



GRAND CORRUPTION AND TAILOR-MADE LAWS IN SERBIA

T R A N S P A R E N C Y S E R B I A



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TRANSPARENCY SERBIA

March, 2021

Transparency Serbia (TI Serbia) is a non-partisan, non-governmental and non-profit voluntary organisation established to curb corruption in Serbia. The organisation promotes the transparency and accountability of public officials and combats corruption, which is defined as the abuse of power for private interest.

Transparency Serbia is a national chapter and representative of Transparency International in the Republic of Serbia.

Transparency Serbia

Belgrade

www.transparentnost.org.rs



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Transparency Serbia and do not necessarily reflect the views of the European Union.

Every effort has been made to verify the accuracy of the information contained in the report. All information was believed to be correct as of October 2020. Nevertheless, Transparency Serbia cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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Publisher:
Transparency Serbia, 2021.

Print:
Unagraf

ISBN:

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EXECUTIVE SUMMARY

This report is one of the research outputs of the EU-funded project Ending Impunity for Grand Corruption in the Western Balkans and Turkey, which aims to reduce corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo*¹, Montenegro, North Macedonia, Serbia and Turkey. The project seeks to improve governance, transparency and the accountability of the judiciary and democratic law-making. To this end, we look at how state capture is achieved and sustained, highlighting shortcomings in the criminal justice system when handling grand corruption cases, and exposing tailor-made laws created to protect the private interests of a few.

State capture is a key obstacle to the effectiveness of anti-corruption and rule-of-law reforms in the Western Balkans and Turkey. State capture is understood as efforts undertaken by private or public actors with private interests in order to redirect public policy decisions away from the public interest using corrupt means and clustering around certain state bodies and functions, ultimately to obtain financial gain for themselves. The impunity for corruption and the creation of laws to further the private interests of particular groups or individuals against the public interest are considered key ways to explain the existence and sustainability of state capture.

Transparency International defines grand corruption as offences set out in the United Nations Convention against Corruption (UNCAC) Articles 15–25 when committed as part of a scheme involving a high-level public official so that the crime results in a major misuse of public finances or property or severely restricting the exercise of the most basic human rights of a substantial part of the population or a vulnerable group.

Tailor-made laws are defined as legal acts enacted with

¹ *This designation is without prejudice to positions on status and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo* declaration of independence.

the purpose of serving only the interests of a natural person, a legal person or a narrow group/network of connected persons and not the interest of other actors in a sector, other groups of society or the public interest. Although it may appear to be of general application, a tailor-made law in fact applies to a particular matter. As corrupt interests are legitimized through such regulations, legal entities and citizens who are harmed by the provisions do not have the opportunity to obtain protection in court.

Our analysis in this report draws on several sources of information: these are primarily data related to corruption cases and tailor-made laws. We also used previous assessments of corruption, state capture and the rule of law in the region by Transparency International's National Integrity System, the European Commission, the Group of States against Corruption (GRECO) and UNCAC; official documents; media articles; and the specialised literature.

KEY FINDINGS

The judiciary

Serbian legislation does not explicitly recognise the concept of "grand corruption" as defined by Transparency International. The term "high-level corruption" is used, but informally. Most frequently, as shown in the EU Commission's country reports,² high-level corruption is considered in the context of corruption cases under the jurisdiction of the Prosecutor's Office for Organised Crime (POC). Although the two concepts partly overlap, the differences are significant. One is that grand corruption cases involving public officials who are elected directly by the people, such as the president of the Republic of Serbia or members of parliament, are not the competence of this office. Another difference is that the POC and the special departments of the Higher Public Prosecutor's

Offices for the Suppression of Corruption do not have a mandate to deal with all criminal offences with elements of corruption, such as the illegal financing of political parties.

There are several reasons why law enforcement agencies and the judiciary in Serbia cannot achieve better results for the suppression of corruption. Some are related to weaknesses in legal and institutional arrangements. However, the main reason appears to be the failure of key stakeholders in the police and the prosecutor's office to investigate "politically sensitive" cases of corruption without having a clear sign that the most influential politicians will support this action. In some cases, key stakeholders have identified normative or institutional problems in the fight against corruption that are known to decision-makers in government and parliament, but nothing is done to resolve them. Finally, in dealing with corruption, the Serbian judiciary faces problems that are common worldwide, such as the low number of reported cases, the lack of evidence and the absence of witnesses.

The constitution does not provide sufficient guarantees for the independence of judges and prosecutors from politicians. Such guarantees would be stronger and in line with international standards if professional judges and prosecutors who are elected by their peers in a free, transparent election process should make up the majority of the High Judicial Council and State Prosecutorial Council. On the other hand, the current provisions of the Constitution of Serbia do not provide such guarantees, and the current proposal of constitutional amendments envisage solutions that would significantly preserve the influence of politicians through members of these bodies elected by the National Assembly. The implementation of anti-corruption and EU integration action plans is significantly delayed.

The system of judges' and public prosecutors' liability for failure to achieve pro-

² Serbia 2020 Report, Brussels, 6 October 2020, page 26, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

professional and ethical standards is not sufficiently transparent. This prevents members of the public from helping the independent judiciary to resolve problems and provide incentives for those performing with full respect for professional and ethical standards.

Public prosecutors are not obliged to investigate all documented allegations of serious corruption, for example, those made in the media or in the public domain (by politicians, non-governmental organisations and business entities, among others). Since competent bodies are not addressing such issues, the perception of corruption remains widespread, and citizens may suspect that the passiveness of prosecution is related to political and other influences.

Various other public authorities collect information that may indicate corruption, but do not have powers to investigate further. They may inform the public prosecution about such cases, but have no clearly defined legal duty to do so. The Public Prosecutor's Office does not have a mechanism that would provide regular verification of data on possible corruption on the basis of reports from other state bodies, nor the duty to check whether such abuses occurred in other situations where the actors acted similarly.

When the public prosecution service has considered a criminal charge and established that there is no element of corruption or other criminal offence, it informs the person who submitted the charge. However, in most instances, the public prosecutor does not explain the decision that there are no elements for criminal prosecution, which makes it harder to assess whether all relevant documents have been collected and considered. This lack of information is particularly problematic when the reported case is already well known to citizens and refers to potential grand corruption.

The Prosecutor's Office for Organised Crime and the four departments of the higher public prosecutor's offices for combatting corruption are still not fully

equipped according to current plans.

The rules governing the collection and publishing of statistical information on corruption cases are not yet such as to provide all relevant information for monitoring and adequate public scrutiny. Cases of corruption indicated in police statistics of arrests cannot always be linked to the outcome of these cases before the prosecution and courts. In particular, the public lacks information about corruption cases that ended with plea bargaining with a defendant.

Public prosecutors do not inform the public about on-going corruption cases and criminal investigations. However, some cases are announced and discussed in public by politicians (including the president, prime minister and minister of police). This problem of "information leaks" about on-going investigations has been identified but is not adequately addressed.

Law-making

The law-making process in Serbia is not sufficiently transparent and the effects of legislation (and potential benefits of tailor-made laws) are not monitored systematically. This provides fertile ground for tailor-made legislation that supports corrupting interests. The decision-making process is highly centralised at the top of the ruling political party/parties. The public has no access to information about influences on government policies that occur through these channels. The government transforms parties' (or party leaders') decisions into legislative proposals, while parliament acts as a service for executives rather than an institution that thoroughly oversees their proposals and actions.

The Constitution of Serbia also contains the possibility of "bypassing" national legislation through state-to-state agreements which is often associated with credit arrangements. This loophole is used to exclude competition in public procurements and public-private partnerships. Parliament ratifies framework state-to-state

agreements and does not always have full information about how they will be used to conclude subsequent contracts for specific projects. The government's justification for state-to-state arrangements does not contain all the information needed to identify potential gaps and damaging provisions. While some information about benefits is presented, there are no economic analyses of alternative solutions for the same problem.

The constitution and laws do not guarantee that all the government's economic contracts will be published or that publishing is a condition of their validity. In practice, many contracts are not published, particularly when they are based on a state-to-state agreement.

The constitution has general provisions on internal harmonisation of the legal system. However, there are no explicit bans preventing the adoption of "laws for one project" that undermine systemic laws in a respective area. Such laws are in practice tailored to the specific interests of pre-agreed contracting parties.

Public debates are mandatory in the preparation of most new laws and to make significant changes to existing ones. Public discussion could help to identify tailor-made provisions in early stages of the process. However, the rules on public debates are also violated, so in some cases they are not conducted in accordance with the rules. Failure to organise a public debate following the rules is not grounds to challenge the constitutionality of the adopted law. Private interests could be transposed in the tailor-made provisions of bylaws with similar effect as in the laws themselves. Mechanisms for protecting public interest are even weaker in the adoption of the bylaws.

Serbia has lobbying legislation to regulate

influence on the decision-making process by directly interested persons or intermediaries (professional lobbyists). However, the law does not ensure full transparency of relevant information. The government, ministries, MPs, other public officials and public servants, special advisers to ministers and individual members of working groups that write a law have a duty to record information on those who approach them formally about the content of legislation. However, they are not obliged to publish this information. An even greater problem is that informal contacting on the same issues is neither explicitly forbidden nor regulated. An even bigger problem is that there is no duty to keep records of informal contacts and addresses to decision-makers on the same issues. Namely, lobbying that is not performed according to pre-established rules is not explicitly prohibited, nor is the conduct of officials regulated when it does occur.

The Law on Prevention of Corruption has a mechanism for the independent, competent Agency for Prevention of Corruption (until 1 September 2020, the agency's name was Anti-Corruption Agency) to assess potential corruption risks in draft legislation. However, a duty to consult this agency only exists for some laws (those related to areas explicitly mentioned in the Action Plan for Chapter 23). There is no such duty when it comes to bylaws and later stages of the legislative process such as government proposals and parliamentary amendments, where new risks could occur.

Considering all these problems, this report provides recommendations to change the constitution, relevant laws and the conduct of law enforcement authorities (the police, prosecutors and courts), parliament, government, ministries and the Agency for Prevention of Corruption.

INTRODUCTION

This report aims to shed light on some of the most harmful issues for the rule of law in Serbia that are of great importance from the perspective of the country's EU integration. The Republic of Serbia is established as a parliamentary democracy, with the division of power into three branches, and the right of citizens to be informed about the work of public authorities. In practice, the system of checks and balances between the three branches of government as well as mechanisms to ensure accountability do not function as envisaged by the constitution, and citizens' right to information is frequently denied without appropriate legal grounds.

The decision-making process is highly centralised and deinstitutionalised. Influences on public authorities' decisions that are streamlined through political parties that is, the ruling party's (or parties') leaders, are neither transparent nor accounted for. Similarly, other channels of influence are usually not visible either. However, the trails of influence might be identified in some instances – who influenced decision-makers, or rather, in whose favour the influence was exerted – based on outcome, in other words, information on who ultimately benefited from the government's and parliament's decisions. It is therefore not surprising that elements of state capture in Serbia are more frequently recognised in situations where political parties and leaders abuse institutions for their own benefit than when they capture institutions on behalf of influential business people, as identified in previous TI Serbia research in this field.³

The report addresses two aspects of state capture that are relevant in Serbia today and for its European perspective. The first is the most serious form of corruption in which rules are not just violated, but also tailored in a way that legalises the interests of the corruptor, so that state institutions are effectively captured. The tailoring of laws in Serbia is increasingly present in its most apparent form:

³ TI Serbia, "Elements of state capture in Serbia: Case studies 2017–2018", www.transparentnost.org.rs/images/dokumenti_uz_vesti/Elements_of_State_Capture_in_Serbia_executive_summary_eng.pdf
Open Society European Policy Institute, "When the law doesn't rule", October 2018, www.opensocietyfoundations.org/publications/when-law-doesn-t-rule-state-capture-judiciary-prosecution-police-serbia



the adoption of laws that apply to one situation only, to avoid anti-corruption rules set in general legislation. The possibility of passing such laws is partly due to insufficiently elaborated rules governing the legislative procedure, partly due to violations of the rules on democratic consultations in practice. In particular, the absence of substantive public and parliamentary debates on many essential laws and the increasing lack of parliamentary scrutiny of government actions have adverse effects. These effects are expected to be amplified by the composition of the new convocation of parliament, where the government is supported by 243 out of 250 members.⁴ Some mechanisms in the recently adopted Law on Prevention of Corruption and the Law on Lobbying might improve the situation to a certain extent.

The other aspect of state capture that we have addressed in this report is the impunity of corruption, in particular high-level corruption, which enables various forms

of state capture to escape the attention of competent authorities. Furthermore, capturing of the judicial and law enforcement institutions themselves may lead to impunity. Corruption must be dealt with by independent judicial authorities, impartially and in a timely manner, so that society has reasonable assurance that corrupted people will be punished. According to EU observers, national strategic acts and citizens' opinion, high-level corruption is not effectively suppressed. The topic is increasingly relevant in the context of upcoming (and seriously delayed) constitutional reform that should ensure greater independence of courts and prosecution offices from political influences.

Similarly, a track record of curbing high-level corruption appears to be a key criterion for assessing progress in this area of EU integration. Following the unsuccessful implementation of the National Anti-Corruption Strategy (2013-2018) and the Action Plan for Chapter 23 of European Inte-

⁴ www.danas.rs/politika/nova-vlada-polozila-zakletvu-pred-poslanicima-skupstine-srbije/

gration (2016-2018), a revised Action Plan for Chapter 23 was adopted in July 2020, as a key public policy document in fight against corruption.

In numerous cases, high-level corruption is suspected, as it has been reported by investigative media and whistleblowers or indicated in other institutions' reports, but has not been addressed by competent public prosecutors. While the police, prosecutors and courts that are responsible for corruption charges have achieved some results, primarily through a higher number of cases resolved through plea bargaining, the overall effects of the 2016 reform (implemented since 1 March 2018) are not yet clear. The report identifies some weaknesses that must be addressed in order to fight corruption, especially grand corruption, more effectively.

This report is one of the research outputs of the EU-funded project Ending Impunity for Grand Corruption in the Western Balkans and Turkey, which aims to reduce corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia, Serbia and Turkey that is being implemented from November 2018 to March 2021. The project seeks to improve governance, transparency and accountability of the judiciary and democratic law-making.

The objectives of this report are:

- To assess the ability of the criminal justice system to investigate, prosecute and sanction high-level corruption cases in accordance with the law. The assessment is based on international standards as reflected in Transparency International's National Integrity System, GRECO and UNCAC reviews.
- To identify tailor-made laws and signs of captured policy-making and law-making.

This report addresses the specific question of how state capture is achieved and maintained. The analysis identifies the key problems in sanctioning high-level corrup-

tion cases and in legal decision-making process that enable tailor-made laws to be enacted.

Background of the study

This report is one of the research outputs of the EU-funded project Ending Impunity for Grand Corruption in the Western Balkans and Turkey, which aims to reduce corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia, Serbia and Turkey. The project seeks to improve governance, transparency and the accountability of the judiciary and democratic law-making. To this end, we look at how state capture is achieved and sustained by highlighting shortcomings in the criminal justice system when handling grand corruption cases, and exposing tailor-made laws created to protect the private interests of a few.

Our research is combined with evidence-based advocacy campaigns to push for change in each country, which was based on documents in each country. In addition to a regional report, the project's research outputs include seven national reports and two databases. First database contains descriptions of corruption cases⁵ in the countries of the region, as well as cases containing elements of state capture. These cases illustrate the inability of each country's judicial systems to deal with political corruption or weaknesses they show in such cases. The second database contains examples of tailor-made laws and other regulations⁶, that is, laws that serve to gain and hold onto privileged benefits and in doing so make state capture legal. These two databases are not exhaustive. They not contain data on all cases of a certain type, that is, there are other cases of grand corruption and regulations that were adopted to satisfy private interests in addition to those already mentioned. A qualitative approach was used to develop the databases, so

cases of corruption and laws are presented to enable an easier understanding how weaknesses in the judicial system occur and how the impact on the adoption of laws is achieved.

This project builds on Transparency International's previous work in the Western Balkans and Turkey. In 2014 and 2015, Transparency International conducted in-depth research into anti-corruption efforts⁷ in Albania, Bosnia and Herzegovina, Kosovo*, North Macedonia, Montenegro, Serbia and Turkey, and found that state capture was a consistent problem across all of the countries. Subsequent research on cases of state capture in specific sectors⁸ of each country allowed us to understand better where capture takes place and what its characteristics are. Now, by analysing how judicial systems deal with grand corruption cases and how undue influence in law-making results in tailor-made laws, we can answer the question of what makes that state capture possible.

After the research, we have continued to work on implementing the recommendations for reforms in order to effectively fight corruption and strengthen the rule of law throughout the region.

During the project, we have continued to monitor and advocate for implementation of the recommendations given in the 2015 National Integrity System Assess-

ment⁹ and subsequent research project.¹⁰ TI Serbia has regularly updated key recommendations for combating corruption, delivered to the relevant EU authorities (for example, inputs for preparation of the EU's annual progress reports). It has also publicly promoted key findings from the EU's annual progress reports and bi-annual non-papers, and TI Serbia's comments on the fight against corruption.

In June 2020, after the 2020 parliamentary and local elections, TI Serbia drafted a proposal entitled "Priorities in the fight against corruption in Serbia 2020–2024 and main tasks for 2020/2021"¹¹ for the new government and parliament. The proposal was submitted to all parliamentary groups.

TI Serbia has used all available opportunities to influence the content of policies and laws that are relevant to solving the problems addressed in this report. It has drawn up proposals and initiatives to improve the following key documents: the Action Plan for Chapter 23 within the review process¹², the Law on Lobbying¹³, the Law on Prevention of Corruption,¹⁴ laws on election conditions¹⁵, the Law on Investigation of Property Origin and Special Tax¹⁶, draft constitutional amendments related to the judiciary¹⁷ and the Law on Public Procurement.¹⁸

In addition, we have used concrete exam-

⁷ https://images.transparencycdn.org/images/NISWBT_EN.pdf

⁸ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Elements-of-State-Capture-in-Serbia-eng-A5.pdf

⁹ Strengthening National Integrity Systems in the Western Balkans and Turkey, and tracking developments of anti-corruption efforts, project funded by the European Commission, May 2014 to November 2017 and December 2017 to August 2018

¹⁰ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Elements-of-State-Capture-in-Serbia-eng-A5.pdf

¹¹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Prioriteti_u_borbi_protiv_korupcije_u_Srbiji.pdf

¹² https://transparentnost.org.rs/images/dokumenti_uz_vesti/Komentari_na_Prvi_nacrt_revidiranog_Akcionog_plana_zu_Poglavlje_23_-_februar_2019.pdf

¹³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Amandmani-na-Predlog-zakona-o-lobiranju---Transparentnost-Srbija-oktobar-2018.pdf

¹⁴ https://transparentnost.org.rs/images/dokumenti_uz_vesti/dopis_narodnoj_skupstini_povodom_predloga_zakona_o_sprecavanju_korupcije.pdf

<https://transparentnost.org.rs/images/stories/inicijativeianalize/poredjenje%20predlog%20zakona%20i%20nacrt%20iz%20februara%202019%20sa%20TS%20komentarima.pdf>

https://transparentnost.org.rs/images/dokumenti_uz_vesti/Op%C5%A1ti_komentari_i_sugestije_u_odnosu_na_Nacrt_zakona_o_spre%C4%8Davanju_korupcije_kao_celinu_obrazac.docx.pdf

<https://transparentnost.org.rs/images/stories/inicijativeianalize/Komentari%20i%20sugestije%20na%20Nacrt%20zakona%20o%20sprecavanju%20korupcije%20iz%20februara%202019.pdf>

<https://transparentnost.org.rs/images/stories/inicijativeianalize/Amandmani%20TS%20na%20nacrt%20zakona%20o%20sprecavanju%20korupcije%20februar%202019%20drugog%20poglavlje%20zakona.pdf>

https://transparentnost.org.rs/images/dokumenti_uz_vesti/%D0%9A%D0%BEmentari_TS_-_Nacrt_zakona_o_sprecavanju_korupcije_III_deo.pdf

¹⁵ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_dopis_zu_poslanike_i_predlog_amandmana_-_C4%8Detiri_antikorupcijska_i_izborna_zakona.pdf

¹⁶ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Nacrt_Zakona_o_utvrđivanju_porekla_imovine_i_posebnom_porezu_-_komentari_TS.pdf

¹⁷ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Izmene_Ustava_komentari_TS_mart_2018.pdf

¹⁸ https://transparentnost.org.rs/images/dokumenti_uz_vesti/Komentari_i_predlozi_za_dopunu_predloga_ZoJN.pdf

⁵ <https://www.transparency.org/en/projects/grand-corruption-western-balkans-and-turkey>

⁶ Ibid

ples to illustrate harmful practices in the preparation of laws (the absence of public debates and the adoption of *lex specialis*) and the failures of the prosecution and other bodies to investigate cases of possible corruption.

