigation, prosecution and sanctioning of corruption offences presented in the table below are publicly available at the official web site of Republic Public Prosecutor, within the annual reports of prosecutors' work.[23] Unfortunately, this data are published as a scanned document, thus not in a searchable form.

Statistical data for the reported crime, convicted persons and criminal sanctions sentence pronounced are also available at the official website of the Statistical Department, published based on the statistical data provided by the courts. Data collected by the Ministry of Interior are available only in occasional press statements and annual reports submitted to the relevant committee of the Parliament but these data are not comperable.

Statistical data on investigation, prosecution and sanctioning of corruption offences are also collected by relevant Serbian authotities for the EU monitoring and progress reports, but this data are not available for domestic public.

During the reserch, statistical data for 2017 were missing at the web site of Republic Public Prosecutor, but till end of the research period were published.

[22] The classification of data is based on UNODC's International Classification of Crime for Statistical Purposes (ICCS)http://www.unodc.org/documents/data-and-analysis/statistics/crime/ICCS/ICCS_final-2015-March12_FINAL.pdf and The European Commission's Expert Group on Policy Needs for Data on Crime http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=16410&no=3

[23] http://www.rjt.gov.rs/sr/informacije-o-radu

2. COMPREHENSIVENESS OF STATISTICS

On the side of repression of corruption, data is not fullly transparent nor presented in a comprehensive way. “The judiciary continues to rely on unlinked information and communication technology (ICT) systems to process and manage cases and documents. Serbia is therefore not yet in a position to produce comprehensive statistical data which would facilitate measurement of the system’s performance and help improve management and policy decisions.”[24]

There is still no system which would allow statistical tracking of criminal proceedings. Different data on crime statistics are collected by the law enforcement bodies (Ministry of Interior, prosecutor’s ofices, courts) but there is no unique methodology which would allow to track one case throught all phases of criminal proceedings.

Statistical data on the fight against corruption can be misleading, even when there was no intention to manipulate it, because different methods are used to collect it and reporting is not regular.[25]
For certain corruptive criminal offences statistics are not collected separatly, i.e. criminal offence from the Law on financing political activities (illicit party financing) and the Law on Anti-corruption Agency (fake assets declarations).

Althought there are more corruption related criminal offences in the Serbian Criminal Code (i.e. abuse of office (public office), abuse of position (which includes private office), accepting bribes in connection with voting, abuse in connection with public procurement, etc.), data presented in the table below includes only following selected offences that are compared throuhghout the region: active and passive bribery (there are no disaggregation whether offence is comited by private individual or national or foreign officials), embezzlement, abuse of office, trading in influence and money laundering.

Statistical data are published on yearly basis. For the purposes of this report the last 5 years data are included, but some of them are avialable for earlier years as well.

[24] EU Progress Report for Serbia 2018
[25] Publication: When law doesn’t rule: State capture of the judiciary, prosecution, police in Serbia, Transparency Serbia, CINS and OSEPI http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/when-law-doesnt-rule-State-capture.pdf

Table 1: Enforcement data for corruption offences in Serbia (2013-2017)

Offence	Year	Bribery					Embezzlement		Abuse of functions	Trading in influence	Money laundering
		active	passive	national officials	foreign officials	private	public	private			
Number of opened investigations	2013	25	79				615		3013	11	22
	2014	16	45				/		1561	4	13
	2015	69	181				690		3018	60	22
	2016	95	161				618		3999	31	27
	2017	92	170				598		2310	19	26
Number of formal charges	2013	48	46				105		679	18	56
	2014	32	34				/		262	8	36
	2015	26	50				51		177	5	4
	2016	13	51				42		210/121	0	15
	2017	82	7				378		334	18	253
Number of final convictions	2013	24	47				189		606	12	12
	2014	32	45				/		430	10	20
	2015	34	57				6		368	6	3
	2016	45	50				223		321/272	5	19
	2017	28	42				226		226	10	5
Number of final acquittals	2013	11	10				44		284	3	7
	2014	17	9				/		168	0	9
	2015	11	35				31		202	7	1
	2016	3	14				50		130/212	0	2
	2017	2	4				35		/	3	/
Number of prison sentences through final convictions	2013	12	38				32		264	1	8
	2014	13	36				/		85	8	18
	2015	9	51				50		69	1	3
	2016	14	47				60		195/98	3	15
	2017	7	41				73		92	4	3

