

## **How to Fight Corruption?**

### **Current Problems and Issues from the Work of Repressive Anti-Corruption Bodies in the Context of EU Integration**

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## 1. Actual Challenges

There is no doubt that, at this moment, the courts, prosecutors and police in Serbia are facing many challenges when they need to meet the expectations of citizens in the fight against corruption. Even if that was not their goal, the messages from the political sphere of ‘zero tolerance’, nonselective prosecution of corruption and exposing affairs from the past have created the notion among the public that the ‘ball has been thrown’ into the field of justice and that nothing less than a multitude of quick convictions will be enough to meet the expectations. Sometimes the pressure is directed to all the institutions of the repressive apparatus, and sometimes it refers to only one of the organizations. Thus, for example, in a speech on the occasion of International Anti-Corruption Day on 9 December 2014, Prime Minister Aleksandar Vucic specifically said that the police and the prosecution did their part in the cases... and now the courts need to take over. Similarly, in other circumstances, particularly in the media the targets were the police officials (especially before the shift of all chiefs of police departments with the suspicion that they were involved in leaking information about investigations in progress, which were not followed by any criminal investigation), public prosecutors (especially organized crime prosecutor and his deputies), or the judges in certain cases (particularly due to the decision on release from custody).

At the same time, the resources for the fight against corruption were not significantly increased in order to respond to these new tasks and the expected increased workload. Moreover, in terms of institutional arrangements for the prosecution of corruption, the measures of a temporary nature are implemented, which was particularly evident in connection with special ‘working groups’ for testing the so-called ‘24 privatization’, or statements from the 24 reports of the Anti-Corruption Committee, whose solving has become a subject of discussion of the European Parliament, and then incorporated in the political program of the Government of Serbia from 2012. The work on these cases was discussed at the meetings of the Coordination Bureau of Security Services (which does not have jurisdiction over the issues of fighting corruption), members of the Government were announcing deadlines for the individual cases from this group to be prosecuted, and at one point they presented summarized results of the achievements (the extent of investigations and indictments, the material damage in these cases and the like). Then the information emerged that the ‘working groups’ were disbanded, but that the work on these cases continues within the ‘ordinary’ organizational units of the police.

Objective obstacles in the work of the judiciary arise from the fact that the ‘reform of the judiciary reform’ brought new changes in the organization of the prosecution and the courts (after it was changed at the beginning of 2010), as well as major personnel changes (termination of the mandate for a large number of judges and prosecutors in 2010, selection of new ones, and return of a number of ‘old’ judiciary members). Court presidents were elected only after a few years during which these positions had been filled by acting presidents, and similar problems were recorded in some public prosecutor’s offices.

In terms of legislative reforms, the beginning of the implementation of the ‘new’ Criminal Legal Code has particular influence, with significantly different procedures for prosecution (‘prosecutorial investigation’). For years, this Code has been implemented in some severe cases of corruption (cases in the Prosecutor's Office for Organized Crime), and from this year it also applies to other crimes, or in the work of other public prosecutors and courts. Some of the decisions of the Code have caused numerous challenges, including bringing into question its constitutionality.

In the public, the main problems in the prosecution of corruption are often identified as slowness of procedures and lenient sentences. There is no doubt that these problems are very much present. However, so far there are no clear evidence on which it could be argued that the situation regarding the effectiveness of prosecution and the strictness of punishing corruption is in any way less productive than the efficiency of judiciary and criminal policy in general. Moreover, given the fact that the courts are mainly dealing with the cases of petty corruption, it should not be surprising that the sentences for these offenses were mild or below the prescribed minimum.

On the other hand, it is obvious that there is a serious problem in the stage preceding the investigation and prosecution of corruption. The corruption offenses are characterized by extremely high 'dark figure of crime'. Judging by any relevant research of public opinion that measured the actual experience of citizens with corruption (and not just the perception of its occurrence), less than 1% of cases of bribery ever gets reported. Such surveys regularly show that the number of citizens who participated in petty corruption by giving bribes during the study period (one year or less) is about 20%. When we take into account the number of households in Serbia, this means that the number of such cases of bribery can roughly be estimated at about half a million. On the other hand, the total number of criminal charges for all acts of corruption does not exceed 5,000 even when we factor numerous cases of reporting without any grounds.

One of the possible answers to the problem of small number of reported cases may represent a recently adopted Law on the protection of whistleblowers, which tends to encourage more people who are aware of the illegalities to dare to report them, so that the state authorities could act according to those reports. The application of this Law will begin in mid-2015. When passing the Law there was a missed opportunity to incorporate some elements that could lead to a larger number of detected cases - eg. in terms of rewards for those people whose involvement lead to the profit in public funds, guarantees of protection against retaliation to persons who were not previously connected with the body that caused the illegality, release from liability in cases of alert with classified information, etc. In addition to the protection of whistleblowers, the increased reporting of corruption cases should be assisted by the changes in criminal legislation or the practice of investigating authorities ('proactive questioning', 'illicit enrichment' offence) as well as better cooperation between bodies that have information on violations of laws with police and prosecution.

Second in importance is the question of selectivity. It needs to be ensured that no decision on whether corruption will be reported and investigated, when it will be done and who will be covered by the indictment depends on the influence of political or other powers. Although the selectivity, or, better yet, actions in cases with evident political support, is sometimes obvious, an additional problem is that it generally can be masked by objective circumstances - eg. the fact that public prosecutors usually have more workload than they can perform and therefore always have an excuse why they did not take into consideration any particular case, especially if this would refer to the operation on official duty, and not on the already filed criminal complaint.

## 2. The Fight Against Corruption as a Political Priority

The fight against corruption occupies an important place among the priorities of the Government of Serbia, interested international organizations, and citizens.

### *The Government Program*

The political program of the current government (exposé of Prime Minister in April 2014)<sup>1</sup>, among other things, states the following:

‘When it comes to fight against corruption, in front of us is primarily one big project. The project of modernization of criminal justice system. We need to build strong institutions that are able to prosecute all serious forms of crime and corruption and effectively handle general crime. Institutions that are able to meet the challenges of the 21st century and transnational crime. Drug trafficking and various abuses in the economy, which confer illegal money that is later ‘laundered’ and thanks to corrupt governments and banking sector gets into the legal channels. This is the basic scheme of corruption which can only be broken by powerful and well-organized state authorities.

The beginning lies in the implementation of the new Code of Criminal Procedure and **the empowerment of prosecutorial investigation concept**. In these efforts, **the prosecutor's office, which is the central organ of the criminal proceedings, must be assisted by all state agencies and the private sector**. The goal is to build an **efficient system of inter-institutional cooperation in the fight against corruption**. Various state bodies in various stages of applied proceedings reveal details that could detect cases of grand corruption. Are these bodies in Serbia connected today and do they work together? The answer: is very poorly.

In order to solve these problems, it is necessary to fulfill several measures:

- Better cooperation of the Organized Crime Prosecution and other prosecutors' offices
- The establishment of a system of information exchange between different state organs that can detect organized crime and corruption within their jurisdiction
- The establishment of **task teams for the prosecution of organized crime and corruption, whose work will be coordinated by the Ministry of Justice and Public Prosecutor's Office**
- The establishment of inter-institutional cooperation centers for the fight against organized crime, financial crime and corruption
- The exchange and reallocation of officers of various state bodies who can detect organized crime and corruption within their jurisdiction
- The prosecution will get the service for financial forensics

In order for all these to be established, **all legal obstacles will be resolved, and new working procedures will be put into effect**, both of which will have the maximum support of the government.

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<sup>1</sup> [http://www.srbija.gov.rs/extfile/sr/208700/ekspoze\\_aleksandar\\_vucic\\_cyr270414.doc](http://www.srbija.gov.rs/extfile/sr/208700/ekspoze_aleksandar_vucic_cyr270414.doc)

In order to meet the National Anti-Corruption Strategy for 2013-2018, **a strong coordination process will be established that will lead to its full realization.**

We will commit to the strengthening of prevention of corruption by empowering the authorities responsible for this area and for the amendment of the Law on Anti-Corruption Agency.

The Law on the Protection of Whistleblowers will be passed as early as June and it will protect the citizens ready to report the perceived corruption related to the work they perform.’

From this presentation of the mandate holder, or the latter prime minister, it is not entirely clear whether and in which direction will be changed the position of the Anti-Corruption Agency, what will be the legal nature and authorities of ‘task teams to prosecute organized crime and corruption’, and in particular what could be a coordinating role of the Ministry of Justice in their work. The first six months of the Government operation did not provide a complete answer to these questions either. The Agency’s responsibilities have not been changed, because changes in the law that governs its operation did not even reach the drafting stage. ‘Task teams’ were never mentioned again, so it remains unclear what was meant when their formation was discussed and whether this concept had something to do with ‘working groups’ which in recent years worked on the investigation of individual cases of abuse or corruption. The Law on the Protection of Whistleblowers was adopted later than planned. A coordinating body of the Government for the implementation of anti-corruption strategy and the accompanying Action plan was established, which will be specifically discussed in the text below.