Methodology and definitions

State capture is a key obstacle to the effectiveness of anti-corruption and rule-of-law reforms in the Western Balkans and Turkey. State capture is understood as efforts undertaken by private sector actors, as well as public sector actors with private interests in order to redirect public policy decisions away from the public interest, which they should serve. At the same time, they use corrupt means and strive to get functions and gain influence in state bodies, in order to eventually obtain financial gain for themselves. Based on this understanding, the impunity for corruption and the creation of laws to further the private interests of particular groups or individuals against the public interest can be considered key factors enabling the emergence and sustainability of the phenomenon of the state capture.

Our analysis in this report draws on several sources of information: primary data collected on corruption cases and tailor-made laws; previous assessments of corruption, state capture and the rule of law in the region that were formulated in the framework of the National Integrity System Study, the European Commission's reports, GRECO and UNCAC; official documents; media reports; and the specialised literature.

Data on corruption cases were collected using requests for free access to information sent to the Prosecutor's Office for Organised Crime, the Court of Appeals in Belgrade, special departments of the Higher Public Prosecutor's Office for Suppression of Corruption, analyses of published data (for example, annual reports of the Republic Public Prosecutor's Office,

database of the Court of Appeals in Belgrade and media articles) and interviews. Data on tailor-made laws were collected through desk research (database of regulations, the Official Gazette, parliament's website and media articles) as well as through free access to information and interviews.

Our collection of data on cases and laws covers the last 12 years which has enabled us to monitor any variations that can be put in the context of changes in government after the elections. The information on corruption cases and tailor-made laws in the report were collected from January 2019 to April 2020 and updated in October 2020. The selection of corruption cases followed three criteria. The first was to include any corruption cases that match Transparency International's definition of grand corruption¹⁹. Transparency International defines grand corruption as offences set out in UNCAC Articles 15–25 when committed as part of a scheme involving a high-level public official and comprising a significant misappropriation of public funds or resources, or severely restricting the exercise of the most basic human rights of a substantial part of the population or of a vulnerable group. However, since such a legal definition presents limitations for the exploration of a complex political phenomenon, we added two further selection criteria: first, there should be cases where the lack of decision-making independence, autonomy and impartiality in the judiciary can be suspected; and second, the case should indicate the possibility of capturing the state. Indicators for considering a particular case, as entry points for a captured country include:

- when a member of parliament or other official authorised to participate in drafting of laws or acts of public policy is involved in such capacity in criminal activity
- when a top-level decision-maker of a regulatory body is involved in such capacity in committing criminal offences

- when the suspected criminal offences involve a public official who obtained his/her position through a revolving-door situation
- when the conduct in any of the above three categories serves the interest of a legal person or a narrow group/network of related parties and not the interest of all or most other members of a sector, social groups or the public interest
- cases linked to tailor-made laws

All three criteria have in common the involvement of at least one public official who has the power to influence the drafting or change of public policies and regulations. In most cases, such public officials have held roles of high responsibility in state-level institutions such as ministries. However, the political reality of the Western Balkans and Turkey is characterised by the power of political parties and influential party members, so we have also included in the sample corruption cases involving powerful mayors or other local authorities.

Tailor-made laws are defined as legal acts enacted with the purpose of serving only the interests of a natural person, a legal person or a narrow group/network of connected persons and not the interest of other actors in a sector, groups of society or the public interest. Although it may appear to be general legal acts, the main purpose of tailor-made law is to create the desired effect in certain cases. Since they have the form of a law, the consequences of such acts cannot be disputed in court, because corruption is already legalised. Based on this definition, the following criteria can be used as indicators that laws may potentially be tailor-made: who is behind the enactment of the law or the content of some of its norms, what are the irregularities observed in writing, the enactment or adoption of the law, who benefits from the law or who has been harmed by its application.

Based on their purpose, we observed three types of tailor-made laws: 1) laws that lead to the reasserting control within a sector, industry or to the protection of certain privileges; 2) laws that lead to dismissal of unwanted officials or the appointment of suit-

able public officials and officials; 3) laws that diminish the power of checks and balances on institutional power, whether by reducing capacity, oversight powers, preventing perpetrators from being held accountable for breaches of regulations, or weakening the ability of the media and civil society organisations to exercise effective oversight.

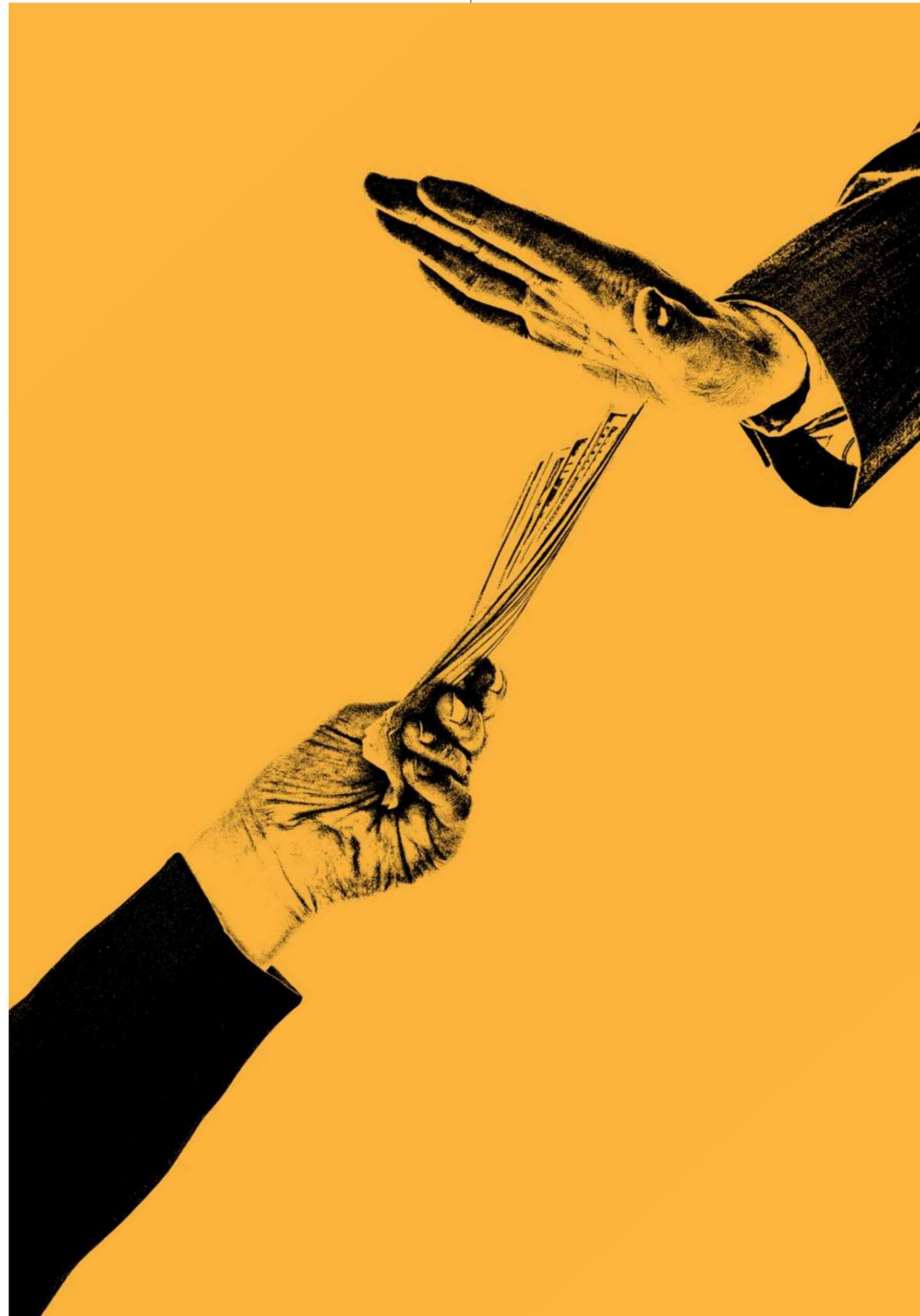
Far from providing a fully comprehensive picture of the situation, this report offers a qualitative approach. Transparency International's branches and partners in the region have done everything they can to identify grand corruption cases and tailor-made laws and gather detailed information about them. The biggest problem in assessing potential grand corruption cases that have reached the judiciary is that a very small amount of information is available online and without sending special requests to access information. The Ministry of the Interior publishes brief information making data on the suspects anonymous. Public prosecution offices and first instance courts do not publish indictments or even short summaries of pending cases. Therefore, we had to try to collect data using requests for free access to information. Although we received most of the requested documents (the Prosecutor's Office for Organised Crime cooperated particularly well), the data from indictments and verdicts in corruption cases did not provide answers to all our questions. Only some of the indictments contain precisely determined data on illegally obtained profit, which is crucial for the qualification of certain criminal offences. It is even rarer to see clearly how much damage was done to public resources by committing corrupt crimes. Similarly, information about how the case was identified, that is, whether it was done by the police, inspection, witness or the public prosecutor, is usually undisclosed. The research was hampered by a complete change in the database of the Court of Appeals in Belgrade, which occurred during the research phase of this project, so a large part of the work had to be repeated.

There is a specific problem with obtaining

¹⁹ <https://www.transparency.org/en/corruptionary/grand-corruption>

further information on high-profile cases of suspected corruption reported by the media. In fact, the competent prosecutor's offices often responded by asking us to specify which criminal case we had requested information about, although it was clearly stated in our requests that we only asked for information on whether prosecutors had taken any action on the case described in the media and for a document to be provided. This could indicate that the public prosecutor's offices did not take any action on these cases. As most media stories are based on insider information that is protected by journalists, it was not always possible to collect additional data that could be useful in case studies other than what the media had already published.

Data on corruption prosecutions published by the police, prosecutors and courts are not comparable, as they are stored using different parameters. Information is not always reported for the same time periods, which makes comparison difficult. When published, data are often presented together for corruption and economic crimes, which creates a false impression of the general public about the frequency of criminal prosecution of corruption. The Republic Public Prosecutor's Office still publishes its annual report as a scanned document, so it is not user-friendly, while the special departments of the Higher Public Prosecutor's Office for Combatting Corruption do not publish their reports at all, even though they are prepared for each quarter. As a rule, the first-instance verdicts are not available except those rendered on appeal.



The main problem with identifying tailor-made laws is that the interests of the final beneficiaries cannot always be determined during the law-making process. This is related to the fact that there is no clear obligation to state all of those who influenced its content in the explanation of the bill.

The Law on Lobbying, which has been in force since August 2019, has not brought any changes in practice in this regard. In addition, there is no practice of monitoring the effects of enactment of adopted law, i.e. to whom it has brought the most benefits

Data on the individuals and companies that influenced the adoption of a law are not usually available, even throughout requests for free access to information, because such information is not collected. Before the adoption of the Law on Lobbying, there was even no obligation for public officials and institutions to track individuals and companies who addressed them in connection with the drafting of general acts. In the period from August 2019 until the publication of this report, there was no visible improvement in this area.

The availability of data on the process about the conclusion of interstate agreements, one of the most frequent types of tailor-made laws in Serbia, is even lower than the ordinary laws. Their ratification does not require a mandatory public debate during the drafting phase of the law, nor is it possible to change anything in such acts through amendments, at the stage when the agreement reaches the Assembly for approval.

FINDINGS AND DISCUSSION

THE JUDICIARY

Grand corruption in the Serbian legal system

Serbian legislation does not explicitly recognise the concept of grand corruption as defined by Transparency International. Some elements that distinguish “grand” from “ordinary” corruption may be recognised in the criminal code, which provides for higher prison sentences when the illicit gain or damage is above a certain threshold, and in rules governing suppression of corruption that provide a special prosecutorial unit to investigate the corruption of some high-level public officials.

The term “high-level corruption” is used informally, although it is not mentioned in the laws. This term occurs frequently in the EU Commission’s country reports²⁰ and in statements by Serbian officials, including the public prosecutor.²¹ It is considered in the context of corruption cases dealt with by the Prosecutor’s Office for Organised Crime (POC). Although the concepts of grand corruption and high-level corruption, which is colloquially used in Serbia, partly overlap, the differences are also significant. Some grand corruption cases from the TI’s definition would not fall within the competences of the Prosecutor’s Office for Organised Crime. This may be because the perpetrator is not covered by the list of people under the Prosecutor’s Office for Organised Crime responsibility, for example, public officials who are elected directly by the people (such as members of parliament and the president of the republic).²² Another reason would be the

²⁰ Serbia 2020 Report, Brussels, 6 October 2020, page 26, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

²¹ www.novosti.rs/vesti/drustvo/935769/intervju-zagorka-dolovac-potkopavaju-tuzilastvo-licnih-interesa

²² According to Serbian legislation, the decision on which prosecution office will investigate a case and subsequently which court will hold the trial is based on the type of criminal offence, the public function of the perpetrator, the existence of organised crime elements, and in some instances the value of the illicit gain, damage or bribes.

legislator’s failure to assign POC all corruption-related offences (for example, a criminal offence of illegal political party financing). Vice versa, only a few cases dealt with by the Prosecutor’s Office for Organised Crime would come under the TI definition of grand corruption. Namely, this office deals with cases of abuse and bribery by certain perpetrators (such as directors of state-owned companies) even if the value of the bribes or damage is insignificant or impossible to determine.

The Serbian Criminal Code provides for the harshest prison sentences if the illicit gain is over 1.5 million Serbian dinars (approximately €12,500), while the TI definition of grand corruption refers to significantly higher amounts. Consequently, it is clear that the concept of grand corruption, as TI sees it, is not recognised in the criminal code. Serbian legislation could benefit from introducing this concept as it may lead to higher prison sentences and a longer statute of limitation for the most damaging cases of corruption.

Corruption offences

Between 2005 and 2014, Serbia made many, mostly useful changes in regulations, based on the recommendations of the Group of States against Corruption (GRECO), a special mechanism of the Council of Europe. The recommendations influenced amendments to the criminal code and improved regulations on the financing of political parties and officials and public servants.²³

The current Criminal Code does not mention the term corruption at all, unlike the previous one that was valid from 2001 to 2006. However, the previous law did not contain a general definition of corruption. The term “corruption” appeared in the title of the chapter “Criminal Offences against Corruption” and in the title of individual criminal offences.²⁴ Other regulations do

include definitions of corruption. The Law on the Anti-Corruption Agency (2008 – 2020) defines corruption as “a relationship based on the abuse of official or social position or influence, in the public or private sector, in order to gain personal gain or benefit for another.”²⁵ The current Law on Prevention of Corruption (in force since 1 September, 2020) provides a slightly modified definition: “corruption is a relationship which occurs when a public office, social status or influence is used for acquiring personal benefits for oneself or another.”

Some corruption-related criminal offences are identified in the Criminal Procedure Code. Since 2009, special provisions have been included on the procedure for the criminal violations of organised crime, corruption and other grave criminal offences. One provision refers to special ways of proving certain criminal offences.²⁶ The 2009 amendments extend the measures that were initially designed (in 2002) to detect organised criminal groups to criminal acts of corruption in which organised crime groups do not participate. The following criminal offences were initially included in this list in the code: abuse of office (Article 359), influence peddling (Article 366), soliciting and accepting bribes (Article 367) and bribery (Article 368).²⁷ All the listed offences are in the criminal code chapter entitled “Offences against official duty”. The list of criminal offences that could be committed in connection with corruption, according to the current criminal code also includes: violation of law by a judge, public prosecutor or his deputy (Article 360), dereliction of duty (Article 361), unlawful collection and payment (Article 362), spending funds from the budget for a purpose other than designated (Article 362a), fraud in service (Article 363), embezzlement (Article 364), unauthorised use (Article 365) and revealing of an official secret (Article 369). Several corruption offences are defined in

²³ <https://transparentnost.org.rs/index.php/sr/aktivnosti-2/naslovna/9887-kako-da-srbija-iskoristi-greco-preporuke>

²⁴ www.yucom.org.rs/wp-content/uploads/2015/02/1421664191_GS_jacanje-pravosudja-WEB.pdf, page 12

²⁵ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 18

²⁶ Ibid.

²⁷ Ibid.

other chapters. These include: giving and accepting bribes in connection with voting (Article 156), which belongs to the group of criminal offences against electoral rights; violation of the right to employment and during unemployment (Article 164), which belongs to the group of criminal offences against labour rights; and construction without a building permit (Article 219a), which belongs to offences against property.²⁸

In addition to those listed here, there are many other criminal offences related to corruption in the criminal code, notably: abuse of position by a responsible person (Article 234), misfeasance in public procurement (Article 234a) and abuse of authority in economy (Article 238), which all belong to the group of criminal offences against economic interests.²⁹ In addition to the above, this chapter also contains the criminal offences: abuse of trust in performing economic activity (Article 224a) and abuse in the privatisation process (Article 228a). Changes in the section on economic crime were identified as progress by the EU and GRECO.³⁰

Some criminal offences with corruption elements are not recognised in the criminal code but are prescribed in other laws. Among them are offences of failure to report assets, or giving false information about the assets, which is referred to in Article 72 of the Law on the Anti-Corruption Agency (Official Gazette of the Republic of Serbia, nos. 97/08, 53/10, 66/11-US and 67/13-US) and an unnamed criminal offence under Article 38 of the Law on Financing Political Activities (Official Gazette of the Republic of Serbia, nos. 43/2011 and 123/2014).³¹ The Companies Law (Official Gazette of the Republic of Serbia, nos. 36/11, 99/11, 83/14, 5/15, 44/18, 95/18 and 91/19) prescribe some

criminal offences: giving a statement of untrue content (Article 581), concluding a legal transaction or taking action in case of personal interest (Article 582), violation of the duty to avoid conflicts of interest (Article 583) and violation of the duty of the representative to act in accordance with restrictions on the power of attorney (Article 584).³²

Problems related to criminal offences of corruption

The current criminal code does not contain a separate chapter for all criminal acts of corruption, which makes it challenging to monitor the situation in this area.³³ An additional problem is that strategic acts recognise some crimes as corrupt, but not all, and consider various types of economic crime along with corruption. For example, the Revised Action Plan for Chapter 23³⁴ of Serbia's EU integration mentions as an example of progress in the fight against corruption the adoption of extensive amendments to the criminal code in 2016. The amendments mostly apply to the chapter on criminal offences against economic interests.³⁵ The outcome is unequal treatment of corruption offences when it comes to criminal prosecution and confusion in statistics on the latter.