ANALYSIS

In general, over the past 5 years, the number of investigation opened for active and passive bribery have increased, but this have not lead to increased number of final convictions, which roughly stayed the same. On the other hand, sanctioning for the offence “abuse of functions” have decreased, largely due to changes in legal definition (exclusion of private sector abuse of office). Having in mind that fight against corruption is one of the Governments’ top priorities since 2012, it is not reflected in incresed number of final convictions and sanctioning. Furthermore, Serbia did not achieve goal set in the 2013th National Anti-corruption Strategy’s Action plan, to raise by 30% number of final convictions for corruption in 2017, compared to 2012.

In previous years, the Government tried to demonstrate a willingness to fight corruption mostly through mass arrests. It is the practice of arresting large numbers of individuals in a single day through unified police operations, even when there are no obvious links between those arrested and the criminal offences they are suspected of. In such arrests, corruption cases are mixed with various other types of crime, mostly economic one. Similarly, cases with no elements of corruption (but some private sector misconduct) are presented to the public as “suppression of corruption” for promotional reasons. While these actions are publicly promoted mainly in political context, there are no publically visible final rulings for this cases.

Public prosecution offices are totally passive when it comes to the investigation of cases affecting interests of those in power or politicaly senzitive cases. Pro-active approach is rearly implemented. There is no progress in punishing high level corruption.

In the structure of reported corruption, dominant offence is still the one with widest definition - “abuse of public office”. Active and passive bribery is significantly lesser reported, while indictements for trading in influence and other corruptive criminal offences (such are abuse in pulic procurements, voters’ bribery, illicit party financing, fake assets declarations) are still rare exception.

2012 changes of the Criminal Code revised whole economic crime section and made distingush between offences abuse of position of responsible official (which occurs in private sector) and abuse of office (which occurs in public sector). These changes of the Code are in force since spring 2013, thus reflected to the certain extent on statistical data and decreased numbers of sanctioning for the offence “abuse of functions”.

Based on statistical data presented in the Republic Public Prosecutor’s annual report for 2017[26], the number of accused (indictments) private individuals is bigger than the number of accused public officials for corruptive criminal offences.

Criminal liability of legal person exists in Serbian legal system since 2008 based on the Law on Liability of Legal Persons for Criminal Offenses. Having in mind statistical data (i.e. in 2017 there were 77 legal pesons reported, in 2016, 98 legal persons reported but only 2 final convictions in 2017) it could be concluded that the Law is not implemented enough and that relevant authorities should put more attention in reveling cases of criminal liability of legal persons.

[26] http://www.rjt.gov.rs/docs/SKMBT_C65218033011140_2.pdf

III. RECOMMENDATIONS

- *Further strengthening of the independence and accountability of the judiciary and creating conditions for free and unselective operation of law enforcement authorities*

- *Police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of judgments) for acts of corruption*

- *The Government should ensure full implementation of existing rules, in particular through the appointment of top officials of public enterprises, public administration and public services, organising of meaningful public debates in a legislative process, and execution of the final decisions of the Commissioner for Information of Public Importance and Personal Data Protection*

- *The Ministry of Justice, the Government and the Parliament should consider legal changes, regarding measures that could best serve the increasing number of reported cases of corruption (e.g., release of liability of participants in the illicit transaction, awards for whistleblowers etc.)*

- *The Ministry of Justice, the Government and the Parliament should fulfil the obligation envisaged by the Anti-Corruption Strategy - introduction of the "illicit enrichment" criminal offence into the legal system*

The European Union is set up by 27 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.