#### *Report on the Work of the Government for the Previous Year (2013)*

Within the report on the Government for 2013<sup>2</sup>, the fight against corruption is mentioned in several chapters. The most important is the related information that can be found under the section on the Ministry of Justice (the activities on Strategy and Action Plan making) and the Ministry of Internal Affairs, which presented data on some of its activities, as follows:

‘Within the fight against corruption the total of 2,071 criminal offenses with elements of corruption were discovered and 2,536 persons were reported. The action was directed to different social areas. Special emphasis was given to the detection of more complex forms of corruption in the work of the state administration (with the emphasis on the arrest of former Assistant Minister for Environment and Spatial Planning on the charges of accepting bribes to illegally acquire property rights on the existing facility) and public enterprises (with the emphasis on the criminal charges filed against three managers of Pancevo Oil Refinery ‘NIS’ for accepting bribes to favorize companies within the public procurement procedure).

The total number of crimes in 2013 was 113,205, which is 17% more than in 2012 (96,798), while the percentage of solved crimes with NN perpetrators amounts to 49.7%. In the field of combating economic crime 7,276 (8,715) criminal offenses were discovered, and the emphasis was on the detection of more complex offenses and offences with greater material damage.

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<sup>2</sup><http://www.parlament.gov.rs/upload/archive/files/lat/pdf/izvestaji/2014/1189%20Izvestaj%20o%20radu%20Vlade%20RS%20za%202013.pdf>

The actions were particularly focused on detection of various abuses in the banking business, construction entrepreneurship, abuses in connection with tax evasion, traffic of excise goods, public procurements, detection of various forms of frauds and insurance frauds, especially in the work of local government, etc.

The Working Group of Criminal Police Directorate, that was formed for the purpose of determining criminal responsibility in the process of 24 disputed privatization marked in the report of the Anti-Corruption Committee as well as for other abuses in complex business operations, undertook intensive activities that resulted in detection of abuse in granting the loans ('Razvojna Banka Vojvodine' from Novi Sad and 'Agrobanka' from Belgrade); during and after the completion of the privatization process ('Jugoremedija', 'Srbolek', 'Tehnohemija' from Belgrade and 'Veterinary Institute'); during the acquisition of ownership of state-owned land ('Sloga' from Novi Sad); during the purchase of subsidized mineral fertilizers ('HIP Azotara' from Pancevo), during the sales of package shares at a lower market value ('Luka Beograd'), etc. Many other frauds were discovered in the operation of 'Galenika' from Belgrade and 'Vojvodina' from Novi Sad, etc.'

Individual organizational units of the Ministry of Interior Affairs (MIA) continuously performed the exchange of data and information in the fight against corruption and various forms of organized criminal activities in order to jointly suppress the above mentioned factors that endanger the security of the Republic of Serbia.

The fight against corruption is also partly mentioned in the report on the Government related to the Security Information Agency, the authority that has no jurisdiction in this area:

'Diverting the Agency's activities from the classic crime to economic and financial crime that threatens the economic system of the Republic of Serbia resulted in delivering more than 50 reports to the Prosecution's Office and to specialized services of MIA Serbia, allowing the collection of evidence of the unlawful activities of several groups and individuals who have a damaged state budget for over 67 million euros.'

### *The Anti-Corruption Strategy*

**The National Anti-Corruption Strategy in the Republic of Serbia for the period from 2013 to 2018**, which was adopted by the National Assembly in 2013, approaches the problem by incorporating preventive and repressive actions against corruption. Among other things, as a special field of action, the strategy also addresses the judiciary (section. 3.4) and the police (section 3.5).<sup>3</sup>

Thus, in the area of justice, among other things, Strategy provides the measures of independence and transparency (regarding budget authorities; the process of selection, promotion and accountability of judges and prosecutors that will be based on clear, objective, transparent and pre-stipulated criteria; developed effective and proactive actions in the detection and prosecution; the legislation based on international standards; an effective cooperation and exchange of information between national authorities; a unique record for offenses with an element of corruption; the prevention of conflicts of interest; strengthening the capacity of the prosecutors and the courts to deal with cases of corruption; and improvement of financial investigation. As for the police, it is

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<sup>3</sup> [http://www.acas.rs/images/stories/Nacionalna\\_strategija\\_za\\_borbu\\_protiv\\_korupcije.pdf](http://www.acas.rs/images/stories/Nacionalna_strategija_za_borbu_protiv_korupcije.pdf)



anticipated to strengthen capacity for conducting investigations on corrupt offenses, strengthening the integrity and internal control.

The Action plan for the implementation of this strategy, which was adopted in September 2013<sup>4</sup>, did not elaborate on the measures in this area thoroughly enough or in a good way. Thus, the indicator target of ‘Developed effective and proactive actions in the detection and prosecution of corruption offenses’ is set in the form of an extremely unambitious indicator - that the number of validly completed procedures at the end of the implementation of this act is only 30% higher than that of 2012!

Another example of the shortcomings we pointed out during the preparation of the Action plan refers to substantive criminal law, which provides for amendment of the Criminal Law in terms of the introduction of a new criminal offense of ‘illicit enrichment’, but not for the changes that would enable the amendment to the criminal act of ‘giving and receiving bribes related to voting’; changes to the offenses of giving and taking bribe when bribery does not apply to an official act that must or may not take place; specific standards that are necessary for the efficient prosecution of corruption among members of collective decision-making body; or the special measures for exemption from criminal responsibilities of participants in corruption who report the act before it gets revealed.

In addition, insufficient attention is paid to amending the criminal norms that exist in other regulations (eg. the Law on Financing Political Activities and the Law on the Anti-Corruption Agency). Besides, the changes in Criminal Law will also be required in regards to the protection of whistleblowers; because the law, which was adopted in November 2014 by the National Assembly, does not contain offenses, and some of the most dangerous forms of violations of the law are not even classified as misdemeanors. Also, there are grounds for a review of the current crime act of abuse in public procurement procedures.

One of the biggest challenges will certainly be the intended introduction of the offense of ‘illicit enrichment’. The UN Convention Against Corruption calls on Member States to introduce this crime in its legal system, which is defined as ‘a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income’. According to the deadlines of the Action Plan, the Ministry of Justice should have prepared an appropriate amendment to the Criminal Code by June 2014, and the Parliament should have adopted this proposal by the end of this year. Along with the introduction of this criminal offense in the legal system, Transparency - Serbia considers it necessary to resolve all doubts about the repeatedly announced adoption of the Law on the Examination of Property Origin and to present the information on the current implementation of the measures of cross-examination of assets and incomes that has been stipulated since 2003 by the Law on tax Procedure and Tax Administration.

Section 3.4.3.2. of the Action Plan lacks concrete measures in regard to the manner in which this plan would be implemented, and how the process of proactive investigations would be developed and implemented. During the preparation of the Action Plan we pointed out that this is one of the most important aspects of the Strategy and therefore, it must be thoroughly developed. We believe it should be a priority to prescribe measures that will create an obligation of proactive conduct among public prosecutors in certain cases - eg. investigate the existence of criminal liability on the basis of

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<sup>4</sup> [http://www.acas.rs/images/stories/Akcioni\\_plan\\_za\\_sprovodjenje\\_Strategije.pdf](http://www.acas.rs/images/stories/Akcioni_plan_za_sprovodjenje_Strategije.pdf)

the report of the State Audit Institution, Public Procurement Office, budget inspection, the Anti-Corruption Agency; examine the existence of criminal liability on the basis of allegations published in the media; question the existence of criminal liability on the basis of already discovered patterns of corrupt behavior, etc. At the same time, we pointed out that these measures clearly have to be accompanied by increased number of public prosecutors who will undertake such actions, and adequate evaluation of their work. Instead, the measures that were adopted amount to ‘forming statistics on the initiated proactive investigations’ (the use of special techniques and acting on the sole initiative of police and prosecutors), for which the deadline expired in September 2014, and to keeping records of such treatment within the corruption criminal actions.

### *Coordination Mechanism in Particular*

The decision on the establishment of the coordination body for the implementation of the Action Plan for the application of the National Anti-Corruption Strategy in the period from 2013 to 2018 was not sufficiently precise in terms of the powers of this body, it leaves space for interpretation in the direction of extending the jurisdiction of the Government to the other branches of power and independent state organs and can create confusion for Strategy implementers when reporting on the application of the Action Plan.

On one hand, this decision does not provide answers to the questions if, during the present implementation of the Strategy and Action Plan within the executive branch, there were any problems that could not be solved in any other way than displacing coordination at the level of the Prime Minister. The only thing we could read was that ‘it was a requirement of the EU’. The decision does not give clear authorizations to the Coordination Body in case there are problems in the application of the Action Plan that need to be resolved - eg. when a ministry does not prepare an opinion or a law draft in due time, when a ministry notices that the action plan is incomplete, when several ministers publicly express opposing views on solving the same issue (eg. about the implementation of the Law on Public Enterprises) and similar.

On the other hand, the Decision leaves room for interpretation that it is actually the intention of the executive authorities to coordinate the actions of the bodies that are not subject to their jurisdiction - judicial bodies, local self-governments, independent state authorities (including the Anti-Corruption Agency, which is by Law responsible to monitor the implementation of the Strategy and Action Plan) and the National Assembly itself that adopted the Strategy (which is also an implementer of the Action Plan). If this was not the intention, the Government Decision should be defined as soon as possible, so that it clearly refers to coordination within the executive branch, which is undoubtedly needed.