The Republic of Serbia's criminal legislation still does not contain the criminal offence of illicit enrichment (based on UNCAC, Article 20), given that it "may be contrary to the fundamental principles of criminal law and the principles of individual responsibility of the offender."³⁶ Transparency Serbia proposed the introduction of this offence.³⁷ If the proposal is accepted, any "official person" would be



criminally liable within the meaning of the criminal code (potentially any public sector employee). With such incrimination, it might be possible to try to investigate many of the potential corruption cases that are currently beyond the reach of the prosecution.³⁸

Based on the proposal of Transparency Serbia, and given the nature of this crime, those who previously held the status of a public official would also be liable. The first step in determining criminal liability would be to identify an official with property of great value. Then, the competent authority (for example, the Tax Administration, Public Prosecutor's Office or Agency for Prevention of Corruption) would ask the person to indicate the legitimate sources of income used to acquire the assets in question or any other mode of acquisition (e.g. a legacy, gift or loan).³⁹

The New Law on Investigation of Property Origin and Special Tax⁴⁰ (2020), which will be in force from March 2021, provides for a similar mechanism. A special unit of the Tax Administration will be empowered to ask for information on the origin of prop-

erty if someone's asset value increases by over €150,000 during three consecutive years. Unless there is evidence of legal income, the property may be taxed at the 75% rate. However, this law does not distinguish between office-holders and other citizens, the elements on the basis of which it is chosen who will be controlled are considered secret, and therefore there is no guarantee that potential participants in corruption will be subject to control.

The definitions of several crimes need to be improved. For the offence of active bribery, Transparency Serbia proposed that criminal liability should be established for a person who gives or offers a bribe to an official, as well as for the intermediary, and in cases if the bribe was offered or given to influence the decision of an official who is not obliged or prohibited from performing an official action or is not prohibited from deciding in a certain way.⁴¹ Currently it is not possible to prosecute individuals for bribery, for example, a person who bribes a member of parliament to vote for a particular proposal. Every member of the parliament is free to decide to vote for or

²⁸ www.yucom.org.rs/wp-content/uploads/2015/02/1421664191_GS_jacanje-pravosudja-WEB.pdf, page 12

²⁹ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 18

³⁰ <http://europa.rs/key-findings-of-the-2018-report-on-serbia/?lang=en>

³¹ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 21

³² www.dri.rs/upload/documents/Publikacije/PACS%20-%20Istraga%20i%20procesuiranje%20krivicnih%20dela%20korupcije%20identifikovanih%20kroz%20revizorske%20izvestaje.pdf, page 13

³³ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 18

³⁴ www.mpravde.gov.rs/tekst/30402/revdirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php

³⁵ www.mpravde.gov.rs/tekst/30402/revdirani-akcioni-plan-za-poglavlje-23-22072020.php, page 128

³⁶ Ibid.

³⁷ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 25

³⁸ For example, this provision might be beneficial in investigation of cases like that of the former education minister, former geography professor and director of the state primary school who acquired capital to establish the first private gymnasium and the first private economics school in Serbia, as well as the first private gymnasium in Montenegro, www.istinomer.rs/akter/mladen-sarcevic/

³⁹ Ibid.

⁴⁰ www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2019/3199-19-%20Lat.pdf

⁴¹ Ibid., page 21

against a proposal or not to vote at all, and therefore the bribe would not be directed at an action that the deputy must or must not perform. The amended incrimination based on the TI Serbia proposal would include other cases of bribery connected with decision-making based on discretionary powers.⁴²

It would be particularly beneficial to investigate potential corruption in the instances discussed in more detail in the chapter “Tailor-made special laws” of this report, as such laws were proposed and adopted by members of collective state bodies who used their discretionary powers. Transparency Serbia also proposes the addition of a new enhanced basis for acquitting participants in corruption, to allow for more frequent reporting of these crimes. According to this proposed amendment, the court would be obliged to acquit a bidder/bribe-giver who reports the crime before it is discovered, but only in cases where the offence was committed at the request of an official or after the official did not perform a required official action within the prescribed time. By adopting these changes, the state would give a positive signal to citizens who have direct knowledge of offences of corruption to report such offences and offenders to the prosecution.⁴³

The criminal offence described in current Article 101 of the Law on Prevention of Corruption (previously Article 72 in the Law on the Anti-Corruption Agency) is “failure to report assets, or giving false information about the assets”. An important element of this crime is the intention of public officials, that is, the goal they want to achieve when they conceal information about their assets. This intention is not easy to prove in court proceedings, even when it is evident that the official has violated the law.⁴⁴ Former officials cannot be held accountable for this crime at the moment, although they have a duty to report

property after leaving office. Hence, there is no justifiable reason to excuse them from criminal responsibility for this act, simply because they committed it after leaving the office.⁴⁵

The criminal offence of bribery in voting has long been prescribed but is rarely prosecuted. However, suspicions are widespread about the prevalence of this phenomenon in electoral processes. Improvements are needed in implementation and in the legal norm. In addition, it was noted that there are frequent violations of other rules of the election procedure. In this criminal act, it would be useful, based on the proposal of TI Serbia, to prescribe a penalty for those who check whether citizens voted as agreed.⁴⁶ There should be appropriate incentives for bribed voters to report such a crime.⁴⁷

The definition of the (unnamed) offence of the Law on Financing Political Activities from 2011 must be improved. Intentions of the perpetrators of this crime, as it is already said, are usually different from those for which they are incriminated. Hidden donors intend to influence decision-making of the state bodies through the political entity that they contribute to. Political parties intend to raise the funds needed for their activities. In both cases, concealment of the source and amount of funding is just a way or means of achieving the goals, and not the purpose of these activities.⁴⁸ The same criminal offence stipulates the punishment for those who discriminate against or threaten political parties’ donors. However, similar discrimination may affect people who refuse to do a service to a political party but the perpetrators could not be punished according to the current norm. In addition, providers of services to political entities may be endangered in the same way as donors.⁴⁹

Prescribing the sentence for most serious forms of corrupt crimes is problematic

due to an undifferentiated penal policy. The most difficult form, for example the offences in the criminal code of abuse of office (Article 359) or violation of law by a judge, public prosecutor or his deputy (Article 360), exists when the value of the acquired property benefit exceeds RSD1.5 million (€12,500), with a potential 2 to 12 years’ imprisonment. The basic type of this criminal offence could result in a prison sentence from 6 months to five years, and the aggravated form (illicit gain of over RSD450,000 [€4,000]) from one to eight years. However, even if the crime involves a significantly higher gain (such as €2 million) this abuse cannot be punished more severely. Similarly, five years’ imprisonment is the harshest sentence possible for an abuse of office that involved a small benefit for the perpetrator, but brought serious damage to the budget or human rights.

In many cases it can be difficult to identify a corruption offence as particularly harmful and to impose an appropriate punishment accordingly. This is because in some cases it is impossible to fully determine the value of the harm or illegal benefit. An act of corruption may greatly harm the budget. However, a corrupt act may also cause minimal harm to the budget and a small benefit to a large number of people and firms, but its consequences may not be fully measurable at the time the prosecution is undertaken. For example, a lawsuit against the former director of the public enterprise Railways of Serbia and his associates recently ended with a verdict of acquittal. The case was based on the accusation of abuse of official position and damage to the public company by spending €1.2 million on six diesel electric locomotives from Slovenian Railways and 10 diesel vehicles from the Swedish company Sweden Rail. This amount did not include the costs of buying old locomotives, which was of questionable technical correctness.

INSTITUTIONAL FRAMEWORK OF THE JUDICIARY AND PROSECUTING AUTHORITIES

Specialised bodies for the suppression of organised crime

The Prosecutor’s Office for Organised Crime (POC) has been active since 2003. The authority and activities of this office in Serbia have been regulated by the Law on the Organisation and Competences of State Bodies in the Suppression of Organised Crime, Terrorism and Corruption, which was first adopted in 2002. The current version of this law was adopted in 2016 and last amended in 2018. The Prosecutor’s Office for Organised Crime (POC) files indictments with the Special Department of the Higher Court in Belgrade. The Counter-Organised Crime Service handles the most difficult cases of financial crimes, crimes against duty and criminal offences with elements of corruption.⁵⁰ POC is managed by a prosecutor appointed according to the general rules for prosecution offices. Candidates for POC posts should have experience and knowledge of organised crime and corruption cases.⁵¹ The head of the Counter-Organised Crime Service is appointed by the interior minister, following the suggestion of POC.⁵² The head of the Special Department of the Higher Court in Belgrade is appointed by the president of that court for a four-year term and is selected from judges assigned to the department. Judges are allocated to the special department for six years, on their written approval. The High Judicial Council may assign other judges to the department exceptionally for the same period. Second instance cases are considered by the Special Department of the Court of Appeals in Belgrade, and the appointment procedure is similar to that in the High Court.⁵³ Salaries and other benefits for employees of special depart-

⁴² Ibid.

⁴³ Ibid., page 22

⁴⁴ Ibid., page 23

⁴⁵ Ibid., page 24

⁴⁶ Ibid.

⁴⁷ Ibid., page 25

⁴⁸ Ibid., page 27

⁴⁹ Ibid., page 28

⁵⁰ Financial Investigation Strategy for the Period from 2015 through 2016, proposal, page 7, <https://mpravde.gov.rs/en/vest/8554/financial-investigation-strategy-for-the-period-from-2015-through-2016-proposal.php>

⁵¹ Law on the Organisation and Competences of State Bodies in the Suppression of Organised Crime, Terrorism and Corruption, Article 5.

⁵² Ibid., Article 6

⁵³ Ibid., Articles 7 and 8

ments in POC and courts (but not in police departments) are stimulative (at least a double salary and a one-third increase in service length). It is envisaged that the legal rules will be elaborated by the government's act⁵⁴ (not adopted yet). POC may also establish a service for financial forensics.⁵⁵

Courts and judges

The institutional arrangements for the judiciary are presented in the Annex of this report.

The EU Progress Report states that the current constitutional and legislative framework leaves room for undue political influence that affects the independence of the judiciary.⁵⁶ Constitutional amendments are needed on the composition and method of election of members of the two councils (the High Judicial Council and the State Prosecutorial Council), and allowing for judicial review of dismissal decisions. This would strengthen the independence, representativeness and hence the legitimacy of these bodies.⁵⁷

The report of the EU and Council of Europe notes that the current framework is "one in which the appointment and promotion... is politicised... resulting in a serious threat to the necessary independence and impartiality of both branches." This creates a risk of undesirable influence on the conduct of judges, whether directly or in the form of pre-emptive caution in dealing with cases that affect the interests of politicians or those whose interests they wish to protect.⁵⁸ That is why in the Inter-

im Compliance Report for Serbia (2019), GRECO pointed out that "no change had occurred in the institutional set-up for the High Judicial Council (HJC) and the concerns expressed in the Evaluation Report remained valid."⁵⁹ As a result of this concern, GRECO recommended changing the composition of the High Judicial Council and excluding the National Assembly from the election of council members; ensuring that at least half the council's members are judges elected by their peers; and abolishing the ex officio membership of representatives of the executive and legislative powers (Recommendation IV).⁶⁰ Even though the National Judicial Reform Strategy for the period 2013 to 2018 noted that the constitution needed to be amended to implement these recommendations, deadlines have not been met.⁶¹ New National Judicial Development Strategy for the period 2020-2025 notes that "... the process of amending the constitutional framework in the field of justice ... has begun in the previous period ..." and predicts that "its completion and adequate implementation will be the biggest challenge of the new Strategy."⁶² The latest GRECO review (October 2020) rates the level of compliance with recommendations in Serbia as "globally unsatisfactory".⁶³

Prosecutors

According to the EU and Council of Europe report, the legal framework for appointment "represents a serious threat to the independence and impartiality of prosecution."⁶⁴ The National Judicial Reform Strategy and action plans for its im-

plementation envisage independent functioning of the State Prosecutorial Council. The indicator would be "legally strengthened independence and competences of the High Judicial Council and State Prosecutorial Council." Independent functioning should be achieved through constitutional changes so that the constitutional framework is amended "in the direction of exclusion of the National Assembly from the process of appointment of court presidents, judges, public prosecutors/deputy public prosecutors and members of the High Judicial Council and State Prosecutorial Council changes in the composition of the High Judicial Council and State Prosecutorial Council aimed at excluding the representatives of the legislative and executive branch from membership in these bodies."⁶⁵

In its Interim Compliance Report for Serbia (2019), GRECO pointed out that the draft constitutional amendments "fall short of the requirements of the recommendation and of the government's own commitments as outlined."⁶⁶ The Second Compliance Report for Serbia (SPC), GRECO Recommendations states that "the draft constitutional amendments would improve significantly the current situation of the composition of the SPC", but stress but the need to exclude the National Assembly from the whole process of electing SPC members and ex officio members of the executive power from the SPC, which has not been planned so far.⁶⁷

As a result, GRECO further recommended changing the composition of the State Prosecutorial Council, in particular by excluding the National Assembly from electing the council's members; ensuring that a substantial proportion of the members are prosecutors elected by their peers; and abolishing the ex officio membership

of representatives of executive and legislative powers.⁶⁸ The deadlines for constitutional changes prescribed in the Action Plan for Chapter 23 have not been met⁶⁹ and the Revised Action Plan for Chapter 23 envisages the fourth quarter of 2021 as the deadline for completing the procedure for amending the Constitution in the part concerning the judiciary.⁷⁰

Institutional arrangements for prosecutors are presented in detail in the Annex of this report.

Police

In the Ministry of the Interior, there is a Service for Combating Organised Crime within the Criminal Police Directorate. One of the organisational units of this service is the Financial Organised Crime Unit and within this unit is the Division for Suppression of Corruption.⁷¹ All police departments in the Republic of Serbia have a department for fighting corruption.⁷² Corruption that occurs within the police is under the jurisdiction of the Internal Control Sector of the Ministry of the Interior. This sector is directly subordinate to the minister, not to the director of the police.⁷³

Suppression of corruption is clearly the competence of competent police units. However, some of the investigations of corruption in privatisation, in particular during 2013, were conducted by legally unregulated "task forces". They operated under an unclear chain of command that included The National Security Council AND the Security Service Coordination Bureau. The latter is responsible for national security issues. The secretary of that body was the vice-prime minister (in the period 2014 to 2016) and head of the ruling party at the same time.⁷⁴

⁵⁴ Ibid., Articles 11 and 12

⁵⁵ Ibid., Article 19

⁵⁶ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 75

⁵⁷ Ibid.

⁵⁸ "Assessment of Risks of Poor Conduct and Corruption in The Serbian Judiciary and Prosecution", Joint European Union – Council of Europe Project Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia, April 2014

⁵⁹ [https://www.mpravde.gov.rs/files/GrecoRC4\(2019\)5-Final-eng-Serbia_Interim.pdf](https://www.mpravde.gov.rs/files/GrecoRC4(2019)5-Final-eng-Serbia_Interim.pdf), page 6

⁶⁰ Ibid.

⁶¹ Revised Action Plan for Chapter 23, www.mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-22072020.php, page 14

⁶² National Judicial Development Strategy for the period 2020-2025, <https://www.vk.sud.rs/sites/default/files/attachment-s/%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%98%D0%B0%20%D1%80%D0%B0%D0%B7%D0%B2%D0%BE%D1%98%D0%B0%20%D0%BF%D1%80%D0%B5%D0%B0%D0%B2%D0%BE%D1%81%D1%83%D1%92%D0%B0%202020-2025.pdf>, p. 4

⁶³ Greco (2020)12 86 the GRECO Plenary Meeting (Strasbourg | KUDO (online), 26 to 29 October 2020), Decisions, p. 4, <https://rm.coe.int/decisions-greco-86/1680a0427c>

⁶⁴ Ibid., page 95

⁶⁵ Ibid., page 96

⁶⁶ [https://www.mpravde.gov.rs/files/GrecoRC4\(2019\)5-Final-eng-Serbia_Interim.pdf](https://www.mpravde.gov.rs/files/GrecoRC4(2019)5-Final-eng-Serbia_Interim.pdf), page 13

⁶⁷ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a07e4d>

⁶⁸ Ibid., page 12

⁶⁹ Revised Action Plan for Chapter 23, <https://www.mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-22072020.php>, page 14

⁷⁰ www.mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-22072020.php, p. 14

⁷¹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 131

⁷² Ibid.

⁷³ Ibid.

⁷⁴ <https://www.astra.rs/wp-content/uploads/2017/11/PrEUgovor-FINAL-REPORT-8-May.pdf>, pages 17-18 and earlier prEUgovor ALARM reports

Problems related to institutional arrangements

Organisational and procedural problems might affect the performance of institutions that are in charge of suppressing corruption. Most high-level corruption cases are prosecuted within the bodies in charge of fighting organised crime. The first problem with the institutional arrangement is that the same prosecution office is in charge of corruption and other types of serious crime (such as terrorism and organised crime). This makes it harder to assess overall results in the area of anti-corruption. Moreover, any increase in the number of other serious crimes that this prosecution has to deal with has a negative impact on the TOC's ability to deal with corruption cases. Similar concerns exist for special departments of police and courts.