The cause of this problem rises from the text of the Strategy (Chapter 5.2.) to which the TS pointed out in its development phase and provided specific suggestions to overcome that problem and which were not taken into account. Both under the Strategy and the Law (on the Anti-Corruption Agency), the monitoring of the implementation of the Strategy and Action Plan is exclusive jurisdiction of the Anti-Corruption Agency. All implementers of Action Plan submit progress reports to this independent state authority. On the other hand, the section 5.2. of the Strategy stipulates that within the Government, coordination is conducted by the Ministry of Justice, and that this coordination includes ‘mutual communication and the exchange of experiences and information’. The same chapter mentions the ‘quarterly meetings with state authorities’, which, bearing in mind the

responsibility of the Ministry for Coordination 'within the government' could only apply to those government bodies that act within the executive branch. However, up to this date, it has been wrongfully interpreted that this obligation of coordination also includes other government bodies (<http://www.mpravde.gov.rs/tekst/3284/osobe-zaduzene-za-izvestavanje-i-koordinaciju.php>).

The Government Decision rises this coordination from the rank of the Ministry of Justice to the level of the Government. Such a solution is contrary to the Strategy, but generally can make sense - for example, if the Ministry of Justice so far had problems to coordinate anti-corruption activities for which several ministries are responsible (on for which there were no information in the public), it is expected that such problems among the ministers could be solved by coordination in which the Prime Minister would take part. So far there are no indications that the formation of the coordination body has led to any significant changes or to a greater level of fulfillment of tasks from the Strategy.

### **3. European Integration and the Fight against Corruption**

The fight against corruption also occupies a very important place in the European integration process of Serbia. This can be clearly seen from the seriousness and scope of access that the European Commission each year devotes to this issue in its progress reports. Due to the bad experience from previous accession processes, the EU plans to be the among the first to open and the last to close negotiations on Chapters 23 and 24 for Serbia and other Balkan countries, which are among the most important for the fight against corruption. Thus, the effectiveness of measures to fight corruption will be monitored throughout the negotiations.

For this reason, it is essential that even now, at the beginning, all of the most important problems are correctly detected and measures to address them are identified. If this is not done, we will easily be in a position where insufficient results in the fight against corruption can arise as an obstacle to Serbia's entry into the EU. Data screening and recommendations given to Serbia by the European Commission are available in connection with the Chapter 23 of the negotiations. Many other data are available for Chapter 23 - an action plan draft, in which civil society organizations were invited to provide comments, the result of consideration of these comments and the second amended draft.<sup>5</sup>

Among other things, the weakness of many measures and activities is reflected in the insufficiently analyzed performance indicators (eg. 'A number of procedures', without indication of what is the desirable outcome - more or less of them) and the method of data verification (which most often cites 'positive reports of EC' and not domestic mechanisms for measuring the success of reforms). This Action Plan contains some identical measures as the Action Plan for the implementation of Anti-Corruption Strategy (until 2018), but with differently defined deadlines or implementers, which will create serious problems in monitoring. Moreover, in many situations, the 'new' action plan brings less effective solutions than the existing ones (eg, unreasonably long deadlines). Description of the current situation is incomplete, and thus, among other things, there is no mention of serious problems with regard to avoidance of competition and transparency in the application of international agreements, unregulated and non-transparent lobbying, non-implementation of some provisions of the Law on Public Enterprises, excessive discretionary powers, high number of unreported cases of corruption, unclear relations (in practice) between the authorities investigating corruption and executive branch in determining the items which will be primarily investigated.

Among the many shortcomings of solutions for individual activities which we pointed out, the ones that stand out are wrongly established concept of coordination of all state bodies in the fight against corruption by the political leadership, undeveloped activities for the proper handling of reports and recommendations of the Agency and the establishment of effective monitoring mechanisms. Also, it is noted that some activities were not planned at all, although they are needed, such as changes in regulations concerning data confidentiality (in the context of the protection of whistleblowers), changes in the regulations of making the contracts on procurements on the basis of bilateral agreements, the issue of forming special police 'working groups' for investigating corruption cases, measures to raise the efficiency and independence of the judicial and investigative bodies (elimination of the problems that are already known), the level of detail of information on procedures conducted for corruption, dealing with the problem of 'information leaking' in the investigations within the present legal framework.

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<sup>5</sup> <http://www.mpravde.gov.rs/tekst/7715/drugi-nacrt-akcionog-plana-za-poglavlje-23.php>

The part relating to the judiciary did not recognize some of the activities that can be implemented even before amending the Constitution in order to improve the transparency of the election of judges and prosecutors, the indicators of reform performance are not sufficiently developed, it is necessary to design specific actions to discover the political pressures that judges and prosecutors are exposed to and to increase the transparency of judicial institutions, and finally, the deadlines for undertaking certain activities are too long.

In the section on fundamental rights, the problem of ‘information leaking to the media’ regarding the criminal investigations is currently being treated from the formal aspect - through planning and refining of internal procedures. However, it is more likely that in most of these cases information were intentionally distributed to the media for the publication at a given time, by violating the existing rules and procedures, so that the priority activity should be investigation of all such cases in the past and those that appear in the future.

Only a small part of these drawbacks was eliminated in the second draft (eg. some of the measures related to strengthening the independence of the judiciary were amended). In addition, there are emerging **questions regarding the reality of the cost estimates** of the implementation of AP activities (although it is certainly commendable that an attempt to make such an assessment was made). It remains to be seen what will be contained in the final text.

#### **The European Commission Report for 2014**

The reports on the progress of Serbia published every year by the European Commission pay more and more attention to the fight against corruption. Questions related to the fight against corruption and the work of the repressive organs of the state are addressed within the negotiation chapters 23 and 24, some of which parts we convey:

##### *Judicial System*

In the area of judicial reform, the reinstatement of previously dismissed judges and prosecutors was finalized. ... A new network of courts of general jurisdiction started operating in January 2014. ...

A Strategy Implementation Commission, led by the Ministry of Justice and composed of 15 representatives of major stakeholders, was set up in September 2013. ... However, the commission has not yet been instrumental in securing timely and adequate implementation of judicial reform. Various delays in the implementation of the action plan occurred. Work on constitutional amendments to improve the position of the judiciary, on legal changes to address the quality and consistency of judicial practice and judicial education is at an early stage.

Regarding the **independence** of the judiciary, the High Judicial Council and the State Prosecutorial Council adopted respectively in July and May 2014 appraisal rules for judges and prosecutors. The two Councils continued to share responsibility with the Ministry of Justice for budget planning, execution and monitoring. An important number of Court Presidents have been appointed on a permanent basis following several nominations, albeit in the absence of clear criteria. The law on judges and public prosecution was amended in June 2014 and provides that the High Judicial Council and the State Prosecutorial Council will propose only one candidate, rather than three, to parliament for each judicial and prosecutorial post. This is a positive step, but only as a transitional solution: the constitutional and legislative framework still leaves room for undue

political influence affecting the independence of the judiciary, particularly in relation to the career of magistrates. Constitutional amendments on the composition and method of election of members of the two Councils and allowing for judicial review of dismissal decisions are needed to strengthen the independence, representativeness and hence legitimacy of these self-governing bodies. Some judges from higher and appellate courts were confronted with direct attempts to exert political influence over their daily activities without the High Judicial Council properly defending their independence. The practice of publicly commenting on trials and announcing arrests and detentions in the media ahead of court decisions risks being detrimental to the independence of the judiciary and raises serious concern.

The **impartiality** of judges is ensured through the constitutional and legal framework. However, practical implementation is hampered by the fact that the system of random allocation of cases is not yet automated in all courts, which provides scope for circumventing the system. In relation to **accountability**, 24 disciplinary charges against prosecutors were filed in 2014. The number of disciplinary charges against judges increased in 2013 to 540 and 8 new proposals for disciplinary measures were submitted. Four of them have been processed and there has been one case of dismissal based on a criminal conviction. The High Judicial Council nominated new members for its disciplinary bodies in January 2014 as some mandates expired in December 2013. It also adopted measures to facilitate the performing of disciplinary functions by reducing ordinary workload. Nevertheless, Serbia still needs to implement a comprehensive system of regular individual and periodical evaluation of judges and prosecutors. Effective implementation of codes of ethics, disciplinary rules and legislation on conflicts of interest and the lifting of immunity for certain posts are needed to ensure full accountability of judges and prosecutors.

As regards the **efficiency** of the judiciary, the judicial budget (including the prison system) was € 269 million in 2014, a 13 % increase on 2013. ... The backlog of court cases remained a concern, with 2.8 million cases pending at the end of 2013. ... The current system of collecting court statistics is not efficient and does not allow making a meaningful analysis of the performances of the Serbian Judicial system. There is also a need to further improve the expertise of judges in certain areas, especially in taxation and financial matters, consumer protection, state subsidies, competition, asylum and human rights protection. ... Persistent differences in the workload among judges, lack of adequate premises and equipment still constitute serious obstacles to judicial efficiency. A proper case methodology to measure workload and to ensure a more equal distribution of cases among judges and prosecutors as part of the reform of the court network is required.

Inconsistency in case law continues to be a concern, especially in appeal courts, and represents a challenge to the principle of equality before the law. Efforts are needed to foster more consistency and coherence through judgments made by the most authoritative courts in the system. As regards **access to justice**, following the general introduction of the adversarial system in criminal proceedings from October 2013, concerns about procedural safeguards remain, especially in the absence of a free legal aid system. ... Differences in workload, the high average duration of proceedings, the significant backlog of cases, the absence of a free legal aid system and the lack of enforcement of final judgments and indemnity claims are major obstacles in practice. The system of awarding compensation to victims of crime through criminal or civil proceedings is not functional.

*Anti-Corruption Policy*

Serbia further implemented the recommendations of the Council of Europe Group of States against Corruption (GRECO). Implementation of the strategy and action plan for 2013-2018 has yet to mirror the strong political impetus to fight corruption. Several measures have been delayed. An efficient mechanism for monitoring implementation of the anti-corruption strategy and action plan needs to be ensured. Adequate resources and human capacities for implementation of the Strategy and action plan need to be allocated. The new inter-ministerial coordination mechanism put in place in August and the appointment of a new State Secretary for the fight against corruption, in the Ministry of Justice and Public Administration, are positive initial steps but their impact on the ground remains to be assessed. Adequate capacity tools and resources need to be ensured to strengthen the Anti-Corruption Agency with a view to fulfilling its mandate. In addition, the agency should reflect on proactively enhancing its role as a key institution in the fight against corruption. This implies in particular developing and ensuring sound working conditions with the Ministry of Justice and other relevant institutions.

Almost half of the relevant authorities did not fulfill their obligation to report to the Anti-Corruption Agency on the implementation of the national strategy in their field of competence, without it being entitled to engage their responsibility. ...

On the prevention side, the Anti-Corruption Agency received almost double the number of requests to investigate conflicts of interest compared to the previous year ... There were 451 procedures begun in 2013 to check the property and revenues of public officials ... Serbian legislation in the area of conflict of interest (including provisions defining conflict of interest) needs to be amended to meet the European and international best practices to ensure all cases of conflict of interest are addressed and deterrent sanctions imposed. ... The agency continued to monitor the funding of political activities ... In 2013, the agency submitted 335 requests for misdemeanor proceedings, of which the majority (303 cases) related to the failure of political organizations to submit reports on expenses for the 2012 election campaign. In connection with these cases, only 28 judgments have been passed, of which 8 are final. ... A track record of enforcing asset declarations and checks on party funding still needs to be established. ... Cases of illicit wealth need to be addressed in line with the provisions of the action plan for the fight against corruption so as to make illicit enrichment a criminal offence. The OSCE/ODHIR recommendations on financing electoral campaigns need to be addressed.

... Transparency of public procurement procedures has improved with the use of the upgraded public procurement portal. ... Comprehensive risk analyses for areas vulnerable to corruption such as health, construction, privatization and education, justice and law enforcement are needed. Corruption in local level administration needs additional attention. Civil society still plays a limited role in the implementation of the anti-corruption agenda. Effective whistle-blowing protection mechanisms have yet to be established. ... Internal control departments lack equipment, resources and human capacity. Independent supervision and capacity for early detection of wrongdoing and conflicts of interest in state-owned companies, privatization procedures and public expenditure remain underdeveloped. The Commissioner for Free Access to Information of Public Importance and Personal Data Protection recorded an increase in the number of requests for access to data on public procurement, privatization, concessions, public-private partnerships and other related procedures that have an impact on the budget. The legal framework needs to be strengthened to ensure adequate follow-up and effectiveness of the Commissioner's decisions.

... the Prosecution for Organized Crime and Corruption has raised indictments against 168 persons in 2013, which is an increase from the 81 indictments raised in 2012. Leaks to the media about ongoing investigations, in breach of the presumption of innocence, are issues of serious concern and should be investigated and processed in line with the law. The number of investigations launched in 2013 by the Special Prosecutor for Corruption and Organized Crime in high-level corruption cases remained about the same as last year (at 147 new investigations, compared with 140 in 2012). Final convictions remained rare and high-profile cases remained at risk of political interference. Further efforts are needed to establish a track record of investigations, prosecution and final convictions, in corruption cases, including high-level cases. Law enforcement bodies and prosecution need to become more proactive. Lack of internal capacity and expertise in financial investigations and asset recovery, together with a lack of technical equipment for special investigative measures, hamper the effectiveness of investigations. Inter-institutional cooperation between law enforcement agencies has improved to a certain extent, but needs to be developed further. The independence of all investigative and judicial bodies dealing with investigations into corruption needs to be strengthened.

Most cases formerly handled under Article 359 (abuse of office) of the criminal code were re-qualified under the new Article 234 (abuse of a position) applicable to private operators: out of the 2 411 cases (involving 4 455 persons) that were processed under former Article 359 and that were re-qualified, 2 202 cases (involving 4 168 persons) were re-qualified under new Article 234. This illustrates a continuing tendency to overuse these offences in the context of business disputes, which is harmful to the business climate and legal certainty. The comprehensive review of the criminal code being conducted to ensure that corruption and economic crimes are precisely defined and can be effectively investigated and processed needs to be completed without delay. The criminal code needs further amendment in this respect. ... *Media campaigns based on anonymous or leaked sources, detailing investigations, announcing arrests and quoting investigation documents undermine trust in judicial institutions, violate personal data laws and challenge the presumption of innocence.* A track record of investigation and convictions in these cases has to be established. More generally, media owners and top editorial staff should pay more attention to abiding by professional standards, with support from the Press Council.

In the field of **police cooperation and the fight against organized crime**, Serbia actively participated in regional police cooperation. ... Specialization within the police was further developed with the creation of three new services for Crime Analysis; Terrorism and Extremism; and Drug Prevention, Addiction and Repression. But most positions still have to be filled and staff trained and equipped. No progress was made in building up capacity to carry out financial investigations in tandem with complex criminal investigations. Access of law enforcement agencies and prosecution services to relevant databases and inter-agency cooperation needs to be ensured. Serbia needs to develop and introduce a strategic threat assessment on organized crime in line with the EU SOCTA (Serious and Organized Crime Threat Assessment) methodology. Intelligence-led policing based on crime mapping and systematic use of threat assessments still needs to be developed. Final convictions and the effective dismantling of criminal organizations remain rare. The track record of proactive investigations and final convictions needs to be established. A central criminal intelligence system and harmonized statistical data remain to be established. An integrated IT system linking the police, the prosecution and the courts is needed for efficient case management. The police's dependence on the security and intelligence agencies to carry out certain special investigative measures in criminal investigations remains a matter of serious concern, in particular regarding interception of communications. Urgent measures are needed to align the



legislation in this area. The witness protection unit still lacks qualified staff, equipment and premises. Human resources management in the Ministry of Interior, including merit-based recruitment and career advancement, specialized training and internal control, remain areas in need of improvement. An independent and robust external oversight mechanism for the police force is still missing. The Directorate that manages seized assets still lacks resources in terms of staff and capacity, including storage space. In 2013, the Directorate dealt with 16 court decisions on temporary seizure of assets; assets were returned in 13 of these cases. Further efforts are needed for full legislative and institutional alignment with the new *acquis* in this area. ...

## 4. Criminal Offences with the Elements of Corruption

**The Criminal Code** of the Republic of Serbia does not contain a separate chapter that would include all criminal acts of corruption, which makes it difficult to monitor the situation in this field, as well as to create policies based on data from the conducted investigations and prosecutions. On the other hand, there are definitions of corruption in specific regulations. Thus, in the Law on the Anti-Corruption Agency, corruption is defined 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 benefit or the benefit on other’s behalf’. In the Civil Law Convention on Corruption of the Council of Europe, which was ratified in 2007<sup>6</sup>, ‘corruption’ denotes requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or the prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof. Based on these definitions, the offenses of corruption could be labeled as follows:

- abuse of authority (Article 359 of CC);
- violation of a law by a judge, public prosecutor and his deputy (Article 360 of CC);
- fraud in service from Article 363;
- unlawful mediation from Article 366;
- primanje mita iz člana 367;
- bribery from Article 368;
- revealing an official secret from Article 369 paragraph 2;
- abuse of authority in economy from Article 238;
- misfeasance in business in relation to public procurement from Article 234a;
- abuse of authority by the responsible officials from Article 234.

Although they did not attempt to define corruption, the standards of the Code of Criminal Procedure have great importance for its prosecution. Thus, since 2009, *there have been special provisions on the procedure for criminal acts of organized crime, corruption and other serious criminal offenses*. This provision applies to particular ways of proving certain criminal offenses and in close connection with the provisions of the Law on organization and jurisdiction of the authorities in fighting organized crime, corruption and other especially serious crimes (former title included only ‘organized crime’). The measures that were originally designed to be used in the detection of organized crime groups were extended by these Law amendments to some of the criminal acts of corruption (regardless of whether they are linked to organized crime or not). This list originally included the following criminal offenses: abuse of office (Article 359 of CC); trading in influence (Article 366 of CC); passive bribery (Article 367 of CC) and active bribery (Article 368 of CC).