In other public prosecution departments, organisational problems include the fact that the State Prosecutorial Council does not select the candidates for the special departments of the Higher Public Prosecutor's Offices for Combating Corruption, even though, according to the current legal framework, the Council has a crucial role in determining the list of candidates for prosecutorial positions.⁷⁵ Deputies are assigned to work in the special department by the public prosecutor of the higher public prosecutor's office in which the special department is formed.⁷⁶ Without their written consent, deputy public prosecutors can be assigned to work in the Special Department for the Suppression of Corruption from the higher public prosecutor's office in which the special department is established, while in similar situations, the High Court must obtain the

written consent of the judge.⁷⁷

In accordance with Article 63 of the Law on Public Prosecutor's Office, deputy public prosecutors are sent to another public prosecutor's office for a period of one year. One year is a short period for dealing with criminal cases that have a corrupt element.⁷⁸ Moreover, deputy prosecutors can be returned to their prosecutor's offices without explanation, so the permanence of the position is not guaranteed. That is one of the possible ways to influence prosecutors when they are working on "politically sensitive" cases.⁷⁹ Furthermore, the positions of deputies who are sent to special departments remain vacant in the prosecutor's offices. Therefore, according to the existing systematisation, they occupy two positions.⁸⁰ Deputy public prosecutors from higher public prosecutor's offices showed very little interest in applying for these posts, because there is no stimulative salary for work in anti-corruption special units of the Higher Public Prosecutor's Offices, as is in the Prosecutor's Office for Organised Crime. On the other hand, due to the possibility of higher earnings, the interest of deputies from the basic public prosecutor's offices was far greater.⁸¹ The work of all special departments is coordinated by the Prosecutor's Office for Organised Crime, but they function as part of the higher public prosecutor offices. The law does not prescribe the powers of the coordinator but does prescribe mandatory meetings with the special department heads at least once a month. To date, the role of the coordinator has been of an advisory nature only.⁸²

There are problems in hiring financial forensic experts since they have the status of civil servants. Considering the provisions in the Law on Salaries of Civil

Servants and State Employees, financial forensic experts' earnings are not competitive on the market. The salaries are not high enough for these experts, with their acquired knowledge, work experience and specialised training, to accept the job of financial forensics in the prosecution offices.⁸³ All the special departments have started working with a smaller number of deputy public prosecutors than the number of deputies stated in the systematisation act.⁸⁴

The first systematisation envisaged that the Special Department of the Higher Public Prosecutor's Office in Belgrade would have 25 deputies and it started working with 16. Belgrade's office should have 15 deputies and started working with 8; the Nis office should have 15 deputies and started with 9; while Novi Sad office should have 20 deputies and started with 10.⁸⁵ In such circumstances, the number of employees in the special departments was disproportionate to the scope of work, which created obstacles to achieving timeliness and a successful fight against corruption.⁸⁶ In one interesting situation, a deputy in the Special Department for the Suppression of Corruption received more criminal prosecution cases⁸⁷ than the higher public prosecutor's office where they are employed had in progress.⁸⁸

In addition, there are various procedural problems. The competences of senior public prosecutor's offices' Special De-

partments for the Suppression of Corruption (and the Organisational Units for the Suppression of Corruption in the Ministry of the Interior and the higher courts' Special Departments for the Suppression of Corruption) are "negatively" determined⁸⁹ when for the same criminal offence there is no jurisdiction of the Prosecutor's Office for Organised Crime.⁹⁰ Furthermore, the Special Departments for the Suppression of Corruption are in charge of many criminal offences that have no element of corruption.⁹¹ Special departments are burdened with work on a large number of minor crimes or the mildest forms of crimes. At the same time, they are expected to deliver results in more serious forms of crime.⁹² The actual jurisdiction therefore suggests that the Special Departments for the Suppression of Corruption should be more closely linked to the Prosecutor's Office for Organised Crime than to the Higher Public Prosecutor's Office in which the Special Department was established.⁹³

The Law on the Organisation and Competences of State Bodies in the Suppression of Organised Crime, Terrorism and Corruption does not specify precisely and in accordance with the Law on Police who performs police activities to combat criminal acts of corruption.⁹⁴

The operational autonomy of the criminal police is not ensured in relation to the Ministry of the Interior.⁹⁵ The police report on

⁷⁵ https://uts.photovisual.org/images/2019/represivne_mere_u_borbi_protiv_korupcije_2.pdf, page 112

⁷⁶ Ibid., page 12

⁷⁷ Ibid., page 13

⁷⁸ Ibid.

⁷⁹ One illustration of this is the case of the former member of parliament and current Minister of Innovation N. Popovic. The Special Department for Corruption of the Higher Public Prosecutor's Office in Belgrade has not initiated an investigation of the minister due to suspicion of embezzlement during the privatisation of the company Minel Transformers, even though the Anti-Corruption Agency, which filed a criminal complaint, has been pressuring prosecutors to investigate this case, <https://www.krik.rs/i-da-lje-bez-istrage-protiv-popovica-u-slucaju-minel/>

⁸⁰ https://uts.photovisual.org/images/2019/represivne_mere_u_borbi_protiv_korupcije_2.pdf, page 38

⁸¹ Ibid., page 12

⁸² Ibid., page 28

⁸³ Ibid., page 14

⁸⁴ Ibid., page 26

⁸⁵ Ibid.

⁸⁶ Ibid., page 27

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Generally, the provisions on jurisdiction are not the best example of nomotechnics. Thus, Article 2 of the law, entitled Criminal Offences to which the Law Applies, includes organised crime, the criminal offence of murder of a representative of the highest state bodies, criminal offences against official duty, the criminal offence of giving and receiving bribes in connection with voting, criminal offences against the economy and other similar criminal offences. Article 3, entitled Crimes Addressed by State Bodies Responsible for the Suppression of Organised Crime and Terrorism, prescribes that state bodies responsible for the suppression of organised crime and terrorism act in cases of organised crime, the murder of representatives of the highest state bodies, and armed rebellion, terrorism and similar criminal offences, as well as criminal offences against official duty when the defendant, that is the person to whom a bribe is given, an official or responsible person performing a public function on the basis of election, appointment or appointment by the National Assembly, president, government, general sessions of the Supreme Court of Cassation, the High Judicial Council or the State Prosecutorial Council, is accused of a criminal offence in which the value of the property gain exceeds RSD200 million (about €1.7 million), that is, the value of the public procurement exceeds RSD800 million (€6.8 million), as well as for the crime of money laundering. Article 13 of the law prescribes only that special departments of higher public prosecutor's offices for the suppression of corruption are competent to act in the cases of criminal offences referred to in Article 2 of the law, except for criminal offences referred to in Article 3 of the law (that is, when the Prosecutor's Office for Organized Crime is in charge).

⁹⁰ https://uts.photovisual.org/images/2019/represivne_mere_u_borbi_protiv_korupcije_2.pdf, page 74

⁹¹ Ibid., page 21

⁹² Ibid.

⁹³ Ibid., page 20

⁹⁴ Ibid., page 108

⁹⁵ Ibid., page 40

their actions first to the ministry, and only after that to the prosecutor. All disputable cases related to high-ranking members of the political establishment require permission from the ministry.⁹⁶ The prosecutor has no authority in relation to the police and his hands are tied.

An example of the problem that may therefore occur is the case of a former MP and minister whose firm purchased the factory "Minel Transformatori" in the privatisation process. The prosecution delayed opening an investigation into this case of alleged violation of the privatisation contract for almost seven years, despite the insistence of the Anti-Corruption Agency. The agency always received the same answer from the prosecutor's office: the police were to blame. The higher prosecutor's office did not respond for almost a year. In November 2016, the answer finally arrived: the police had not provided enough evidence.⁹⁷

Therefore, the problem in the fight against corruption is that the police have two "masters": the prosecutor and their immediate superior. The prosecutor's authority over the police is limited by legal provisions stating that a prosecutor may only propose disciplinary proceedings if a police officer fails to conduct actions and nothing else. Therefore, it is realistic to expect that a police officer will always listen to an immediate superior rather than the prosecutor. This poses a potentially high risk of corruption, as the police are under direct political influence, while the prosecution is an independent state body.⁹⁸ In practice, the public prosecutor cannot fully exercise a leading role in the criminal investigation even though he is formally superior to the police. There are countless cases in which the police did not respond to the prosecution's orders,⁹⁹ sometimes even after over a year.¹⁰⁰ Regarding coop-

eration with the competent court, police officers do not cooperate directly in the procedure of submitting initiatives to issue orders for evidentiary actions, except indirectly through the competent court.¹⁰¹

In recent years, there has been a significant increase in number of cases in which the principle of opportunity has been applied. These are cases when the public prosecutor decides to postpone or not to initiate criminal prosecution, under the conditions provided by law.¹⁰²

A final problem is the lack of a strong link between prosecutors and misdemeanour courts. This can lead to the application of the *ne bis in idem* rule, that is, the impossibility of criminal prosecution and punishment for corrupt practices. At the end of September 2020, the Special Department of the Higher Court in Belgrade for the Fight against Corruption and Organised Crime rejected the indictment against the vice-president of the opposition People's Party Borislav Novaković, former mayor of Novi Sad and former director of the Novi Sad public company Institute for City Construction. The special court invoked the legal principle that one cannot be charged twice for the same offence (*ne bis in idem*).¹⁰³ The Higher Public Prosecutor's Office in Belgrade had initiated proceedings against Novaković for abuse of office during the construction of the Boulevard of Europe in Novi Sad from 2009 to 2011, but the proceedings were suspended due to the same matter being decided in the Misdemeanour Court.¹⁰⁴

Identification of corruption cases

In public, the main problems in prosecuting corruption are often observed as slowness of procedures and lenient sentences. There is no doubt that these problems are very much present. Nevertheless, it can

be concluded with certainty that the long duration of proceedings and mild penal policy in this area are significantly more prevalent than in other criminal cases.¹⁰⁵

Long duration of proceedings is common in highly sensitive cases involving politicians and government officials. For example, in the already described case, where abuses in the company "Serbian Railways" were suspected, the first instance verdict was pronounced in April 2013. The disputed procurements, however, were made in the period 2004–2006. In July 2015, the Appellate Court ordered a retrial, and in March 2019, the Higher Court in Belgrade cleared the defendants of the charges.¹⁰⁶

Corruption prosecution has speeded up significantly with the introduction of a plea agreement mechanism and the establish-

ment of special anti-corruption units within the four higher public prosecutor's offices.¹⁰⁷ For example, statistics from January 2019 showed that 126 people had been convicted since the launch of the Special Department for the Suppression of Corruption of the Higher Court in Novi Sad: 14 prison sentences, 56 suspended sentences and 8 fines, while as many as 48 people entered into a plea agreement.¹⁰⁸ In addition, the data show that most of the criminal charges that the Agency for Prevention of Corruption filed with the prosecutor's offices were rejected, while in other cases prosecutors entered into a plea agreement or applied the so-called prosecutor's opportunity (a prosecutor may decide not to prosecute the case if the official confess the crime and agrees to donate some money for charitable purposes, for example) with the officials.¹⁰⁹ It is noticeable that a large number of the charges were associated with corruption in health care.¹¹⁰

There is a serious problem in the phase of reporting and investigating corruption. Corruption offences are characterised by an extremely high "dark or hidden figure of crime", which means that the number of convictions for corrupt crimes is far less than the number of crimes committed (the white figure of crime) or prosecuted acts (the grey figure of crime).

Judging from all relevant surveys of public opinion that measures citizens' actual experience of corruption (and not just the perception of its occurrence), less than 1% of bribery cases are ever reported. Surveys regularly show that the number of citizens who participated in petty corruption by giving bribes during the observed period (one year or less) is almost 10 per cent. For example, the latest survey of this kind,¹¹¹ conducted in November 2019, shows that 12% of citizens who had con-



⁹⁶ Ibid.

⁹⁷ www.krik.rs/ministar-popovic-imun-na-istragu-u-slucaju-minel/

⁹⁸ https://uts.photovisual.org/images/2019/represivne_mere_u_borbi_protiv_korupcije_2.pdf, page 41

⁹⁹ Ibid., page 112

¹⁰⁰ Ibid., page 6

¹⁰¹ Ibid., page 64

¹⁰² Ibid., page 137

¹⁰³ <http://rs.n1info.com/Vesti/a653839/Specijalni-sud-odbio-optuznicu-protiv-Borislava-Novakovica.html>

¹⁰⁴ Ibid.

¹⁰⁵ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 5

¹⁰⁶ <http://rs.n1info.com/Vesti/a467347/Milanko-Sarancic-i-saradnici-oslobodjeni-optuzbi-za-zloupotrebe-u-Zeleznici.html>

¹⁰⁷ Annual report of the Republic Public Prosecutor's Office for 2019, www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

¹⁰⁸ www.mojnovisad.com/vesti/novi-sad-u-prosloj-godini-126-osudjenih-za-korupciju-id26028.html

¹⁰⁹ <https://europeanwesternbalkans.rs/borba-protiv-korupcije-ko-ce-bit-kaznjen/>

¹¹⁰ www.novosti.rs/vesti/hronika/910165/privod-direktora-malih-pcelica-vecina-osumnjicjenih-sklopila-sporazum-priznanju-krivice-detalji-mogu-bit-saopsteni, <https://www.danas.rs/drustvo/vma-uhapsen-nacelnik-nefrologije-zbog-primanja-mita/>, <https://nisevesti.rs/korupcija-farmaceuti-priznali-davanje-mita-lekarima/>

¹¹¹ www.odgovornavlast.rs/wp-content/uploads/2020/01/USAID-GAI-lzve%20A1taj-sa-istra%20BEivanja-javnog-mnjenja-Odnos-gra%2091ana-Srbije-prema-korupciji-Decembar-2019.pdf

tact with listed public institutions during the year (which is 88% of the total adult population), gave a bribe. Considering that there are approximately 5.7 million adults in Serbia,¹¹² the number of bribes paid could be estimated at over half a million per year. However, the annual report of the Republic Prosecutor's Office states that there were only 152 reported cases of passive bribery, 260 of active bribery and 2,169 cases of abuse of official position.¹¹³

According to the indictments TI Serbia collected from the Prosecutor's Office for Organised Crime, the number of indictments for criminal offences of corruption in which the illicit property gain was established at more than RSD1.5 million (€12,000) is insignificant. This does not mean that there was no such benefit; however, in most cases the precise value of the illicit gain could not be determined.

The current Criminal Procedure Code introduced prosecutorial investigation, which gives the public prosecutor's office a leading role in obtaining evidence and presenting it in court.¹¹⁴ Individual decisions on whether to prosecute are made exclusively by the prosecutor.¹¹⁵ The public prosecutor acts in the procedure directly or through his deputy, in proceedings for a criminal offence punishable by imprisonment for up to five years and through associates of the prosecutor's office.¹¹⁶ The public prosecutor manages the pre-investigation procedure. Criminal charges in the pre-investigation procedure are submitted to the competent public prosecutor.¹¹⁷ State and other bodies, legal and natural persons report criminal acts that are prosecuted ex officio, of which they are informed or find out about in another way, under the conditions provided by law or other regulations.¹¹⁸ The criminal code

stipulates in which case failure to report a criminal offence is a criminal offence.¹¹⁹

If a criminal complaint is filed with the police, a non-competent public prosecutor or a court, they will receive the report and immediately submit it to the competent public prosecutor.¹²⁰ The largest number of criminal charges comes from the police, followed by aggrieved parties and other government bodies. The smallest percentage of the cases is initiated directly by the Public Prosecutor's Office. Data on a small number of criminal cases that were initiated by the public prosecutor's office show the burden of these bodies, but could be linked to European Commission assessments of the need for a stronger proactive approach to detecting and prosecuting corruption.¹²¹ Criminal charges may be filed in writing, orally or by other means. If a criminal report is submitted orally, a record will be made of it and the applicant will be warned of the consequences of false reporting. If the application is announced by phone or in some other way, an official note will be made by telecommunication means. If the application has been submitted by email, it will be saved on the appropriate data carrier and printed.¹²²

Although there are legal possibilities for effectively prosecuting corruption, including the application of special investigative techniques, these opportunities are used insufficiently.¹²³ According to the prosecution offices' latest annual report, they proactively investigated 28 cases of abuse of official position, 6 cases of trading in influence, 23 passive bribery cases and 10 active bribery cases during 2019.¹²⁴

Amendments to the Criminal Procedure Code from 2009 enabled the use of spe-

cial techniques and measures to prove certain corruption offences. This possibility was previously only available in cases with an element of organised crime.¹²⁵ However, these methods are rarely used in the investigation of corruption (for example, only five times for the crime of accepting bribes in 2019).¹²⁶

The code stipulates "special provisions on the procedure for criminal acts of organised crime, corruption and other serious criminal offences" and special rules of procedure for such offences. Special evidentiary actions may be ordered if evidence for criminal prosecution cannot be collected in any other way or if the collection of evidence would be significantly more difficult.¹²⁷ The proposal for determining special evidentiary actions and the decision on the proposal are confidential.¹²⁸

The measures include surveillance and recording of communication, secret monitoring and recording of the suspect, a computer data search, controlled delivery, an undercover investigator (in response to a prosecutor's reasoned request, the court may determine the involvement of an undercover investigator), the provision of simulated business services and the conclusion of simulated legal affairs.¹²⁹ Police officers from the Department for Special Investigative Methods implement the measures.¹³⁰ The Criminal Procedure Code has introduced new measures since 2012, such as plea agreement that increases the efficiency of the prosecutor's work, and therefore the prosecution of corruption.¹³¹

For years, more proactive actions in detecting corruption by prosecutors have been demanded in EU progress reports, and this was also envisaged in the Na-

tional Anti-Corruption Strategy (2013–2018)¹³², and the Action Plans for Chapters 23 and 24 of EU integration. However, the prosecution sometimes depends on other institutions and bodies because it needs to wait for requested information.¹³³ To resolve this problem, prosecutor's offices have signed memorandums of cooperation with other institutions and have established contact points.¹³⁴ The concept was further institutionalised based on the measures envisaged in the Financial Investigations Strategy for 2015 to 2016. A network of liaison officers has been established based on this strategy and the subsequent changes in legislation. There are at least two such officers in 13 various state authorities. All of them have completed specialised training for work in multidisciplinary teams with public prosecutors. The law provides the possibility of establishing task forces that work on the most complex cases of corruption.¹³⁵

In addition to better cooperation between bodies that have information on violations of laws, the police and prosecution, the Law on the Protection of Whistleblowers¹³⁶ tends to encourage more people who know about illegal actions to report it, so that state authorities can act according to these reports. When the law was passed, an opportunity was missed to incorporate some mechanisms that could lead to a larger number of reported cases. These include rewards for whistleblowers whose involvement benefits public funds, providing guarantees of protection against retaliation for those who were not previously employed or in any other relationship with the institution where the law was violated, and release from liability whistleblowers who disclose information marked as classified, among others.¹³⁷ The EU also iden-

¹¹² <https://publikacije.stat.gov.rs/G2020/Pdf/G202017013.pdf>

¹¹³ Legality in 2019, pages 98–108, www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

¹¹⁴ www.yucom.org.rs/wp-content/uploads/2015/02/1421664191_GS_jacanje-pravosudja-WEB.pdf

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf

¹¹⁸ Criminal Procedure Code, Article 280

¹¹⁹ Ibid.

¹²⁰ www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf

¹²¹ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 32

¹²² www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf

¹²³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 105

¹²⁴ www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

¹²⁵ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 37

¹²⁶ www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

¹²⁷ Ibid., page 36

¹²⁸ Ibid., page 37

¹²⁹ Ibid., pages 37–39

¹³⁰ Ibid.