The law that establishes special jurisdictions of Prosecutor's Office for Organized Crime shall be applied in cases of corruption ‘when the defendant or the person taking a bribe is an official or responsible person who performs a public function on the basis of the election or appointment by the National Assembly, the Government, High Judicial Council or the State Prosecutors’ or ‘when the value of acquired property benefits (by criminal offense of abuse of office) exceeds the amount

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<sup>6</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_potvrdivanju\\_gradjanskopravne\\_konvencije\\_o\\_korupciji.html](http://www.paragraf.rs/propisi/zakon_o_potvrdivanju_gradjanskopravne_konvencije_o_korupciji.html)

of 200 million RSD'. It is interesting to note that, in this way, the special regime of prosecutions included cases of corruption involving senior government officials of the executive and judicial powers, but not those who belong to the legislative branch of government (MPs), as well as the President of the Republic, which is an obvious omission.

'New' Code of Criminal Procedure, which came into force on 15 January 2012 for the acts against organized crime, and on 1 October 2013 for all other acts, contains similar norms, but also in other provisions (Article 162), speaking of the offenses that involve application of special evidentiary actions. When amendments to the Criminal Code were adopted in 2013 the 'abuse of office' was divided into two additional offenses: one related to the private sector (abuse of the responsible person), and the second named 'abuse in relation to public procurement', and these two new acts were covered by a special regime of proof and prosecution.

**Abuse of office** may consist of three different actions: 1) the use of individual's official position or authority; 2) exceeding the limits of individual's official authority; 3) failure to perform official duties. In addition to the fact that the official, for example, exceeded the limits of his authority, an additional element is requested - that one of these actions resulted in acquiring benefit for himself or another individual or legal body and that it inflicted damage or violated the rights of others party. There are more severe forms which are related with the amount of illegal gains. Penalties range from six months to twelve years.

**Trading in influence** (formerly 'illegal mediation') also has various forms. The characteristic of this offense is that the perpetrator is not the decision maker, the person with the official powers, as in the case of 'abuse of office', but the other person that can somehow affect the behavior of the decision-maker. It may be requesting or receiving awards or some benefits to mediate in the performance of any official act. An important element is that this is achieved by means of 'using one's official or social position or real or perceived influence'. Another form of the offense is a promise, offering or giving awards for mediation. The difference can be made in regards to whether the action that involved mediation was otherwise required from or prohibited for the official in question. Penalties vary depending on the form (ranging from six months to ten years).

**Passive bribery** consists of demanding a bribe, accepting bribery or receiving promises of bribes, which may consist of gift or other benefit (for oneself or for someone else). The difference between individual forms is made according to what is the subject of bribery - whether it is an official act that is otherwise required or prohibited, or not. There is a severe form of bribe-taking when bribery is related to revealing an offense, initiating or conducting criminal proceedings, the imposition of criminal penalties or in connection with the enforcement of the penalties. Also, this offense includes the punishable situation when an official, after having committed an official act (or after having failed to perform it) takes bribe in this respect. This criminal offense can be committed by an official or a responsible person in a company, institution or other legal entity. Penalties are very different depending on the severity (from three months to three years for the smallest acts, and from three up to 15 years for the most serious forms).

**Active bribery** can take variety of forms - giving, offering, promising gifts or other benefits, as well as mediation in bribery of a public official. Bribery may be related to the action that the official shall or shall not perform. In contrast to receiving a bribe, there is no anticipated criminal responsibility for the subsequent provision of gifts after the action is taken or omitted. The penalty

can be up to five years (depending on the form). If the offender reports the act before it is discovered the law provides the possibility of acquittal.

**The abuse of office of a person in power**, which was introduced in criminal legislation in late 2012, is derived from the former fourth paragraph of Article 359 - abuse of office. For this act punishment is stipulated for the responsible person in a company, or its owner. There are some differences in relation to the offense of abuse of office. In this case, benefit can also be obtained for oneself or for others, but there are no 'serious violation of the rights of others' such as harmful consequences, but only 'causing property damage' to others. Also, the penalties are somewhat lower, ranging from three months to ten years.

**The abuse in relation to public procurement** essentially consists of two distinct offenses, which are artificially unified. One is abuse by bidders, and the other is abuse by customers. Abuses by bidders may occur in several forms - the submission of an offer based on false information in connection with public procurement, illegal negotiations with other bidders and undertaking other illegal activities with the intent to affect the decision of the procurement buyer. Perpetrators may be responsible persons in legal entities or entrepreneurs. There is a possibility of acquittal for the perpetrator who voluntarily, and before the buyer selects an offer, reveals that the offer is based on false information or illegal agreements with other bidders, or that there were other illegal activities with the intent to influence the buyer's decision. In terms of abuse by the customer, it is a specific form of abuse of office. Specifically, the act of execution is, as with abuse, exploitation of position or authority, exceeding the limits of official authority or failure to execute official duties. The offender can be an official or a responsible person within a legal body (because customers could also be companies owned by the state). Consequence is the harm to public funds. Unlike other crimes, more severe forms for this type of abuse are not defined in relation to the value of the illegal gain or the caused damage, but in relation to the total value of the public procurement in which the abuse took place (value greater than 150 million RSD). Penalties range from six months to ten years.

**Violation of the law by a judge, public prosecutor and his deputy** stipulates the accountability of judges, jurors, public prosecutor and his deputy who, with with the intention of benefiting one side, or harming another, in court proceedings passed an illegal act or otherwise violated the law. A more severe form of this offense is designed for cases where the value of acquired gain or caused damage exceeds a certain amount, and penalties are ranging from six months to twelve years. In relation to the crime, it should be noted that judges are mostly exempted from liability for the expressed opinion or for voting in the court decision, unless it is a criminal offense by violating the law by the judge. This is the only criminal offense specifically mentioned in the highest legal act.

**Fraud in the service** stipulates accountability for official or responsible person who, during their official duties, attempt to gain illicit material benefit for himself or others by making false accounts or in some other way deceives an authorized person to make an unlawful payment. Depending on the amount of the acquired gain, the penalty can be between six months and 12 years.

**Disclosure of official secrets** (one of the forms) can be committed by an official who, with the intent of acquiring benefit, unauthorizedly communicates, delivers or otherwise makes available information which constitute an official secret, or who obtains such information with the intention of conveying it to an unauthorized person, and the penalty is between one and eight years in prison.

Information and documents regarded as official secret are declared as such by law, other regulation or decision of the competent authority based on the law and whose disclosure would or could cause detrimental consequences for the service. On the other hand, the information and documents that are not considered as official secret are the ones directed at serious violations of fundamental human rights, or against the constitutional order and security of Serbia, as well as information or documents that are aimed at covering up the offense for which the law prescribes the imprisonment of five years or more. Criminal liability also exists when the secret is revealed by the person who is no longer a public official.

Except the before mentioned acts, many other crimes are also related to corruption, of which four should be particularly pointed out:

**Giving and receiving bribes in connection with voting** is stipulated in the Article 156 of CC. This criminal act has several forms. The first consists in offering, giving, promising reward, gift or other benefit to other party in election or referendum to vote or not to vote at all, or to vote in favor of or against a particular person or proposal (active bribery). Another form is its counterpart (passive bribery). A more severe punishment is prescribed when a bribe is offered, given or promised by a member of the voting committee or other person who has duties related to voting. Prison sentences can be up to five years.

**Improper use of budget funds** is stipulated in the Article 362a of CC. This criminal offense can be committed by a person responsible for budget beneficiaries or the person responsible for the organization of mandatory social insurance. The act consists in creating obligations or in approving the budget account to pay expenses exceeding the amount of one million RSD compared to the amount determined by the budget, financial plan or the act of government which determines the amount of the loan. Penalty can be in a form of a fine or imprisonment up to one year.

The offense of **Failure to report assets, or giving false information about the assets** is referred to in the Article 72 of the Law on Anti-Corruption Agency ('Official Gazette of RS', no. 97/08, 53/10, 66/11-US and 67/13-US) and **unnamed criminal offense under the Article 38 of the Law on Financing Political Activities** ('Official Gazette of RS', no. 43/2011 and 123/2014). These two offenses will be discussed in more detail below, within the proposals to amend the Criminal Code.

Transparency Serbia has repeatedly given suggestions on how to complete the criminal law framework for the fight against corruption. The last time we did it was in September 2012, with a number of specific amendments that were sent to the Ministry of Justice.

In regards with the offense of **active bribery** we gave a proposal to establish criminal liability for both a person who gives or offers a bribe to an official, and for the intermediary in such bribery, if the bribe was offered or given in order to influence the deciding of an official in situations when he has neither the obligation nor the prohibition to perform an official action at all, or when he is not obliged or prohibited to decide in a certain way.