¹³¹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 106

¹³² Ibid., page 105

¹³³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 98

¹³⁴ www.yucom.org.rs/wp-content/uploads/2015/02/1421664191_GS_jacanje-pravosudja-WEB.pdf

¹³⁵ Revised Action Plan for Chapter 23, pages 135 and 136, www.mpravde.gov.rs/files/Revised%20AP23.docx

¹³⁶ www.paragraf.rs/propisi/zakon_o_zastiti_uzbunjivaca.html

¹³⁷ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 5

tified factors such as strengthening trust in institutions as necessary to ensure the protection of whistleblowers in cases of high corruption. Whistleblower reports should be investigated in accordance with the law, as the EC reminds.¹³⁸ In the latest report, the EC also stated that Serbia needs to align its legislation on whistleblower protection with recently adopted EU directives. It repeated the need to investigate cases of potential corruption brought by whistleblowers and directly named one such case (Krusik).¹³⁹

Problems related to the identification of corruption cases

When other state bodies notice that a crime has been committed, they must inform the public prosecutor and file a criminal complaint. However, if state bodies (such as the State Audit Institution) notice that a procedure has been violated, they cannot determine whether the criminal offence or misdemeanour has been committed, nor are they authorized to conduct a criminal investigation that would lead them to such knowledge. These bodies have no established obligation to ask public prosecutors for opinions in case of doubt nor to submit their findings to the prosecutor for each case where they determined that regulation was violated. When other state bodies nevertheless submit the documentation to the public prosecutor, the latter does not have a clearly defined legal obligation to review those documents, except when it comes to criminal charges. Similarly, they may consider cases of potential corruption that are indicated in media reports, but do not have a clearly defined duty to do so.

Both the Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for 2013 to 2018 and the current Action Plan for Chapter 23 are missing concrete mea-

asures on how the process of proactive investigations should be developed and implemented. Such measures may include the introduction of an obligation of duty to proactively investigate the existence of criminal liability, based on the reports of the State Audit Institution, the Public Procurement Office, budget inspection, the Agency for Prevention of Corruption, allegations published in the media, identified patterns of corrupt behaviour, etc.¹⁴⁰ The prosecutors do not have to wait for other state authorities (like the State Audit Institution) to file criminal allegations. Instead, they could examine relevant documents (such as annual financial statement audit) on their own initiative to check whether there are grounds for criminal prosecution.¹⁴¹ Current plans in this area do not include the introduction of more clearly specified duties of prosecutors in terms of proactivity. They only describe training for law enforcement officers on a proactive approach and special investigative techniques (Action Plan for Chapter 23, Measure 2.3.2.4.).

Another problem in corruption prosecution is that some problematic decisions, which may involve trading in influence or abuse of official power, are made by collective bodies (for example the Government of Serbia or the oversight boards of public enterprises). Therefore, the responsibility of all members who participated in the adoption of the disputed decision would have to be proven to determine the existence of a criminal offence if there is no evidence that someone took a bribe. This issue has not been tackled through strategic acts and legislative changes.¹⁴² An interesting recent example of this problem is the decision of the Prosecutor's Office for Organised Crime to reject criminal charges submitted by one opposition member of parliament against a member of the Government. On behalf of the Government, the minister signed a joint investment agreement (which the



opposition member of parliament considered damaging and contrary to the law) for the Belgrade Waterfront joint venture with a private partner. According to the available information, The Prosecutor's Office for Organised Crime rejected this criminal report and the objection of its submitter as well, concluding that he, not having a status of a victim, did not have the right to file the charges. Apart from this formal reason, the media suggested one of the possible reasons for rejection although it is not entirely clear whether media citation are direct allegations from the Prosecutor's Office or the submitter's interpretation: "...the prosecution took the position that state officials could not be held accountable because they are protected by Government decisions."¹⁴³

Similarly, in some instances where it is clear that the public official violated a procedure or made a decision in a way that harms public interest (concluded a damaging contract, for example), it is not equally clear that the official committed a criminal offence (such as abuse of official position). To prove a criminal offence, the

prosecutor has to convince the court that there was intention (malice) to benefit the official's or someone else's private interest. Generally, it is easier for prosecutors to obtain evidence of a violation of the law by the perpetrator (like a civil servant) than of persons who influenced the official to make such a decision.

A further problem for corruption investigation is that special investigative techniques cannot be applied to all relevant cases of corruption because some officials and some acts are not covered by regulations giving such jurisdiction.¹⁴⁴ For example, these techniques cannot be used to investigate election bribery, illegal campaign financing or intentional submission of false asset declarations by public officials, since these offences are not listed in the relevant provision of the Criminal Procedure Code (Article 162).

Statistics show that the public prosecutor's office fails to process all criminal charges for these offences at the rate that they are received.¹⁴⁵ The number of unresolved cases from previous years is al-

¹³⁸ www.mei.gov.rs/upload/documents/eu_dokumenta/Non_paper_Ch_23_24_June_2020.pdf, page 9

¹³⁹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf, page 27

¹⁴⁰ <https://transparentnost.org.rs/images/stories/How%20to%20Fight%20Corruption%20-%20December%202014.pdf>, page 9

¹⁴¹ <https://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf>, page 55

¹⁴² Ibid.

¹⁴³ www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/8448-ko-ima-svojestvo-ostecenog-i-kako-utvrditi-odgovornost-clanova-kolektivnih-tela

¹⁴⁴ <https://transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf>, page 19

¹⁴⁵ Ibid., page 32

most the same as the annual inflow.¹⁴⁶ The backlog was exceptionally high in 2018 as public prosecutors were reluctant to prosecute cases while they waited for a reorganisation (announced in 2016) scheduled for 1 March that year. The backlog was lower in 2019.

Reporting on corruption prosecution

The anti-corruption statistics are only partially reliable, comparable and transparent. The Serbian government submits statistics on corruption indictments and verdicts to the European Commission but does not make the same data available to its own citizens. Public prosecutors and courts only publish annual reports, although some reports are prepared quarterly. The Ministry of the Interior publishes data on police actions against participants in corruption, together with data on perpetrators of other types of crimes, primarily economic crimes.¹⁴⁷ It is not yet clear to what extent legislative reforms from 2016 (in force since March 2018¹⁴⁸) have impacted the field of combating corruption. Information on corruption is presented to public in a similar way to information on other types of crime and comparisons are only made with the immediately preceding year. Based on these reports, it is not possible to monitor the results achieved by applying newly introduced anti-corruption instruments for suppressing corruption (such as task forces, forensic accountants and financial investigations running in parallel with criminal investigations). However, based on available data, it is clear that there has been no progress on verdicts in high-level corruption cases or on the total number of reported and investigated corruption cases. When the interior min-

ister¹⁴⁹ or representatives of the Ministry of Justice¹⁵⁰ present to the public in the fight against corruption, they use statistics that are very difficult to understand. These politicians may give information to citizens such as that the police arrested 43 suspects in a certain action or that 400 verdicts for corruption were passed in a certain period. The citizen has nothing to compare the data with to determine whether these statistics represent success or failure.

Serbia regularly submits some anti-corruption statistics to the European Commission. In some cases, Serbian citizens could find some of this information from the commission's annual report¹⁵¹, without being previously informed by the competent national institutions. Despite public prosecutors' main legal role in criminal investigations, they do not fully inform citizens about their actions. Instead, the information is provided by politicians. It is most often done by the interior minister, who talks about police actions of mass arrests of suspects in various crimes. Such information does not provide a complete insight, because there is no possibility of comparison with previous periods, nor can the public compare information of detection of possible corruption with the final outcome of criminal proceedings. Such statements by senior officials on investigations or court decisions are also related to the problem of "information leaks" about criminal investigations. This problem is addressed inadequately in the Action Plans for Chapters 23 and 24. Activities planned to resolve the problem¹⁵² ignore the fact that "leaks" tend to be intentional actions of authorities and not the consequence of a lack of knowledge or a lack of procedures within the prosecuting authorities.¹⁵³

LAW-MAKING

The legislative procedure

The general legal acts in the Republic of Serbia are the constitution, laws, bylaws, and general acts of the autonomous provinces, cities, municipalities and organisations with public authority.¹⁵⁴

The Constitution of the Republic of Serbia, Article 194, regulates the hierarchy of national and international legal acts. It stipulates that the legal system of the Republic of Serbia is unique, and that all laws and other general acts enacted in Serbia must comply with the Constitution. The same article states that "ratified international contracts and generally accepted rules of international law" are also part of the legal order of the Republic of Serbia and "ratified international contracts may not be contrary to the constitution." Laws and other general acts may not be contrary to ratified international treaties or the generally accepted rules of international law.¹⁵⁵

International agreements may exclude the application of anti-corruption mechanisms set by national law.¹⁵⁶ For such agreements, the government is not obliged to conduct a public debate during the preparation phase, so citizens do not have a chance to indicate corruption risks in these documents. Parliament may adopt or reject the agreements but cannot modify them. If public debate were in place, it could serve to assess the compliance of the agreement with the rest of the legal system and its good or bad sides.¹⁵⁷

Clearly, parliament, as the only instance that may prevent potential damage, should actively monitor draft legislation to make sure it is aligned with the constitution, the rest of the legal system and strategic

documents, and in particular, consider the expected effects of proposed solutions to corruption. When interstate agreements (bilateral agreements concluded by two countries' governments and ratified by their parliaments) are approved, this consideration should cover the risks associated with the possibility of circumventing the implementation of existing legislation's transparency and competition provisions.¹⁵⁸ Although some examples were noted before, since 2013, the number of arrangements with preselected partners in public procurements and public-private partnerships in which the Public Procurement Law is bypassed through interstate agreement, has been significantly increased.¹⁵⁹

Interstate agreements thus serve as a legal cover for direct agreements, so that a job is given without competition and transparency. Interstate agreements are the general framework for cooperation, but specific jobs are then filled. These subsequent contracts are not verified by parliament and the details are not made public. This practice is no exception, but over the years it has become the main way of making big deals, especially in the field of infrastructure.

Laws can be proposed to parliament by each member of the parliament, the government, the Assembly of the Autonomous Province, at least 30,000 voters, the ombudsperson or the National Bank of Serbia, in areas within their competence.¹⁶⁰ A draft law has two parts: the text of the proposal and the explanation. A law is proposed following the Rules of Procedure of the National Assembly and the Uniform Methodological Rules for Drafting Regulations.¹⁶¹ The explanation of a draft law must contain: the constitutional, that is, the legal basis for enactment of the law; reasons for passing the law; an explanation of basic le-

¹⁴⁶ Ibid., page 11

¹⁴⁷ www.mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/lut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zi_S19zQzdDYy8LUw-c3QwcfQ1MDQKcJQ3cXcz0g4uL4oOC45V9Ekvy9AuyHRUBWzRREA!!/

¹⁴⁸ www.propisi.net/1-marta-2018-godine-pocela-su-sa-radom-posebna-odeljenja-tuzhilastva-i-sudova-specijalizovana-za-borbu-protiv-korupcije/

¹⁴⁹ https://rtv.rs/sr_lat/hronika/zbog-korupcije-uhapseno-80-osoba-ostetili-budzet-preko-100-miliona-evra_673545.html

¹⁵⁰ https://rtv.rs/sr_lat/hronika/zbog-korupcije-uhapseno-80-osoba-ostetili-budzet-preko-100-miliona-evra_673545.html

¹⁵¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

¹⁵² www.mpravde.gov.rs/files/Revised%20AP23.docx

¹⁵³ www.uts.org.rs/press-centar/press-clipping/1319-vucicevi-komentari-o-istragama-pritisak-na-pravosudje

¹⁵⁴ <http://mojustav.rs/strucni-komentar-197/>

¹⁵⁵ <https://transparentnost.org.rs/images/publikacije/Public%20interest%20in%20the%20mud%20smoke%20and%20under%20the%20water.pdf>, page 14

¹⁵⁶ Ibid., page 12

¹⁵⁷ Ibid., page 37

¹⁵⁸ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 45

¹⁵⁹ Ibid., page 125

¹⁶⁰ www.parlament.gov.rs/akti/put-zakona.1052.html

¹⁶¹ www.parlament.gov.rs/akti/put-zakona.1054.html



gal institutes and individual solutions; an assessment of the financial resources required for law enforcement, including the origins of these resources; general interest due to the proposed retroactive effect, if any; reasons for passing the law by urgent procedure; reasons for entering into force within less than eight days; and a review of the provisions of the applicable regulation that are being amended or supplemented.¹⁶² Along with the bill, the proposer submits a statement that the bill is harmonised with European Union regulations or that there is no obligation to harmonise or that the law cannot be harmonised with European Union regulations, as well as a table on harmonisation of draft laws with European Union regulations.¹⁶³

The parliament decides its own agenda, by the majority of votes. There is no guarantee that proposals submitted will be considered. In practice, this affects the proposals of opposition members of parliament and citizens' initiatives¹⁶⁴. There is a possibility, as practice has proven, that even the right to explain the submitted amendments could be compromised by

abuse of various provisions of the Rules of Procedure of the National Assembly.¹⁶⁵

Successful implementation of laws requires the adoption of bylaws. In practice, bylaws are not enacted within proposed deadlines, thus new laws cannot be implemented.¹⁶⁶ Bylaws are passed by the government, state administration bodies, holders of public authority, and exceptionally by the National Assembly. Among bylaws, general acts issued by the head of state or the government (decrees, ordinances and executive orders) are of special importance. Bylaws are acts that should not determine the new rights and obligations of the subjects, but only elaborate on and supplement them.¹⁶⁷

The involvement of stakeholders in legislative procedures

Public debates during the preparation of a law are regulated through the provisions of the Law on State Administration¹⁶⁸ and developed through the provisions of the Serbian government's Rules of Pro-

cedure.¹⁶⁹ Citizen participation in the process of creating public policies and interactions with the authorities is one of the tasks that Serbia still needs to fulfil and improve in the process of joining the European Union. In the fourth round of evaluation,¹⁷⁰ GRECO recommended increasing transparency of the legislative process, including instructions related to the development of rules on public debates and public hearings and ensuring their implementation in practice. It also stated that an urgent procedure in passing the law should be an exception and not a rule. In addition, GRECO noted the problem that public hearings are only mandatory for laws proposed by the government. Similar obligations have not been established for bills submitted by members of parliament or groups of citizens. Also, the ombudsman, the National Bank of Serbia and the Assembly of the Autonomous Province of Vojvodina have the right to propose laws within their competences, but not the obligation to conduct public hearings.

GRECO's recommendation has not been fully implemented, so public hearings are only held when a draft law is prepared by a "public administration body" (a ministry or a special organisation). Due to this omission, there is a possibility that such rules exclude the public from the law-drafting because the laws would be proposed directly by the deputies of the ruling party, and not by the Government. This has happened in some cases (for example, in the amendments to the Law on Financing Political Activities, 2014). The Law on Financing Political Activities was supposed to be amended by the end of 2014, based on the original Action Plan for the Implementation of the National Anti-Corruption Strategy from 2013. At the proposal of the parliamentary group of the ruling SNS party, amendments to the law were adopted in November 2014. Nevertheless, they did not solve the problems that had already been identified in the planning documents

and new ones had been created. Among other things, political parties that receive money from the budget to finance their regular work (that is, for all but elections) are allowed to use that money to finance the election campaign and buy real estate. Thus, the already huge gap in the ability to organise and pay for promotional activities that exists between the candidates of the largest parliamentary parties (only one in Serbia today) and all the others have been further deepened.

Amendments to the Law on Public Administration from 2018¹⁷¹ brought some improvements in the rules on public debates, but they are insufficient. They introduced the possibility of opening a public hearing (Article 77) in the early stages of preparation of an act (that is, a concept law). The amendments also prescribed what information must be published before a public hearing. The obligation for public consultations during the preparation of laws was introduced at that time. Finally, the range of acts that require a public hearing before they are adopted was expanded. Now a public hearing is an obligation in the preparation of certain bylaws and strategies and similar public policy acts. Rules on public hearings during the implementation of strategic acts were regulated on 16 February 2019 by the Regulation on the Methodology of Public Policy Management, Policy and Regulatory Impact Assessment and the Content of Individual Public Policy Documents,¹⁷² adopted based on the Law on the Planning System of the Republic of Serbia.¹⁷³ The obligation to conduct public hearings when the draft law envisages significant changes in the regulation of an area or when it covers a topic of public interest already existed (Article 41).

The government's Rules of Procedure stipulate the obligation to prepare a report on the public debate that identifies all the proposals and the explanations for their

¹⁶² www.parlament.gov.rs/akti/put-zakona.1055.html

¹⁶³ Ibid.

¹⁶⁴ www.parlament.gov.rs/%D0%B0%D0%BA%D1%82%D0%B8/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8-%D1%83-%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D0%B4%D1%83%D1%80%D0%B8/%D1%83-%D1%81%D0%B0%D0%B7%D0%B8%D0%B2%D1%83-%D0%BE%D0%B4-3-%D1%98%D1%83%D0%BD%D0%B0-2016.4237.html

¹⁶⁵ www.preugovor.org/Alarm-Reports/1528/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml, page 14

¹⁶⁶ <http://ri.naled.rs/htdocs/methodologyView.php?id=57255&s.Jezik=rs>

¹⁶⁷ https://sr.wikipedia.org/sr/Podzakonski_akti

¹⁶⁸ www.paragraf.rs/propisi/zakon_o_drzavnoj_upravi.html

¹⁶⁹ www.srbija.gov.rs/dokument/2432/poslovnik-vlade.php

¹⁷⁰ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792e56>

¹⁷¹ www.srbija.gov.rs/vest/324849/usvojene-izmene-zakona-o-lokalnoj-samoupravi-i-drzavnoj-upravi.php

¹⁷² Official Gazette of the Republic of Serbia, No. 8/2019

¹⁷³ www.paragraf.rs/propisi/zakon-o-planskom-sistemu-republike-srbije.html

acceptance or rejection.¹⁷⁴ However, there is no similar duty to record changes that occur after the public debate. In some instances, draft laws have been changed substantially after the ministry finalised the debate, but before the government submitted the bill to parliament.¹⁷⁵

In research on public debates held in 2019,¹⁷⁶ TI Serbia found that state administration bodies did not act the same way in similar situations and did not comply with the provision of the Law on State Administration and the government's Rules of Procedure, which state the minimum obligations for publishing data. The situation was very similar in the previous years. Of the 24 new laws passed in 2019 (not including the final budget accounts), public debates were conducted on 21 draft laws. In 2018, public debates were not held on two of 16 new laws. A public debate has never been organised on the most important public policy document: the Republic of Serbia's budget for the next year. Notably, public debates in 2019 were avoided entirely on two laws that seriously disrupted the integrity of the legal system. The first was a special law passed to implement one project, the Moravian Corridor, which significantly deviated from general rules on expropriation, public procurement and other legal areas. Another controversial law that was adopted without a public debate was on the issue of converting housing loans indexed in Swiss francs.¹⁷⁷ In this case, the interests of debtors, commercial banks and citizens conflicted, as part of the cost of private loans was financed from the budget. During the research, TI Serbia did not notice any significant progress in the enforcement of other regulations and planning documents, such as the Law on the Planning System, the Law on Electronic Government, the Open Government Partnership Action Plan¹⁷⁸, and the like.

In June 2018, Amendments to the Law on Local Self-Government¹⁷⁹ were adopt-

ed. The amendments stipulate that cities and municipalities must organise a public debate during the adoption of some decisions, including discussions on essential parts of the budget (investment planning). Public debates are also organised when a certain number of citizens request it. The law did not establish rules for conducting these public debates but each city and municipality regulate it independently.