This would solve the current problem of the inability to prosecute certain persons for bribery, for example a person who bribes a MP to vote for a certain proposal (as every MP is free to vote for or against or not to vote at all, and therefore the bribe is not directed at the action that the official 'must perform' or 'may not perform', etc.). In addition, this incrimination also covers other cases of

bribery in connection with decision-making on the basis of ‘free will’ or ‘discretionary powers’. Another example that could be mentioned is when the director of a public company, based on his authority, concludes contracts on sponsorship of sports organizations according to his own assessment of the justification of concluding such contracts. If he takes bribe to conclude such a contract, the director would certainly be responsible for the crime of abuse of office. On the other hand, a person who offered or gave bribe to the director to conclude the sponsorship contract in such a case, could be criminally responsible only as an instigator. The third case may be the one in which a traffic policeman authorized to assess whether a certain disregard of traffic regulations had sufficient elements for filing a charge for traffic violation or it is sufficient just to warn to the driver, so the driver uses bribe to attempts to influence the policeman’s decision. All these situations are obviously examples of bribery, but under the applicable provisions of the CC the prosecution cannot be initiated for the offense of active bribery, but only for the abuse of office, as a more general part of this section of the Criminal Code.

In addition, we proposed the addition of a new enhanced basis for acquittal. The court would be obliged to acquit a bidder / bribe-giver who reports the offense before it gets discovered, but only in cases where the offense was committed at the request of an official or after the official did not perform a required official action within the prescribed time. This amendment is justified by numerous examples from practice in which initially there is no criminal intent with the person who gives the bribe, but it arises as a result of unachieved rights and the inability to achieve a legal right in the prescribed manner and within the prescribed period. In many such cases, the bidder / bribe-giver is faced with a choice - to achieve / protect his right by making a criminal offense or to fully give up the exercise / protection of his right because there is no effective alternative mechanism to protect or exercise the right or there is no such mechanism at all. Such examples are situations where a physician conditions the performance of a necessary interventions by the bribe, when the ministry or municipal government does not issue a permit to a citizen or a commercial company within the statutory period even though all conditions were met, when a public company does not make payments under the contract for the performed work, although the contractual payment obligation is due and there are sufficient funds for the payment, and the like.

Therefore, these are the situations where bribery was extorted by previous unlawful conduct of an official. By adopting these changes, the state would give a positive signal to citizens who have direct knowledge of the offenses of corruption that was extracted by previous unlawful conduct of an official to report such offenses and offenders to the prosecution. This would contribute to the solution for the biggest problem of fighting corruption in Serbia - the fact that most cases of giving bribes never get reported to authorities.

If these amendments were accepted, the Article 369 - **active bribery** should also be changed so that a separate paragraph would prescribe responsibility for the bribe-taker in cases where an official who requests or receives a gift or other benefit to enforce or not to perform an act under his authority that an official may but does not have to perform. As an example of a comparative solution that similarly regulates certain issues mentioned here, we cite the provisions of ‘Kazenskog Zakonika’ of the Republic of Slovenia. Specifically, this law stipulates criminal liability for active and passive bribery and in cases when the bribery was performed in connection with official action that an official ‘may’ perform (but he has no obligation or prohibition with respect to that action).

The criminal offense of the current Article 72 of the **Law on Anti-Corruption Agency**, titled Failure to report assets, or giving false information about the assets is formulated as follows: ‘An official who fails to report assets to the Agency or gives false information about the assets with the intent to conceal information, shall be punished with imprisonment from six months to five years.’

We proposed that this crime is reformulated as follows:

*‘The official and a former official who fail to submit a report on their assets even after the legal deadline, and who were requested to do so by competent authority, or the information that they failed to report assets is released, shall be punished with imprisonment up to three years.*

*According to the punishment from paragraph 1, an official and a former official who report false information about the value of their assets even though they knew or should have known that the information is false, shall be punished.*

*According to the punishment from paragraph 1, an official and a former official who reports other false information or provide no information that they were obliged to report shall be punished, if that was an information essential to establish the existence of dependency between officials or former officials and related persons or the use of rights arising from holding public office.*

*According to the punishment from paragraph 1, an official and a former official who enable one or more related persons (regarding the meaning of the law governing the reporting of assets of public officials) to acquire or hold on his behalf assets more valuable than 300,000 RSD and thus falsely report the value of their assets, shall be punished.*

*If due to acts from the paragraph 1, 2 and 4 from this Article the report does not display the property whose value is greater than 1,500,000 RSD the offender shall be punished with imprisonment from six months to five years.’*

The criminal act currently comprises not only the intent of officials, but also the existence of a specific intent to conceal information about the assets. Such intention is not easy to prove in court proceedings, even when it is obvious that the official has violated the law. For example, the official may argue that in the failure to report some assets there were no intention of concealing any information, but that it occurred due of forgetfulness (that is, without any intent), or that it was done with some other intention, and not with the one which is incriminated (for example, that he had no intention to conceal the value of the assets but to express protest against this legal obligation) and there is almost no way to objectively determine that the intention was not exactly the one that is criminally sanctioned.

On the other hand, the current standard is too strict, because it makes no difference in essentially contrasting and unequally important situations in which an official has violated his obligation. Thus, for example, currently there is no difference to what is the nature of false information (eg, whether the omitted information is about an official’s property, whether the value of the property was misrepresented and the like). Furthermore, if the proof of the existence of the offense refers only to the intention to conceal information about the assets, in a possible criminal proceedings the officials who falsely name the person they are indebted to or vice versa can remain unpunished, as well as the officials who do not report the usage of official apartment, information about other activities and

performed functions, and so on. This data may be more important from the standpoint of the objectives to be achieved by the Law on the Anti-Corruption Agency than the assets. For example, the judge who accurately specifies the information that he owes 100,000 euros, but falsely states that he is indebted to his cousin from Germany, but in fact it is a debt that he has to suspected drug dealers, conceals important information for determining the relationship of dependency.

The current standard does not cover former officials who, according to this law, also have a duty to submit reports after the termination of office, so there is no justifiable reason to amnesty them from criminal responsibility for this act, especially when taking into account the provisions prescribed by the authority of the Agency in the control reports, the possibility of comparing the financial statuses at the beginning and the end of the mandate, and the like.

Furthermore, since the failure to submit reports is already sanctioned by the provisions of the Law, difference should be made according to the situations where either misdemeanor or criminal sanctions should be applied. An official or former official who fails to meet the statutory deadline and subsequently submits the report should be charged for misdemeanor, and the one who does not do so even later should be criminally liable.

Finally, it should be noted that the existing standard of criminal law does not include all situations where an official submits a report stating his entire assets registered in his name, but omits the information about assets that are, on some basis, run on his behalf by related persons during the time when he is obliged to report on his assets. The adoption of the proposed amendments would remove all the aforementioned shortcomings.

In connection with the offense of **bribery related to voting**, we proposed substantial amendments. This criminal act has long been prescribed, but it does not lead to any prosecution or leads to such a small number of cases that cannot be accounted for separately in the statistics on the number of the initiated criminal proceedings. On the other hand, doubts about the prevalence of this phenomenon are growing in any electoral process, with reference to the various modalities, some of which are conditioned by technological advances (eg. recording of 'desirably marked' ballot by a mobile phone). According to opinion polls (commissioned by the UN Development Program for Serbia), conducted on a stratified national sample in June 2012, in the May elections the total of 18% of adult citizens of Serbia were in the position to be offered a gift or service in order to vote for a particular party. It is obviously necessary to amend the standards in order to influence the rise in the number of reported cases, and that all possible forms of unwanted and dangerous behavior get sanctioned.

We have proposed changes that would comply CC with the norms regulating elections (the Law on the Election of Deputies, the Law on Local Elections), that is, with the fact that in the election one may vote for electoral lists, and not only for certain candidates. We proposed a new paragraph 3, which would allow the prosecution and punishment not only for the persons who offer or give a bribe, but also for the people who check whether the citizens voted as they were told and agreed. Examples can be in terms of various actions - eg. verification of shots from mobile phones, verification whether all bribed voters showed up at the polls and used the right to vote, verification whether the citizen who agreed to do so left the poll with a blank ballot after he had dropped the completed ballot in the box, verification that the ballot box contains the expected number of ballots marked with pre-arranged color or symbol, questioning citizens after the election if they voted and



whether they voted in accordance with the previous agreement, and the like. Finally, it was suggested that, as a stimulant for reporting this crime, a bribed person should be able to keep the received gift or favor, unless it violates other regulations (eg. if the gift was reflected in the unlawful future employment) and to be exempted from punishment. Namely, if the motive for accepting bribes among the citizens was acquiring gain, it is not realistic to expect that they would report such a case if there is a possibility that their material benefits get seized, especially since, according to all available data, this offense is most often conducted in agreement with the poorest citizens of Serbia.

One of our proposals for amendment refers to the introduction of a new criminal act in the criminal law - 'illicit enrichment', from the Article 20 of the UN Convention in the domestic legal system. This standard could be the following:

***Owning of the property whose origin cannot be explained by lawful and reported incomes***

*An official and a former official, who own assets worth more than 1,500,000 RSD and whose acquisition, at the request of the competent authority, cannot be explained by their rightful and reported incomes, shall be sentenced to a minimum of one year in jail and a fine.*

*For the offense specified in paragraph 1, a person who acquired the assets without his will and knowledge shall not be punished.*

*Assets whose acquisition cannot be explained by lawful and reported revenues shall be confiscated.*

The UN Convention against Corruption (The Law on Ratification of the UN Convention against Corruption - Official Gazette of Serbia and Montenegro - International Treaties no. 12/2005), which is also ratified by the Republic of Serbia, contains the following provision: (Article 20, Illegal enrichment): *Depending on its constitution and fundamental principles of its legal system, each state party shall consider the adoption of legislative and other measures that may be necessary to establish as a criminal offense, and act that, when committed intentionally, illicit enrichment, or significantly increases the assets of a public official that he cannot reasonably explain in relation to his lawful earnings.*

If the our proposal gets accepted, there would be not only criminal liability for 'public officials' (who are explicitly mentioned in the UN Convention), but also for any 'public official' within the meaning of the Criminal Code. In this connection it should be noted that the term 'public official' includes other persons as well, based on the UNCAC glossary, so that in many respects coincides with the term of 'public official' in the Criminal Code. Given the nature of this crime, the liability would also exist for those who previously held the status of a public official (eg. former public officials).

In order for criminal liability to exist, an official should have, to begin with, a property which is of greater value (eg. 1.5 million RSD). Then, there should be a request from the competent authority (eg. Tax Administration, Public Prosecutor's Office, Anti-Corruption Agency) for the person to indicate the legitimate sources of income from which he acquired the assets in question, or any other mode of acquisition (eg. legacy, gift, loan). In some situations, the submission of such a

request will be preceded by the analysis of data that are already in the possession of the state authority - eg. access to data on real estate ownership and data on paid income tax.

The new aspect that this incrimination would bring to Serbia is important for the fight against corruption. However, it must be viewed in the context of already existing regulations. In fact, if there was suspicion that the official committed a crime of greed, then there would be a criminal prosecution for this crime. Also, if there is a suspicion that the official committed a serious crime, or a crime within an organized criminal group, he would have to prove the legality of the acquisition of assets, in accordance with the provisions of the Law on confiscation of assets acquired by criminal acts. However, if there is no suspicion and no specific evidence to suggest that the official has committed such a punishable act, there would be reasons to apply this new criminal offense. It could be applied in situations where, for example, there is no evidence that an officer took bribes from certain shipment company to avoid customs duties, but there is a situations in which the same tax collector has the assets worth 300,000 euros although his total earnings since the beginning of employment were less than 100,000 euros, while at the same time he had no other legitimate income that could explain this difference, or the income based on inheritance, gifts and the like.

The standard applies not only to lawful, but also to reported income. In order to avoid criminal liability, it is necessary to fulfill both requirements - that the income was lawful and that it was reported. Some reporting obligations apply to all citizens, that is, to all potential perpetrators of this crime (eg, submission of tax declarations). However, there are obligations that apply only to public officials - reporting the assets and income of public officials. In situations where an individual has not acquired the assets by his own will, nor does he know that he had acquired it, criminal liability would not exist. Confiscation of assets would apply not only to the property of unexplained origin whose value exceeds 1,500,000 RSD, but to its total amount.

On the same occasion we pointed out to some other possible directions for the development of criminal legislation. So we mentioned **Joint recommendations of the Commissioner for Information of Public Importance and Personal Data Protection and the Ombudsman**. The joint recommendations of these two independent state authorities from July 2012, with which we agree, among other things request the Government and the National Assembly the following<sup>7</sup>: ‘To criminalize the obstruction of an investigation led by independent control state authorities (Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Anti-Corruption Agency, the State Audit Institution, Commissioner for Equality). Any harassment, threat or any other attempt to influence the complainant or witnesses who cooperate with the control authorities should be a criminal offense.’

The Law on Financing Political Activities from 2011 stipulates the offense (unnamed). The provision states:

**Article 38:**

*Whoever grants or obtains funds for financing political entity in the name and for the account of the political entity and contrary to the provisions of this law in order to disguise the source of funding*

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<sup>7</sup> <http://www.poverenik.rs/yu/aktuelnosti/1386-konferencija-za-medije.html>

*or the amount of funds collected for the political entity, shall be punished with imprisonment of three months to three years.*

*If the commission of the offense referred to in paragraph 1 of this Article supplied or received funds in excess of 1,500,000 RSD, the offender shall be punished with imprisonment from six months to five years.*

*Whoever commits violence or threatens with violence, put at a disadvantage or denies a right and legitimate interest to a person or a legal body, or due to the fact that he contributed to a political entity, shall be punished with imprisonment of three months to three years.*

*Assets from paragraph 1 and 2 of this Article shall be confiscated.*

Solutions from this article are problematic in many ways. The amendments necessary to include this offense in the Criminal Code and to correct existing problematic provisions could be formulated as follows:

### **Illegal Financing of Political Entity**

#### **Article 156a**

*Whoever grants or obtains funds for financing political entity in the name and for the account of the political entity and contrary to the law and in the amount greater than 15,000 RSD shall be punished with imprisonment of three months to three years.*

*Whoever conceals the source or the value of financing a political party, provides a political entity with the funds that were obtained for this purpose from the third party, pays the costs of activities of political parties as if they were his own or the costs of a third party, receives compensation for goods and services provided to the political entity of the third party, or fails to give details of the source or the value of financing political entity in the accounting records or report, and in the amount greater than 15,000 RSD, shall be punished with imprisonment of three months to three years.*

*If the commission of the offense referred to in paragraph 1 and 2 of this Article supplied or received funds in excess of 15,000 RSD, the offender shall be punished with imprisonment from six months to five years.*

*Assets from paragraph 1 and 2 of this Article shall be confiscated.*

### **Infringement of the Rights of Political Entity Financiers**

#### **Article 156b**

*Whoever commits violence or threatens with violence, puts at a disadvantage or denies a right and legitimate interest to a person or a legal body, or due to the fact that he contributed to a political entity or that he sold goods or provided goods to a political entity, shall be punished with imprisonment of three months to three years.*

The first paragraph of the current Article 38 of the Law on Financing of Political Parties sanctions any person who, in the name and for the account of the political entity, obtains funds for financing political entity, contrary to the provisions of the law and in order to disguise the source of funding or the amount of funds collected for the political entity. The disadvantage of this legislative solution is that the precisely defined intention is stipulated as a condition of criminal responsibility. The intention that can be expected to exist in illegal allocation of benefits is in fact quite different from the one that is incriminated - in case of donors, it is to exercise some influence on decision-making by means of a political entity to whom they give a contribution, and in case of a political entity, it is to raise the funds needed to carry out his activities. In both cases, the concealment of the source and amount of funding is just a way or means to obtain donations (eg, because a certain person is not allowed to make contributions according to the Law or because he may not give more than the legal limit).

The second paragraph of the current provisions stipulates a greater punishment if given or received funds exceed a certain amount. The third paragraph of the current standards prescribes sanction for the person that commits violence or threatens with violence, put at a disadvantage or denies a right and legitimate interest to a person or a legal body and due to the fact that he contributed to a political entity. This solution is flawed because it stipulates the punishment of only those persons who discriminate or threaten the suppliers of benefits. However, the same situation may apply to any person who did not give favor to a political entity, but there is only a conviction about it by the perpetrator of the crime. Also, the providers of services to political entities may be endangered the same as the providers of donations.

Instead of the current criminal section of the Law on Financing Political Activities, and in order to overcome these problems, we proposed the introduction of two new articles to the Criminal Code that should normally codified all crimes.

The Article 156a, for which the proposed term is '**Illegal financing of political entity**', suggests the incrimination of persons who provide funds for financing political entity contrary to the law in the amount greater than 15,000 RSD, as well as persons who, in the name and for the account of a political entity receive such compensation. In practice, this incrimination may refer to situations when someone intentionally gives or receives cash contribution exceeding the stated amount, knowing that such a form of giving donations is not allowed, or if someone receives a donation that exceeds the maximum value that one person is entitled to contribute, knowing that it exceeds the legal limit, if someone makes a contribution knowing that he has no right to do so because he belongs to the group of persons that should not fund political entities, etc. Unlike the current criminal act under the Law on Financing Political Activities, on the basis of this suggestion, it could not be proved that giving or receiving any funds is coupled with a specific intent (intent is sufficient), but, on the other hand, there is a prescribed minimum value of given or received funds which is the basis to general criminal liability. The amount of 15,000 RSD is set as the limit in this respect, by analogy with the amount prescribed as a basis for distinguishing between 'theft' and 'petty theft' in the Criminal Code. In cases where the funds are of lesser value, the violators of the rules could be charged for some of the misdemeanours of the Law on Financing Political Parties.