The process of adopting regulations in Serbia is still characterised by insufficient public participation. Failure to conduct or simulation of conducting public debates, frequent enactment of laws by urgent procedure and conducting parliamentary hearings on unrelated draft laws at the same time have a negative impact on the quality of legal provisions. Due to risks that are not addressed in time, material errors or provisions that are inapplicable, laws are often changed shortly after adoption, often by urgent procedure. In addition to the harmful consequences that occur when hearings before the adoption of the law are of insufficient quality, it should be pointed out as a problem that citizens do not have any means to protect their rights in cases when a public hearing, contrary to legal obligation, is not held. Due to risks that are not addressed in time, material errors or provisions that are not applicable, laws passed in this way are often changed in a short period after adoption, usually by urgent procedure. Apart from the harmful consequences that occur when the hearings before the adoption of the law are of insufficient quality, it should be highlighted as a problem that citizens do not have any means to protect their rights in cases when a public hearing, contrary to legal obligation, is not held.

Unlike laws, which are adopted publicly in the Assembly, in the preparation of which public hearings are often organised and which contain publicly available explanations, decrees and regulations are generally not discussed in public before

adoption, and their explanations are not published. In recent years, the media have reported on several cases¹⁸⁰ in which, according to these allegations, bylaws were passed in the interest of certain persons, and in one such case, a former minister was prosecuted.¹⁸¹

Consideration of the corrupting effects of the law

With the new Law on Prevention of Corruption¹⁸², which was adopted on 21 May 2019¹⁸³ and came into force on 1 September 2020, the Agency for Prevention of Corruption was obliged to analyse the risk of corruption. By this new law, the agency has been authorised to initiate the adoption of regulations to eliminate corruption risk or align regulations with ratified international agreements on fighting corruption (Article 35). State administration authorities are obliged to submit to the agency draft laws in "areas that are particularly susceptible to risk of corruption" or are related to the ratified anti-corruption international agreements. Areas where there is a particular risk of corruption are listed in the Action Plan for Negotiations between Serbia and the EU, Chapter 23, the amended version (revision) of which was adopted in July 2020.¹⁸⁴

Undoubtedly, the introduction of this obligation in the law is a positive step, but it remains to be seen how much this opportunity will be seized in practice. Even before the enactment of this law, the agency had the opportunity to give opinions on corruption risks on its own initiative, or at the request of the ministries who prepare the laws. In the past, such analyses were frequently promoted. However, in the last two-and-a-half years, the agency has stopped publishing these analyses,

thus missing the opportunity to gain allies among citizens to eliminate the perceived risks and to enable the deputies to take into consideration the opinion of the agency when considering the bill.

In March 2019, TI Serbia submitted to all members of parliament amendments on as many as 65 articles of the Draft Law on Prevention of Corruption (there are 114 articles in total). Among the amendments were proposals for improving Article 35 which regulates these issues.¹⁸⁵ Opposition lawmakers submitted 90 amendments, but these amendments were not discussed because the opposition boycotted the session, while members of the ruling majority were inclined to accept the government's bill without objections.¹⁸⁶ The law was not discussed in principle either, as the ruling majority had a joint debate¹⁸⁷ on it and seven other unrelated laws. The total time for discussion of all laws was five hours, so there was no time to consider the disputed issues.

Had Transparency Serbia's proposal been accepted (that an opinion should be sought on each law listed in strategic anti-corruption acts and not only on those belonging to individual areas), the area of risk assessment would be better regulated. Even more useful would have been the TI Serbia proposal for the agency to be authorised to give opinions on drafts or proposals of laws and any regulations that it independently deemed to contain risks of corruption, that is, provisions useful for fighting corruption. It would have also been useful if the agency had been obliged to prepare an opinion on the corruption risks in other cases as well, when requested by proposer of an act.

According to the current legal provision, the agency gives opinions only in the case of the adoption of new laws, but not the

¹⁷⁴ www.srbija.gov.rs/dokument/2432/poslovnik-vlade.php (article 42)

¹⁷⁵ <https://paragraflex.rs/dnevne-vesti/100119/100119-vest11.html>

¹⁷⁶ www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_izvestaj_o_JR_u_2019.pdf

¹⁷⁷ www.paragraf.rs/propisi/zakon-konverziji-stambenih-kredita-indeksiranih-svajcarskim-francima.html

¹⁷⁸ <http://mduls.gov.rs/reforma-javne-uprave/unapredjenje-transparentnosti-uprave/partnerstvo-za-otvorenu-upravu/?script=lat>

¹⁷⁹ www.paragraf.rs/izmene_i_dopune/200618-zakon-o-izmenama-i-dopunama-zakona-o-lokalnoj-samoupravi.html

¹⁸⁰ www.koreni.rs/pravilnik-dizajniran-po-kiosku/

¹⁸¹ www.koreni.rs/pravilnik-dizajniran-po-kiosku/

¹⁸² www.paragraf.rs/propisi/zakon-o-sprecavanju-korupcije.html

¹⁸³ www.propisi.net/usvojen-zakon-o-sprecavanju-korupcije/

¹⁸⁴ www.mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php

¹⁸⁵ www.transparentnost.org.rs/images/stories/inicijative/analize/Amandmani%20TS%20na%20nacr%20zakona%20o%20sprecanju%20korupcije%20februar%202019%20drugo%20poglavlje%20zakona.pdf

¹⁸⁶ www.rtv.rs/sr_lat/politika/poslanici-zavrili-rad-sutra-glasanje-o-pravosudnim-zakonima_1018524.html

¹⁸⁷ www.parlament.gov.rs/Peta_sednica_Prvog_redovnog_zasedanja_Narodne_skup%C5%A1tine_Republike_Srbije_u_2019._godini.36429.941.html

preparation of other important acts like the constitution, laws that do not contain corruption risks but include provisions to fight corruption, and draft bylaws.

The law does not prescribe an obligation for the agency to establish a methodology for assessing the risk of corruption, which would be of great benefit. The existence of such a methodology would enable state bodies, local governments and everyone else to perform risk assessment themselves, without waiting for the agency to do so. In addition, the weakness of the existing system is that ministries have no obligation to act on received recommendations from the agency or to inform the agency and the public about their actions. The legislator failed to oblige the agency to react during parliamentary procedure (for example, in relation to the submitted amendments) and thus to influence the elimination of risks that were not noticed in the earlier stages of the legal procedure.

Since its establishment in 2010, the agency has independently, or at the request of a ministry preparing a draft law, analysed 125 regulations¹⁸⁸ in a qualitative, useful way. The practice of publishing its opinions suddenly stopped in February 2018, one month after the election of the new agency director.¹⁸⁹ The agency did not even publish its opinion about the draft law regulating its duties, even though this draft law had been initiated by the agency five years earlier. The final version differs significantly from the agency's previous proposal.¹⁹⁰

Risk analyses in laws on education, more precisely the analysis of the Law on textbooks, resonated particularly well with the public. In this case, it was announced that the law contained corruption risks and other shortcomings, which were primarily reflected in the wide discretionary pow-

ers and the possibility of exceeding such powers.¹⁹¹

Those who proposed the laws did not always consider the agency's assessments and recommendations. Often the opposite was true: the most drastic example is from April 2015.

During the parliamentary debate on the Bill on Determining Public Interest and Special Procedures of Expropriation and Issuance of Building License for the Realisation of the Project "Belgrade Waterfront", submitted by the government, several opposition members of parliament referred to the Anti-Corruption Agency's opinion¹⁹² on the corruption risk of the bill. Minister of Justice Nikola Selaković (as a government representative) responded by stating that the agency is not competent to give an opinion on laws that have nothing to do with the fight against corruption, in other words, that no article of the law gives such competence to the agency.¹⁹³

Lobbying



¹⁸⁸ www.acas.rs/praksa-agencije/analize-propisa-na-rizike-od-korupcije/?pismo=lat

¹⁸⁹ The election of the director was controversial due to his previous affiliation with the ruling party www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/9690-ispitati-informacije-o-mogucij-politickoj-povezanosti-direktora-agencije

¹⁹⁰ www.acas.rs/%D0%BC%D0%BE%D0%B4%D0%B5%D0%BB-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%BO-%D0%BE-%D0%B3%D0%B5%D0%BD%D1%86%D0%B8%D1%98%D0%B8-%D0%B7%D0%B0-%D0%B1%D0%BE%D1%80%D0%B1%D1%83-%D0%BF%D1%80%D0%BE%D1%82%D0%B8/

¹⁹¹ www.blic.rs/vesti/drustvo/agencija-predlozena-resenja-zakona-o-udzbenicima-sadrze-rizike-korupcije/phrzsyo

¹⁹² www.acas.rs/wp-content/uploads/2012/12/Misljenje-o-Predlogu-zakona-o-Beogradu-na-vodi-final-1.pdf?pismo=lat

¹⁹³ www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiWn9LxipTsAhWQEBQKHWMWA4wQFjA-DegQICRAC&url=http://3A%2F%2Fwww.parlament.gov.rs%2Fupload%2Farchive%2Ffiles%2Fflat%2Fdoc%2Fstenobeleske%2F9.%2520april%25202015.%2520LAT.doc&usq=AOvVaw1_SlgzJFreOiyUpEHY7I0s://www.vreme.com/cms/view.php?id=1286920&print=yes

The Law on Lobbying¹⁹⁴ was adopted on 9 November 2018¹⁹⁵ and entered into force on 14 August 2019.¹⁹⁶ The law was adopted 18 years after the democratic changes in 2000, as one of the last missing anti-corruption laws passed by Serbia. The regulation of lobbying was envisaged by the National Strategy for the Fight against Corruption from 2005, as well as the next National Strategy, which was valid from 2013 to 2018. The regulation of lobbying was envisioned by the National Strategy for the Fight against Corruption from 2005, as well as the next. National Strategy that was valid from 2013 to 2018.

The regulation of lobbying was one of the most important of GRECO's recommendations for Serbia¹⁹⁷ from 2015. The adoption of the law was accelerated after GRECO published on 15 March 2018 that Serbia had not fulfilled any of its recommendations from the fourth round of evaluation, including the need to regulate the lobbying of members of parliament.¹⁹⁸

The manner in which the Law on Lobbying was adopted speaks volumes about Serbia's practice of adopting and enforcing important anti-corruption and other laws: it is only important to respond to pressure and show that the recommendations have been met without real willingness to pass the best possible law and, most importantly, to enable its enforcement to bring changes in practice.

A public debate was held on the draft of this law. However, in the explanation of the law there is no mention of the consideration of proposals that were not adopted. The Ministry of Justice did not publish a special report from the public hearing even though it was obliged to do so, according to the government's Rules of Procedure.

The Serbian parliament adopted the law

without debating a hundred submitted amendments;¹⁹⁹ all of them were rejected. Transparency Serbia published an analysis²⁰⁰ of the bill, pointing out all its shortcomings, and sent eight amendments²⁰¹ to parliament. TI Serbia considers that the adoption of these amendments would improve the legal text.

Transparency Serbia proposed solutions for the following unresolved problems: the law does not address attempts to influence the adoption of individual decisions, it only focuses on the adoption of general legal acts; the law stipulates the obligation to report to the Agency for Prevention of Corruption on any instances of lobbying, but there is no obligation to provide this information to the public; there is no duty to report on informal lobbying, that is, attempts to influence that occur before an official lobbying memo is sent; this (or any other law) does not address a serious problem, which is that state bodies ignore initiatives drawn up by citizens, associations and economic entities to pass or change a regulation, or they arbitrarily choose which of these initiatives to consider.

The solution to most of the above problems could be to apply the reverse approach to that taken by the Serbian legislator. Instead of primarily regulating who can lobby and how, it would be better to focus on the actions of government bodies and officials, their duty to record and disclose who has addressed them and with what proposals, regardless of the manner of addressing and the stage of the proceedings. It is equally important to prescribe the authorities' duty to consider and respond to any proposal submitted for the improvement of regulations and practices, no matter who makes it.

Transparency Serbia investigated the first five months of implementation of the Law

¹⁹⁴ www.paragraf.rs/propisi/zakon-o-lobiranju-republike-srbije.html

¹⁹⁵ www.danas.rs/politika/poslanici-skupstine-srbije-usvojili-vise-zakona-iz-oblasti-pravosudja/

¹⁹⁶ www.rts.rs/page/stories/sr/story/125/drustvo/3625331/zakon-o-lobiranju-stupio-na-snagu--ko-ima-pravo-da-lobira.html

¹⁹⁷ www.coe.int/en/web/greco/evaluations/serbia

¹⁹⁸ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792e56>

¹⁹⁹ www.parlament.gov.rs/42_%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9E%D0%B4%D0%B1%D0%BE_%D1%80%D0%BD_%D0%B7%D0%B0_%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D1%81%D1%83%D1%92%D0%B5.35176.43.html

²⁰⁰ www.transparentnost.org.rs/images/dokumenti_uz_vesti/Analiza_Zakona_o_Lobiranju.pdf

²⁰¹ www.transparentnost.org.rs/images/dokumenti_uz_vesti/Amandmani-na-Predlog-zakona-o-lobiranju---Transparentnost-Srbija-oktobar-2018.pdf

on Lobbying in institutions that could be expected to be most often exposed to lobbying: the Government of Serbia and its ministries, the National Assembly, and the president of the republic.²⁰² Transparency Serbia sent out 23 requests for access to information of public importance and received 23 identical responses – that there were no lobbying contacts within the meaning of the provisions of the Law on Lobbying.

It is extremely unlikely that none of the interested subjects addressed any ministry, the government, the president or the assembly and the deputies regarding regulations, during almost half a year. In this period, these bodies participated in the adoption or drafting of several hundred laws, decrees, regulations and other general acts that affect the interests of hundreds of thousands of economic entities. It is much more likely that none of them (including those who prepared, proposed and adopted the Law on Lobbying) were aware that the obligation to keep records of interested persons who addressed state bodies in connection with the adoption of general acts had been established. After 14 months of implementing the law, the progress is visible only in the area of training and certification of interested lobbyists and lobbying firms. There are now 26 registered lobbyists.²⁰³ Since the law was first enforced, the agency has organ-

ised three training sessions for lobbyists. On the other hand, the law has not improved the transparency of the legislative process in any way.

Tailored-made special laws

In Serbia, there are two mechanisms for passing laws tailored to specific projects. The first such mechanism is interstate agreements ratified by the Assembly, which introduce special provisions and / or procedures for doing business with companies from the country with which the agreement was concluded. These agreements usually provide only a general framework for contracts that will be concluded. Since these agreements have greater force than the law, they serve as a means to circumvent the enforcement of the Law on Public Procurement and the Law on Public-Private Partnership, if such a clause is included in the interstate agreement.

Another mechanism is special laws that are passed to set different rules for a particular project, satisfying the private interests of the participants in that project.

The Law on Determining Public Interest and Special Procedures for the Implementation of the Project for Construction of the Infrastructure Corridor of the E-761 Motorway, Section Pojate–Preljina (Offi-

cial Gazette of the Republic of Serbia, no. 49 of 8 July 2019)²⁰⁴ regulates issues that are already covered by Serbian laws on expropriation, public procurement, public-private partnership, design, taxes and customs. The most controversial aspect of the law is that it stipulates that the regulations governing the public procurement procedure do not apply to the selection of a “strategic partner and the conclusion of a contract on design and construction, as well as the selection of expert supervision over the execution of works.” This means that the Law on Public-Private Partnership does not apply either, because otherwise, according to that law, the rules of public procurement would be applied to the selection of a private partner. This means that the Law on Public-Private Partnership does not apply either, because otherwise, according to that law, the rules of public procurement would be applied to selecting a private partner.

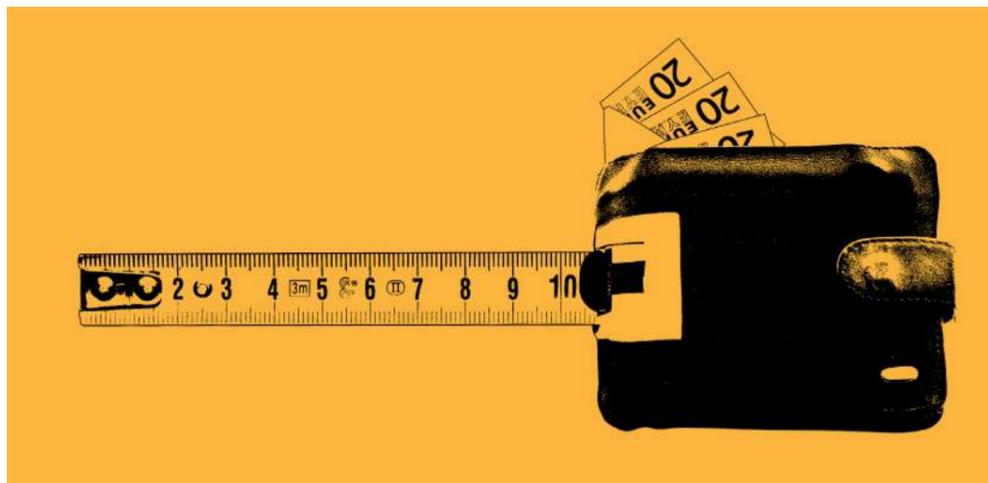
Instead of introducing new rules in the manner explained above and ignoring the enforcement of laws, the Government should change laws if something is wrong with them, i.e. if they are not efficient enough. The practice of devising special rules for each project and ignoring existing laws is extremely illogical and can be dangerous for the entire system.

The model for the adoption of all subsequent “special laws” (lex specialis) that allow the introduction of special procedures and circumvention of the rules of regular laws, is the one adopted for the project “Belgrade Waterfront”, which is described in more detail later in this analysis.²⁰⁵

The culmination of the practice so far is the umbrella “special law”, adopted in early 2020, which enabled the Government to decide how and when to bypass any provision “that stands in the way of investment” or “that protects against corruption”, depending on the observer’s perspective.

When concluding these agreements and passing laws, the proponents present it as if they are doing it in the public interest, but the explanations they give are incomplete and unclear. On the other hand, it is very clear that government officials have an interest in entering into such agreements. The most obvious form is the use of such deals for political promotion. In some cases it is suspected that there are other types of benefits – for example, that Serbian politicians are behind the “Belgrade Waterfront” project, and that the companies based in the United Arab Emirates are just a facade in this project.²⁰⁶ One of the reasons for such publicly expressed doubts is the fact that the joint Arab-Serbian company, the holder of this project, was exempted from paying compensation for construction land in the amount of €300 million, in exchange for the construction of public facilities, the scope, dynamics and realizations have never been disclosed.²⁰⁷ Despite numerous requests, the public remained deprived of important information about this project. Unexplored suspicions that the procedure has been changed in a way that benefits pre-known business people, closely associated with the top of the ruling party²⁰⁸, have arisen in other cases as well.

When it comes to interstate agreements, the Constitution provides the possibility to regulate the relations of the contracting parties differently than it would be the case if the laws of Serbia were applied, and the only restriction is that the interstate agreement does not violate any norm of the Constitution. In a dozen cases, there were various attempts to challenge the constitutionality of the provisions of international agreements. The Constitutional Court of Serbia rejected all those initiatives.²⁰⁹ Among them was the initiative²¹⁰ to launch the procedure for assessing the constitutionality of the Law on Ratification of the Agreement on Co-



²⁰² www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_-_istra%C5%BEivanje_o_primeni_Zakona_o_lobiranju.pdf
²⁰³ www.acas.rs/pretraga_registra/#/acas/registarLobista

²⁰⁴ www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2019/49/2/reg
²⁰⁵ www.transparentnost.org.rs/images/dokumenti_uz_vesti/Elements-of-State-Capture-in-Serbia-eng-A5.pdf
²⁰⁶ <https://insajder.net/sr/sajt/tema/11774/>

²⁰⁷ www.istinomer.rs/ufokusu/beograd-na-vodi/
²⁰⁸ <http://rs.n1info.com/Biznis/a569824/Cvijic-Kursumlijska-i-Vranjska-banja-novi-plen-za-biznismene-bliske-SNS.html>
²⁰⁹ An example of such a ruling refers to the “oil-gas agreement” between the Republic of Serbia and the Russian Federation, which gave the Russian side a predominant position in the biggest Serbian oil company, under rather favourable conditions.
²¹⁰ <https://sirius.rs/praksa/yfTOGA>

operation between the Government of the Republic of Serbia and the Government of the United Arab Emirates from 2013 and 2015. Similarly, the initiative to assess the constitutionality and legality of the Joint Investment Agreement between the Government of the Republic of Serbia and Al Rawafed International Investment LLC was rejected, as well as the requests to suspend the execution of individual acts and actions taken under that agreement.

There is no provision in the Serbian Constitution that would limit the decision of the parliamentary majority on the disposal of public finances and public property. Therefore, no matter how harmful the consequences of an interstate agreement, special law or agreement concluded on the basis of them, such decisions of the National Assembly and the Government cannot be challenged due to their contradiction with the highest legal act. Hypothetically, parliament could approve the sale of 10 billion euros worth of state-owned property for just 1 euro, or a €1,000 billion loan under any financial conditions. The Constitutional Court, based on previous practice, would not consider such an agreement unconstitutional.

The Constitutional Court also decides on the constitutionality of special laws that violate the rules from existing general regulations. In some earlier cases, the Constitutional Court took the stance that the constitutional principle of the unity of the legal order is violated when the provisions of a special law are in conflict with the provisions of the systemic law in that area. However, in most situations the Constitutional Court took a different approach - for example, when it upheld the Law on Encouraging the Construction Industry²¹¹ even though it was in conflict with the systemic Law on Public Procurement, or when the Law on Temporary Regulation of Pensions²¹² de facto regulated the amount of pensions, which is the subject of the Law on Pension and Disability Insurance.

The "Belgrade Waterfront" project that

we have already mentioned in the context of interstate agreements is also one of the examples of the adoption of "special laws" with a precise and predetermined purpose. The adoption of this law was the finale of a series of controversial steps taken by the authorities at the city and state level in the period from August 2014 to April 2015 exclusively to benefit the pre-announced investor, starting with the changes in urban plans.

The reason for the adoption of the special law was that the Law on Expropriation did not allow the confiscation of land and privately owned buildings for the construction of commercial, residential, tourist and catering facilities. The special law determined special expropriation procedures and the issuance of construction permits for the construction of "Belgrade Waterfront". In that way, the expropriation of buildings and land for the development of the future residential and business centre in the riverfront area of the Sava River was enabled, based on the previously adopted "Plan of special purpose" and the government decision to declare "Belgrade Waterfront" a project "of importance to the Republic of Serbia and the City of Belgrade".

By applying this special law, the Government has practically informed the citizens that the Law on Expropriation and the accompanying rules will be just a dead letter on paper whenever the Government decides that a project is of "national importance". As Transparency Serbia pointed out, it would be more appropriate to amend the Law on Expropriation by introducing new legal provisions that could be equally applied in the future in all similar situations, instead of on a case-by-case basis, i.e. in situations where it suits someone.

Undermining the legal order by favouring investors for the "Belgrade Waterfront" project was no exception, but served as a model for the adoption of other special laws. Thus, the Law on Special Procedures for the Implementation of Projects for the Construction and Reconstruction of Line

Infrastructure Facilities of Particular Importance for the Republic of Serbia²¹³ was adopted in February 2020. The government explained that the law was needed to accelerate the construction of important infrastructure projects, such as highways.

The paradox is that this legal mechanism for circumventing the rules of public procurement was adopted only a month after the same Government proposed and the same National Assembly passed a new Law on Public Procurement, harmonized with EU rules.

The tailor-made law from February 2020 enabled the contracting of numerous projects according to special rules, and their value was estimated at several billion euros at the time of its adoption.

This special law, like those that preceded it, follows a rather unusual "logic": if any given project is "of special importance to the Republic of Serbia", it will be contracted according to rules that provide less protection of the public interest, especially when it comes to transparency and competition.

Although this law defines "projects of special importance", so it could serve any project in the future, it is essentially a legal mechanism that has the same effects as the adoption of special laws for only one project. Namely, the procedures from the special law for line infrastructure will enable the selection of a predetermined partner in situations where the financing and implementation of projects have already been agreed or are expected to be regulated by agreements with other countries. One concrete example is the construction of metro lines in Belgrade.

This Law can be applied to projects for construction and reconstruction of public transport infrastructure (road, railway, water and air) of "special importance for the Republic of Serbia". The Government decides which projects are of special im-

portance. The law itself identifies projects worth more than €50 million as such.

The Law also stipulates that the rules from the Law on Public Procurement regarding the "procurement plan, prior notification, manner of proving mandatory and additional conditions for participation in the public procurement procedure, deadlines for submission of bids and deadlines for the Republic Commission for the Protection of Rights in Public Procurement Procedures to make a decision, shall not apply."²¹⁴

In Articles 37 to 48, it is stated that "especially in case of urgency and risk of the project realisation," if a preliminary feasibility study of the general project has been prepared, the government may decide that the public procurement rules do not apply at all to the project or its individual phases and activities. Instead, "a special procedure for selecting a strategic partner for the purpose of implementing a project of particular importance for the Republic of Serbia" shall apply. The obvious intention of such a legal solution is to tailor the special procedures to a preselected strategic partner. Namely, the Article 39, paragraph 3, explicitly states that the government will issue a regulation (decree) defining criteria and rules for choosing a "strategic partner" for each project individually.

Therefore, it can be expected that for the upcoming infrastructure projects, frequently announced by state officials in their public appearances²¹⁵, Serbia is about to receive more regulations adjusted exactly to the projects planned in advance. A similar thing has already happened when, on the basis of a tailor-made law for the "Moravian Corridor"²¹⁶, the Government passed a decree on the selection of a strategic partner, the content of which favoured the only bidder. In its 2020 Report on Serbia, the EU cited the law as one of the reasons for "serious concern".²¹⁷

²¹³ www.mgsi.gov.rs/lat/dokumenti/zakon-o-posebnim-postupcima-radi-realizacije-projekata-izgradnje-i-rekonstrukcije
²¹⁴ www.mgsi.gov.rs/sites/default/files/LAW%20on%20Special%20Procedures%20for%20the%20Implementation%20of%20the%20Project%20of%20Construction%20and%20Reconstruction%20of%20Line%20Infrastructure%20Structures%20of%20Particular%20Importance%20to%20the%20Republic%20of%20Serbia.pdf

²¹⁵ www.danas.rs/ekonomija/mihajlovic-opravljanje-leks-specijalis-za-brzu-izgradnju-infrastrukture/

²¹⁶ www.danas.rs/ekonomija/ts-transparentno-s-puno-sumnjivih-poteza-izabran-graditelj-moravskog-koridora/

²¹⁷ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf, p. 28

²¹¹ www.nadzor.org.rs/pdf/Pismo%20ustavnom%20sudu.pdf

²¹² <http://rs.n1info.com/Vesti/a95474/Odluka-Ustavnog-suda-o-penzijama-pravna-ili-politicka.html>

CONCLUSIONS

Judiciary

There are several reasons why law enforcement agencies and the judiciary in Serbia do not achieve better results in the suppression of corruption, in particular in cases related to high-level officials. Some are associated with weaknesses in legal and institutional arrangements.

However, it appears that a greater impact is caused by the failure of key stakeholders – police and prosecution – to investigate “politically sensitive” cases of corruption unless they have a clear sign that the most influential politicians will support the action. Consequently, elements of institutions’ capture are highly visible in the sector.²¹⁸ Furthermore, some of normative or institutional problems in the fight against corruption are clearly identified, the Government and the Assembly know about them, but do nothing to resolve them. Finally, a relatively small number of reported corruption cases, the absence of witnesses and other difficulties in proving corruption can be listed as a problem. All of these factors contribute to grand corruption going largely unpunished, and provide fertile ground for various types of state capture, including legislative and decision-making processes.

Grand corruption is not recognised in Serbian legislation. One of the consequences of the non-existence of a separate criminal offence for the most serious cases of corruption is that the usual statutes of limitations are applied even when the consequences for public resources and human rights are particularly severe

The Prosecutor’s Office for Organised Crime is in charge of investigating cor-

ruption cases of some, but not all high-level public officials (among those who are not under the jurisdiction of this prosecutor’s office are the president and members of parliament). Similarly, evidence for some, but not all, corruption offences can be done using special investigative techniques. Neither the Prosecutor’s Office for Organized Crime nor the special departments of the Higher Public Prosecutor’s Offices for the Suppression of Corruption are responsible for certain corrupt criminal acts which are prescribed by special laws. Public prosecutors may, but are not obliged to investigate all documented allegations of serious corruption, such as those reported in the media or otherwise publicly available (for example, in the statements of politicians, non-government organisations and business entities). When the competent bodies do not address these issues, the perception remains that corruption is widespread, and citizens suspect that the passiveness of prosecution is related to political and other influences. It is therefore crucial for the cases of suspected corruption to be properly investigated and the public informed. Many other public authorities come across information that may indicate corruption, but do not have powers to investigate further. There is a clear duty in the law for such authorities to submit a criminal charge if they identify corruption in the scope of their work (for example, the State Audit Institution, the Agency for Prevention of Corruption and the Public Procurement Office). However, in most instances, these bodies will not have sufficient information to determine whether a particular violation of rules they have established also constitutes corruption. They may inform public prosecution about it, but there is no clearly defined legal duty to do so. There is also no mechanism within the public prosecutor’s offices

for regular verification of information from the reports and findings of other institutions in order to investigate the existence of corrupt crimes.

When, after consideration of a criminal charge, it is considered that there is no element of corruption or other criminal offence, public prosecution informs the person who submitted the charge. However, in most cases, when they find that there are no elements for prosecution, the prosecutor does not justify his decision, which makes it harder to assess whether all relevant documents have been collected and considered. The lack of information is particularly problematic when the reported case is known to citizens and when grand corruption has been suspected.

The Public Prosecutor’s Office for Organised Crime and four departments of the higher prosecutor’s office in charge of suppressing corruption are still not fully equipped according to current plans. In addition, it should be borne in mind that these plans are not designed to respond to the need for more proactive investigations.

The constitutionality of some of the key provisions of the newly adopted Law on Investigation of Property Origin and Special Tax is controversial which may hamper its implementation and lead to compensation claims in the future. Furthermore, the law does not provide sufficient guarantees that it will be used to check potential participants in corruption, as the criteria for control are not defined in the law, while the plan for controlling the Tax Administration’s special unit will be a confidential document.

The rules governing the collection of statistical information on corruption cases are not sufficiently developed. The results provided by courts, prosecutors’ offices and the police are not fully comparable. Some of them are published in a format that is not user-friendly or reusable. Then, most of the information is available to the public only in annual reports, although special departments of the Higher Public Prosecutor’s Office (HPPO) report quar-

terly. Furthermore, most of the information is only available to the public in annual reports, although special anti-corruption units of the HPPO report quarterly. Although there is a lot of information on the arrests of corruption suspects, available from the Ministry of the Interior, it cannot be matched with the later outcome of these cases before the prosecution and courts. In particular, the public lacks information about corruption cases that ended with plea agreement.

There is no practice of competent public prosecutors providing citizens with information on ongoing prosecutions of those who participate in corruption and on ongoing investigations. On the other hand, for some of these cases, information is communicated to the public or commented by politicians (president, prime minister or minister of police). The problem of “information-leaking” on ongoing investigations is recognized in the national planning documents and reports of the European Commission, but is not adequately addressed.

The constitution does not provide sufficient guarantees for the independence of judges and prosecutors from politicians. Such guarantees would be stronger and in line with international standards, if judges and prosecutors, elected by their peers in a free and transparent election process, constituted the majority in the High Judicial Council and the State Prosecutors’ Council. On the other hand, the current provisions of the Constitution do not provide such guarantees and the current proposals for constitutional amendments envisage solutions that would still significantly preserve the influence of politicians through members of these bodies elected by the National Assembly. A lack of commitment to independence of the judiciary is even clearly visible in the statements of high government officials.

The system of judges’ and public prosecutors’ liability for breaches of professional and ethical standards is not sufficiently transparent. This prevents citizens from helping the judiciary to resolve their inter-

²¹⁸ www.transparentnost.org.rs/images/dokumenti_uz_vesti/when-law-doesnt-rule-State-capture.pdf

nal problems without political interference and on the other hand, does not provide sufficient incentives for those judges and prosecutors performing with full respect for professional and ethical standards.

Serbia has adopted strategic documents that are relevant to improve legislation and practice in the fight against corruption (two national anti-corruption strategies - the implementation of which has expired, action plans for Chapters 23 and 24 of EU integration, strategies in the field of judicial reform, financial investigations, etc.) However, a lot of the activities envisaged in these documents have still not been implemented. There is no appropriate monitoring and follow-up mechanism in place that would ensure problems are addressed in a timely manner and that the effects of planning documents are considered. Similarly, there is no practice of discussing the effects of implementing adopted laws in the Assembly.

An oversight mechanism for implementation of the currently key anti-corruption policy document (the revised Action Plan for Chapter 23) exists at national and EU level. However, neither the previous nor the current coordination body for implementation of the Action Plan for Chapter 23 has organised debates on the results of suppression of high-level corruption, even if annual EC country reports and six monthly non-paper reports always indicate weaknesses in this area.

Law-making

The law-making process in Serbia is not sufficiently transparent. The effects of the legislation, and therefore the possible benefits of tailor-made laws, are not systematically monitored. This provides fertile ground for corrupt interests to find their way to legal provisions and not to be noticed. At the moment, adjusting regulations to private interests is the area that raises the most suspicions about the existence of elements of a captive state in Serbia. These suspicions are not investigated by the public prosecutor or other

competent authorities, while the media and civil society cannot fully comprehend private interests behind state authorities' decisions, due to the insufficiently transparent decision-making process.

Another important factor that significantly contributes to the frequency of tailoring laws and lower visibility of this phenomenon refers to certain features of the functioning of the political system. The decision-making process is highly centralised at the top of one or more ruling political parties, whereas the public has no access to information about influences on government policies that occur through parties' channels. The government transforms parties' decisions (or party leaders' decisions) into legislative proposals, while the Assembly more often acts as a government service than as an institution that will thoroughly oversee their actions. In addition, some of the serious shortcomings in the legislation enable private interests to be transformed into tailor-made laws and for such interests to stay hidden not only from citizens, but also from legislators. The adopted laws are usually not precise and clear enough and their implementation is regulated in more detail through bylaws passed by the government and ministers. Unlike laws that are adopted publicly, in the Assembly, and in preparation of which public hearings are often organised and which contain publicly available explanations, decrees and regulations are generally not considered in public before adoption, and their explanations are not published. Some of the identified cases of tailoring regulations in the private interest just refer to bylaws.

The Constitution of Serbia envisages the possibility of "bypassing" national legislation through state-to-state agreements and loan arrangements. This loophole is used to exclude competition in public procurements and public-private partnerships. Parliament ratifies framework state-to-state agreements and does not always have full information about how they will be used for further government contracting. When proposing ratification of such arrangements to the Assembly, the

government's justification does not contain all the information needed to identify potential gaps and damaging provisions. While some information about possible benefits and advantages of such arrangements is presented to the public, there are no economic analyses that would allow comparison with alternative solutions for the same problem. There is no legal obligation for the Government and the Assembly to consult with the Fiscal Council on these issues before concluding or approving the agreement. The constitution and laws do not provide guarantees that all economic contracts concluded by the government will be published or that publishing them is a condition for their validity. In practice, many of these contracts are not published, in particular when they are negotiated based on a state-to-state agreement.

The constitution has general provisions on internal harmonisation of the legal system. However, there are no explicit bans that would prevent adoption of "laws for one project", which undermine systemic laws in the respective area. Such laws are in practice tailored to the specific interests of pre-agreed contracting parties.

There is a legal duty in place to provide information on interested parties consulted during the drafting process and to pre-assess effects of the future law for various entities. However, this "legislative footprint" does not cover all relevant information even when it is prepared, which is frequently not the case.

Public debates are mandatory in the preparation of most new laws and when significant changes are made to existing ones. Public debate can help to identify tailor-made provisions in early stages of the process. However, the rules are violated, and public debates are sometimes not organised at all or are not organised in accordance with the rules. Information on the consideration of proposals made during the public debates is often missing, even though it is mandatory. Failure to organise public debate in accordance with the rules does not provide grounds to challenge the constitutionality of the

law. Furthermore, public debates are not mandatory at all if the proponent of the law is a member of parliament rather than the government. This possibility has been abused in some cases to avoid public debates.

Serbia has the Law on Lobbying. This law seeks to regulate influences on the decision-making process performed either by directly interested persons or intermediaries (professional lobbyists). However, the law does not ensure full transparency of relevant information. The government, ministries, members of parliament, public officials, special advisors in government and ministries and some members of working groups which draft the law do have a duty to record information on those who approach them formally regarding the content of legislation, but they are not obliged to publish this information. An even bigger problem is that informal contacts of interested persons and lobbyists with public officials about the same issues are not explicitly forbidden nor is it regulated in more detail how an official should act if such contact occurs.

There is a mechanism provided in the Law on Prevention of Corruption for accessing potential corruption risks in the draft legislation. An independent body of the Agency for the Prevention of Corruption is responsible for this assessment. However, a duty to consult the agency is only required for laws enacted in some areas (which are explicitly listed in the Action Plan for Chapter 23), and not for all laws. Furthermore, there is no such duty to consider the risks of corruption in the later stages of the legislative process (government proposal or parliamentary amendments), where new risks could occur, as well as in the case of bylaws. There is no legally defined mechanism for informing the agency and the public on the implementation of the agency's recommendations for elimination of corruption risks. Similarly, there is neither a legal duty nor an established practice for the agency to consult the public to identify corruption risks in laws, which would be helpful to identify a larger number of tailor-made provisions.

RECOMMENDATIONS

The Judiciary

- The concept of grand corruption should be recognised in the Serbian Criminal Code, to prevent impunity for the gravest corruption offences beyond the current statute of limitation rules.
- The law on the organisation and competence of state authorities in the suppression of organised crime, terrorism and corruption should be amended to ensure that the Prosecutor's Office for Organised Crime is in charge of the corruption offences of all high-level public officials.
- The Criminal Procedure Code should be amended to enable implementation of special investigation techniques for all corruption-related offences.
- The Constitution should guarantee greater independence of judges and prosecutors from politicians. In particular, professional judges and prosecutors, who are elected by their peers in a free, transparent election process, should comprise the majority of the High Judicial Council and State Prosecutorial Council.
- The system of judges' and public prosecutors' liability for failure to achieve professional and ethical standards should be more transparent.
- The Public Prosecutor's Office should have a clearly defined duty to investigate, within a certain time frame, documented allegations of serious corruption exposed in the media. It should also inform the public about its findings.
- The Public Prosecutor's Office should publish an explanation of decisions not to prosecute cases of alleged grand corruption.
- The Prosecutor's Office for Organised Crime and four departments of the higher public prosecutor's office in charge of suppressing corruption should be given sufficient resources for more proactive investigations.
- The newly adopted Law on Investigation of Property Origin and Special Tax should be checked by the Constitutional Court before it enters into force, to prevent possible damage requests. Once the law is in force, the plan for Tax Administration control should prioritise the control of potential participants in high-level corruption cases.
- The police, public prosecution and court statistics should be improved to enable more detailed information on types of corruption, the sector where corruption occurred and offenders. The statistics of various authorities should be enhanced to be fully comparable.
- The police, public prosecution and courts should regularly report about their work in the field of anti-corruption (at least quarterly) and this information should be available in open data (machine-readable) format.
- The competent public prosecutor should accurately present information about criminal investigations and ongoing cases, thus preventing politicians (the president, prime minister and minister of police) from taking the floor.
- Public prosecution offices and courts should publish information about their deals with those accused of corruption and plea bargaining, to ensure a sufficient level of protection of public interest from possible abuses.
- Parliament and the Ministry of Justice should organise public hearing (experts' and practitioners' debate) to discuss implementation of strategic acts and laws relevant for the prosecution of high-level corruption and related problems. Such forums should include representatives of independent state institutions (the State Audit Institution, the Agency for Prevention of Corrupti-

on, the Commission for the Protection of Rights in Public Procurement, etc.), the Anti-Corruption Council and civil society organisations and investigative media that exposed cases of potential high-level corruption.

- The coordination body for implementation of the Action Plan for Chapter 23 should organise debates on the results of suppressing high-level corruption at least annually, following the EC country report and/or non-paper.

Law-making

- The following changes in legislation and practice are needed to prevent undue influence in public decision-making and subsequent state capture:
- The constitution should be amended to limit the possibility of "bypassing" national legislation (in particular on public procurements, public-private partnerships and privatisation) through state-to-state agreements and loan arrangements. Even before such constitutional changes, the government should provide a detailed explanation of the effects of these agreements that would include considerations and economic analyses of alternative solutions for the same problem. The Fiscal Council should check these analyses and its opinion should be considered along with the governmental proposal in parliament.
- All the government's economic contracts should be published before they enter into force in order to be valid (constitutional changes might be needed). All existing government economic contracts should be published without further delay.
- The constitution should explicitly prohibit adoption of "laws for one project" that violate the provisions of systemic law for the area.
- An explanatory note for each law should include the full "legislative footprint", that is, information on all the stakeholders who influenced the process of legislative drafting in all phases.
- Public debate should be mandatory for all laws, regardless of its proponent. Failure to organise public debate should be recognised as grounds to deny the constitutionality of the act.
- Government, ministries, parliamentary groups, their officials, advisors and task force members should be obliged, through the Law on Lobbying, to publish information on the legal and natural persons that approached them, in connection with the enactment, repeal or amendment of the law, whether it is formal correspondence or an informal attempt to influence;
- Ministries and the government should publish an explanatory note for draft bylaws and organise public debates before the adoption of these acts.
- The Agency for Prevention of Corruption should be mandated to give its opinion about each law and bylaw that might affect corruption or the fight against corruption, and not just acts that are explicitly mentioned in the Action Plan for Chapter 23. A proponent of the legislation should provide information on how they implemented the agency's recommendation.
- When it gives opinions on corruption risks in legislation, the Agency for Prevention of Corruption should seek public input, consider this input and publish its opinion with an explanation of its arguments.

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ANNEXES

The judiciary, institutional set-up

Judicial power in the Republic of Serbia is vested in courts of general and special jurisdiction.²¹⁹ The courts of general jurisdiction are 66 basic courts, 25 high courts, 4 appellate courts and the Supreme Court of Cassation. The courts of special jurisdiction are 16 commercial courts, the Commercial Appellate Court, 44 misdemeanour courts, the Misdemeanour Appellate Court and the Administrative Court.²²⁰ In the first half of 2020, by a decision of the High Judicial Council, 3,038 judicial positions were determined, of which 2,742 were filled. Excluding those on long-term leave, 2,602 judges acted effectively in all courts in Serbia.²²¹

The Supreme Court of Cassation is the court of highest instance in the Republic of Serbia. It is the immediately higher instance court to the Commercial Appellate Court, the Misdemeanour Appellate Court, the Administrative Court, and the other appellate courts. Appellate courts are the immediately higher instance court to high courts and basic courts (in some cases, specified by the law, high courts are the immediately higher instance to basic courts). A high court in the first instance adjudicates in most corruption-related offences, such as abuse of position cases, accepting bribes, and bribery and abuse in connection with public procurement.²²²

The constitution and laws guarantee the independence of judges and the permanency of their function.²²³ The constitution

prohibits influencing judges and prohibits political activity of judges.²²⁴ Constitutional guarantees are confirmed by the provisions of the Law on Organisation of Courts and the Law on Judges.²²⁵

According to the Law on Organisation of Courts, judicial authority is vested in courts and independent of the legislative and executive authorities.²²⁶ A judge is independent in his/her actions and decision-making.²²⁷ Judicial decisions are binding on all courts and may not be subject to extra-judicial control. Judicial decisions may be reviewed only by the court of competent jurisdiction in due proceedings established by law.²²⁸ Use of public office, the media or any public appearance that may unduly influence the course and outcome of court proceedings is prohibited by the law. Any other form of influence on the courts or pressure on the parties in the proceedings is also prohibited.²²⁹

A judge performs his/her function as a permanent one, except when he/she is elected judge for the first time.²³⁰ Judges are elected to permanent functions by the High Judicial Council.²³¹ The High Judicial Council also proposes candidates to the National Assembly for the first judicial tenure.²³² The High Judicial Council has 11 members. Six of them are judges, one is a representative of the law faculties, one of attorneys-at-law, and three members are appointed through their functions: the minister of justice, the president of the Parliamentary Committee and the president of the Supreme Court of Cassation.²³³

²¹⁹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 71

²²⁰ Law On Organisation of Courts, Article 11

²²¹ <https://www.vk.sud.rs/sites/default/files/attachments/Izve%C5%A1taj%20o%20radu%20sudova%20u%20Republici%20Srbiji%20za%20period%20januar-juni%202020.%20godine.pdf>, page 4

²²² Law On Organisation of Courts, Article 23

²²³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 75

²²⁴ Constitution of Serbia, Articles 142–149

²²⁵ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 75

²²⁶ Ibid.

²²⁷ The Law on Judges, Article 1

²²⁸ Ibid.

²²⁹ The Law On Organisation of Courts, Article 6

²³⁰ The Law on Judges, Article 2

²³¹ The Law on Judges, Articles 50–52

²³² https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 71

²³³ Ibid.

The judicial function can be terminated on a judges' own request, by implementation of legal conditions or dismissal for legal reasons, and if a judge, after three years from the first election, is not elected to a permanent judicial office.²³⁴ The High Judicial Council adopts the decision on termination of a judicial function.²³⁵ A judge has the right to file an appeal against that decision to the Constitutional Court.²³⁶ The decision of the Constitutional Court is final.²³⁷ The Law on Judges stipulates in detail the procedure for dismissal.²³⁸ The procedure for dismissal before the High Judicial Council can be initiated by a proposal of the president of the court, the president of a directly higher instance court, the president of the Supreme Court of Cassation, competent authorities for the evaluation of the judge's work or the Disciplinary Commission.²³⁹

Participants in court proceedings are entitled to complain about the work of the court when they find that the proceedings are dilatory, irregular or that there is any form of influence on the course and outcome.²⁴⁰ Disciplinary reports against a judge are submitted to the Disciplinary Prosecutor. The Disciplinary Prosecutor may file the motion for disciplinary proceedings to the Disciplinary Commission. The High Judicial Council establishes both the prosecutor and the commission.²⁴¹ Disciplinary sanctions are public reprimand, salary reduction of up to 50% for a period not exceeding one year and prohibition of advancement for a period of up to three years.²⁴² If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence, it shall institute dismissal proceedings.²⁴³ During the procedure, the judge can be

suspended. There is a formal complaints procedure – a judge can appeal to the Constitutional Court.²⁴⁴ The immunity of judges refers to the responsibility for the stated opinion and voting during the adoption of court decisions, except in the case of criminal acts of violation of the law by a judge.²⁴⁵ In other situations, the judge's immunity does not protect him from prosecution. A judge is not protected with immunity from prosecution in other situations.²⁴⁶

Public prosecution, institutional set-up

The public prosecution system consists of the Republic Public Prosecutor's Office, the appellate public prosecutor's offices, the higher public prosecutor's offices, the basic public prosecutor's offices and the public prosecutor's offices with special jurisdiction, the Public Prosecutor's Office for Organised Crime and the Public Prosecutor's Office for War Crimes.²⁴⁷

Anti-corruption departments have been established in the Republic Public Prosecutor's Office, all appellate public prosecutor's offices and four higher public prosecutor's offices (Belgrade, Novi Sad, Nis and Kragujevac).²⁴⁸ Since 2009, the competence of the Prosecutor's Office for Organised Crime has been extended to certain crimes which are colloquially called grand corruption. Jurisdiction is determined according to the rank of the perpetrators, that is, the persons who are being bribed - these are officials elected or appointed by the National Assembly, government, High Judicial Council or State Prosecutorial Council. The same

prosecutor will be in charge of prosecuting economic crimes (including private sector corruption) when the value of the illicit gain exceeds the amount of about €1.7 million, or when the value of public procurement exceeds €6.8 million.²⁴⁹

The Republic of Serbia had 71 public prosecutors²⁵⁰ and 713 deputy public prosecutors on 1 January 2020.²⁵¹ The Prosecutor's Office for Organised Crime has a public prosecutor and 25 deputies.²⁵²

Public prosecution in Serbia is organised in such a way that a lower-ranked public prosecutor is subordinated to the immediately higher-ranked public prosecutor, and a lower-ranked public prosecutor's office to the immediately higher-ranked public prosecutor's office. Every public prosecutor is subordinated to the Republic Public Prosecutor. A higher ranked prosecutor may issue to an immediately lower-ranked one a mandatory instruction for proceeding in particular cases when there is doubt about the efficiency and legality of his/her actions, and the Republic Public Prosecutor may issue such instruction to any public prosecutor. Prosecutors have deputies and a deputy public prosecutor is obliged to perform all the acts entrusted by the public prosecutor.²⁵³ In addition to public prosecutor's offices, the State Prosecutorial Council has been organised as an independent body that ensures and guarantees the independence of public prosecutors and deputy public prosecutors.²⁵⁴ The organisation of prosecutor's offices largely follows that of the courts.²⁵⁵

The constitution²⁵⁶ and laws guarantee independence in the work of prosecutors.²⁵⁷ Unlike the judiciary which is by the constitution "independent", the public prosecu-

tion is "self-contained"²⁵⁸ and every public prosecutor and deputy is "independent in the performance of its competences".²⁵⁹ The independence of judges means that judges are functionally independent, that is, they can perform their function without anyone's influence. The autonomous or "self-contained" nature of prosecutors alone is not sufficient to ensure functional independence in the performance of their duties. According to the representatives of the prosecutors' association, "the actions of prosecutors must be independent in all aspects – independent not only of the executive and the legislature, but also of the influence of the courts, as well as of arbitrary interference by superior prosecutors in the work of lower prosecutors."²⁶⁰ All forms of influence of the executive and legislative authorities on the work of the public prosecution and its handling of cases, using the public office, the media and any other means that may threaten the independence of the work of the public prosecutor's office, are prohibited. The public prosecutor and the deputy public prosecutor are obliged to reject any action that represents an impact on the independence of the work of the Public Prosecutor's Office.²⁶¹

The constitution and laws guarantee independence in the work of prosecutors. Unlike the judiciary which is by the constitution "independent", the public prosecution is "self-contained" and every public prosecutor and deputy is "independent in the performance of its competences".

The public prosecutor is elected by parliament, on proposal by the government, following the opinion of the parliamentary committee for the judiciary.²⁶² The

²³⁴ The Law on Judges, Article 57

²³⁵ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 76

²³⁶ Ibid.

²³⁷ The Law on Judges, Articles 62–68

²³⁸ Ibid.

²³⁹ Rulebook on disciplinary procedure and disciplinary responsibility of the judge, Article 19

²⁴⁰ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 81

²⁴¹ The Law on Judges, Articles 93–95

²⁴² https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 81

²⁴³ The Law on Judges, Articles 91–92

²⁴⁴ The Law on Judges, Articles 64–67

²⁴⁵ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 81

²⁴⁶ The Law on Judges, Article 5

²⁴⁷ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 91

²⁴⁸ Ibid.

²⁴⁹ <http://rjt.nlnet.rs/sr/borba-protiv-korupcije>

²⁵⁰ Report on the work of the State Prosecutors' Council for 2019, <http://www.dvt.jt.rs/izvestaji/>, page 20

²⁵¹ Ibid.

²⁵² https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 91

²⁵³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 91

²⁵⁴ www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf, page 4

²⁵⁵ Ibid.

²⁵⁶ The Constitution of Serbia, Article 156

²⁵⁷ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 95

²⁵⁸ The Law on Public Prosecution, Article 2

²⁵⁹ Ibid.

²⁶⁰ www.danas.rs/dijalog/licni-stavovi/zasto-bi-tuzilastvo-trebalo-da-bude-nezavisno/

²⁶¹ <http://www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf>

²⁶² The Law on Public Prosecution, Article 74

State Prosecutorial Council proposes candidates to the government.²⁶³ The public prosecutor is elected for a term of six years and may be reappointed.²⁶⁴ The mandate of deputy public prosecutors elected for the first time lasts for three years. Parliament elects them on the proposal of the State Prosecutorial Council (one candidate for each vacant post).²⁶⁵ The council elects deputy public prosecutors to permanent function.²⁶⁶

The State Prosecutorial Council members have five years' mandate with a ban on consecutive re-election. The composition of the State Prosecutorial Council is: three ex officio members (the Republic Public Prosecutor, minister of justice and chair of the parliamentary committee responsible for the judiciary); six public prosecutors or deputy public prosecutors; and two "credible and prominent" lawyers.²⁶⁷ The council decides on the election of deputy prosecutors to another prosecutor's office of the same rank or the higher public prosecutor's offices.²⁶⁸

The prosecutor and deputy prosecutor can be dismissed for reasons determined by the law.²⁶⁹ The function of a public prosecutor is also terminated if he/she is not re-elected, that is, if a deputy public prosecutor is not elected to permanent function.²⁷⁰ A dismissal decision is reached on the government's proposal,²⁷¹ which must be based on reason by decision of the State Prosecutorial Council,²⁷² and appeal to the Constitutional Court is possible.²⁷³ The public prosecutor and the deputy public prosecutor are independent

in exercising their powers.²⁷⁴ Moreover, the public prosecutor and the deputy public prosecutor are obliged to reject any action that represents an impact on the independence of the work of the public prosecutor's office.²⁷⁵ Mandatory instructions of the superior public prosecutor are issued in writing and must include the reason and justification.²⁷⁶ A lower public prosecutor who believes that the mandatory instruction is unlawful or groundless may file an objection with an explanation to the Republic Public Prosecutor.²⁷⁷ Prosecutors in Serbia are obliged to appeal against every acquittal, or to provide a detailed explanation if the decision was taken with the consent of the public prosecutor.²⁷⁸ Furthermore, decisions to dismiss criminal charges or cease prosecution after the completion of an investigation must be made in panels.²⁷⁹

The police, institutional set-up

In the last Annual progress reports of the European Commission for Serbia 2020 (Key Findings), it is stated that "no progress was made overall as the excessive number of acting senior manager positions was not sizably reduced. Lack of transparency and respect of the merit-based recruitment procedure for senior civil service positions is an issue of increasingly serious concern."²⁸⁰

Legislation guarantees "operational independence of police from other state bodies in carrying out police duties and other tasks for which the police are responsi-

ble."²⁸¹ The minister may require reports, data and other documents related to the work of the police.²⁸² The director of police submits to the minister, regularly and at his/her special request, reports on the work of the police and all individual issues from the purview of the police. The same duty exists for sector managers.²⁸³ According to the law, the minister may give to police "guidelines and mandatory instructions for work, with full respect for the operational independence of the police."²⁸⁴ The minister may order the police to perform certain tasks and take certain measures and submit a report about them.²⁸⁵ These responsibilities of the minister can be applied until the moment when the public prosecutor is notified of a

criminal offence and the prosecutor takes control of police conduct in the pre-trial proceedings.²⁸⁶ The level of independence of police within the ministry is proclaimed by the law. The Police Directorate is established for performing police and other internal duties.²⁸⁷ The Directorate of the Police is led by the police director who is appointed and dismissed by the government at the proposal of the minister, after public competition.²⁸⁸ Organisational units at headquarters and regional police departments are led by regional chiefs, and police stations are headed by commanders.²⁸⁹ Internal appointments and promotions are made in accordance with the Law on Police²⁹⁰, which provide for regular evaluation on an annual basis.



²⁶³ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 91

²⁶⁴ Ibid., page 95

²⁶⁵ The Law on Public Prosecution, Article 75

²⁶⁶ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 95

²⁶⁷ Ibid., page 91

²⁶⁸ The Law on Public Prosecution, Article 74, 75

²⁶⁹ The Constitution of Serbia, Article 161, the Law on Public Prosecution, Article 87

²⁷⁰ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 96

²⁷¹ Ibid.

²⁷² The Law on Public Prosecution, Article 97

²⁷³ The Law on Public Prosecution, Article 98

²⁷⁴ <http://www.cepris.org/wp-content/uploads/2017/12/FINALNA-VERZIJA.pdf>, page 5

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ The Law on Public Prosecution, Article 18

²⁷⁸ The Binding Instruction of the Public Prosecutor, 2007, updated in March 2010

²⁷⁹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 96

²⁸⁰ <http://europa.rs/key-findings-of-the-2020-report-on-serbia/?lang=en>

²⁸¹ The Law on Police, Article 12

²⁸² https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 131

²⁸³ The Law on Police, Article 14

²⁸⁴ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 131

²⁸⁵ The Law on Police, Article 14

²⁸⁶ Ibid.

²⁸⁷ The Law on Police, Article 22

²⁸⁸ The Law on Police, Article 22

²⁸⁹ https://transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf, page 134

²⁹⁰ The Law on Police, Articles 149, 165-167

CIP - Katalogizacija u publikaciji -
Narodna Biblioteka Srbije, Beograd

Nenadić, Nemanja, 1972-

Publisher:
Transparency Serbia
Palmotićevo 31, Belgrade
www.transparetnost.org.rs

Print:
UNAGRAF d.o.o.
Belgrade

Circulation:
70



Transparentnost Srbija
Transparency Serbia

www.transparentnost.org.rs