While the paragraph 1 incriminates intentional giving or receiving funds contrary to the law, the paragraph 2 proposes incrimination of various forms of concealing the source or the value of financing political entity. Four types of such concealment are specifically listed. The first type is

giving political entity the funds received from the third party for this purpose, ie situations where a potential contributor who has no right to personally finance a political entity (eg, because he would thus exceed the legal limit, because he belongs to the group of persons who should not fund political entities, or because he does not want it known that he made a contribution) allocates his funds to other people who then appear as donors to a political entity. The second type of the crime in this paragraph presents payment of the costs of entity's political activities as if they were one's own. The law requires political entities to pay for the costs of their activities, with the funds from their own accounts. The exceptions are free services, namely services provided directly to a political entity and which are, as such, recorded among the received contributions. However, it is anticipated to sanction any situation when someone falsely presents the expense of a political entity as his own or as an expense of a third party, for example, when the founder of the public media is paid to broadcast an ad of a political entity, and that payment is presented as the compensation for another type of ad. The third type of the crime in this paragraph presents the other side of the coin previously described because it stipulates the sanctioning of persons who provide services or goods to political subjects, and then receive reimbursement for these costs by a third party (eg, a political entity chartered buses to transport rally participants, and then this cost gets paid to the transport enterprise directly by the owner of the local gas station). The fourth type of this crime can be committed by persons responsible in the political entity who intentionally omit to state a source of financing political entity in the accounting records or reports or those who state an inaccurate source or incorrect amount of funding. In this case, it is stipulated that the criminal liability, as opposed to a misdemeanor, exists only in case when the value of hidden funds exceeds 15,000 RSD.

Paragraph 3 stipulates more severe punishment in cases where the value of given, received or hidden assets exceeds 1,500,000 RSD, and paragraph 4 states that the illegally obtained, given or concealed assets will be seized.

The draft of the Article 156 b, which is called 'Infringement of rights of political entity financiers' stipulates the punishment for a person who commits violence or threatens with violence, puts at a disadvantage or denies a right and legitimate interest to a person or a legal body and due to the fact or belief that this person or body gave donation, made a contribution or provided a service to a political entity. This provision eliminates gaps in the existing Article 38, paragraph 3 of the Law on Financing Political Parties. Namely, it stipulates the sanctioning of persons who threaten the rights of service providers and sellers of goods to political entities, and not just the rights of donors. In practice, persons who provide a service to a political entity with a market compensation can be just as endangered as the people who make contributions to them, and both practices are just as socially dangerous. In addition, there is a stipulated incrimination not only in situations when someone threatened the contributions donor due to the fact that he made a donation to a political entity, but also in situations where the endangerment was motivated by the mistaken belief by the perpetrator that such contribution was given. Regardless of the fact whether the threat to the rights of donors and service providers to political entities is based on the desired intent to damage the actual or perceived contributor / service provider, the social risk is equal and there is no reason that this kind of behavior is not sanctioned in the same way.

**Whistleblowers Protection Act**<sup>8</sup> did not prescribe offenses or penalties for some of the most serious violations of the law. It is expected that this deficiency should be resolved through

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<sup>8</sup> 'Official Gazette RS', No 128/14, from 11/26/2014

amendments to the Criminal Code in the period before the implementation of this law. It would be more appropriate that those amendments were made along with the adoption of the Law on the Protection of Whistleblowers<sup>9</sup>. The previously developed draft of the Law on awareness raising and the protection of whistleblowers prescribed the following criminal offenses, some of which may be relevant in the legal framework that has been adopted:

#### **Article 34:**

##### **Violation of the Rights of Whistleblowers and Other Persons**

*Whoever engages in act of retaliation, if there are no characteristics of other serious criminal offense, shall be punished with imprisonment up to one year.*

*If the act of retaliation led to serious consequences for the victim, the offender shall be punished with imprisonment up to three years.*

The law does not use the term ‘retaliation’, but harmful action, so the terminology should be adjusted before the adoption of amendments.

#### **Article 36:**

##### **Unauthorized Disclosure of the Identity of Whistleblowers**

*An official and responsible person who, without authorization, disclose the identity of the provider of information about endangering public interest or whoever conducts actions in order to discover the identity of the provider of information about endangering public interest, shall be punished by a fine or imprisonment up to six months.*

This article should also be amended in accordance with the previously adopted terminology (eg. ‘whistleblower’ or ‘a person who discloses information’ instead of ‘provider of information about endangering public interest’).

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<sup>9</sup> [www.poverenik.rs%2Fimages%2Fstories%2Fmodel-zakona%2Fmodel-final.doc](http://www.poverenik.rs%2Fimages%2Fstories%2Fmodel-zakona%2Fmodel-final.doc)

## 5. Statistical Data on the Fight against Corruption

Since one of the problems in connection with the prosecution of corruption is the lack of complete and comparable data on its intensity, all the statistical data should be taken with caution. The differences occur in the statistics kept by individual organs (different ways of keeping statistics by the police or by public prosecutors and courts), but also in terms of coverage of criminal offenses that are treated in these statistics. An additional problem is that even those statistics that are compiled are not publicly available. It often happens that the citizens of Serbia found out about the statistical data on the prosecution of corruption only from the reports of the European Commission on the progress of Serbia in the process of European integration. In the analysis of the procedure in cases of corruption in the period from 2006 to 2012<sup>10</sup>, a review was made on the basis of the data of the National Bureau of Statistics on convicted adult citizens:

Table 1: Relationship between the number of reports, charges and convictions for specific corruption offenses in the period from 2006 to 2012

Year	Phase	Abuse of Office	Influence in Trade	Passive Bribery	Active Bribery	TOTAL
2006	Reports	2750	28	97	43	2918 (100%)
	Charges	1116	1	43	45	1205 (41,3%)
	Conviction	606	-	38	40	684 (23,4%)
2007	Reports	2675	5	129	109	2918 (100%)
	Charges	950	8	38	36	1032 (35,4%)
	Conviction	524	7	31	29	591 (20,3%)
2008	Reports	2661	18	91	102	2872 (100%)
	Charges	966	12	33	35	1046 (36,4%)
	Conviction	514	8	23	31	576 (20,1%)
2009	Reports	2523	6	132	85	2764 (100%)
	Charges	929	3	43	45	1020 (36,9%)
	Conviction	523	3	32	35	593 (21,5%)
2010	Reports	1868	5	125	37	2035 (100%)

<sup>10</sup> Cited according to SE, 2014. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PACS-Serbia/Technical%20Paper/ECCU%20-%20PACS%20-%20serb%20-%2009%20-%202014%20-%20Risk%20Analysis%20report.pdf>

	Charges	503	3	37	28	571 (28,1%)
	Conviction	263	2	32	25	322 (15,8%)
2011	Reports	2247	12	96	58	2413 (100%)
	Charges	800	11	49	29	889 (36,8%)
	Conviction	375	11	25	24	435 (18,0%)
2012	Reports	2110	11	91	66	2278 (100%)
	Charges	1002	1	74	65	1142 (50,1%)
	Conviction	460	1	59	56	576 (25,3%)

Transparency - Serbia further analyzed the issue of charges, prosecution and conviction of corruption in the first two years after the reform of the judiciary<sup>11</sup>. During this period, the number of criminal charges that are due to corruption offenses was not small. In those two years the prosecutor's office received almost **13,000 such charges**, and they had over 5,000 reports from previous years. However, the largest number of criminal charges does not pass this phase - **77.8%, gets rejected**. Also, the statistics show that the public prosecutor's office cannot process all criminal charges for these offenses at the rate that they are received. For those two years they received about 13 thousand criminal charges, and at the same time, **the prosecution decided in one way or the other on less than half of that number - 6,290**. This means that the possible sudden increase in the number of criminal charges would result in additional reduction in efficiency, in case there are no changes in the organization of prosecutor's offices or changes in regulations. It should be kept in mind that prosecutors also depend on the actions of other bodies - both in the investigation phase, and during the trial.

By far the largest number of criminal charges in this group of offenses is related to the abuse of office - 87%, the next 11% are offences are for violations of the law by a judge or prosecutor, while active and passive bribery participate with 1% in the statistics. It should be noted that criminal charges for other corruption offenses are so rare that there was not separate statistics regarding those.

The largest number of criminal charges comes from the police - as much as 59%, the next in line are the damaged sides in 27% of cases, other government bodies represent 8%, and only 5% of cases is initiated by the public prosecution. The data on a small number of criminal cases that were initiated by the public prosecutor's office reveal the burden of these bodies, but it can be related with assessments of the European Commission on the need for a proactive approach in the detection and prosecution of corruption. However, statistics on the structure of those who file criminal

<sup>11</sup><http://www.transparentnost.org.rs/images/stories/materijali/18022013/Pravosudje%20u%20borbi%20protiv%20korupcije.%20januar%202013%20.pdf>



charges for corruption can often be deceptive. For example, the information that the victims of corruption often decide to file criminal complaints is, in fact, not correct. In reality, the fact is that more than half of these reports are submitted by individuals who believe they have been harmed by the conduct of judges and prosecutors (unsatisfied customers and their agents). Many such cases do not represent an actual corruption, but a specific pressure on the court or dissatisfaction with the actions of the court and decisions that might be justified. This should be reconsidered at a higher judicial authority or be subject to disciplinary proceedings due to poor quality of work, but not to the criminal proceedings due to corruption. In case of passive bribery, only every eighth charge comes from a damaged side.

Particularly interesting are the information pertaining to the status of the accused. When 'abuse of office' in private sector is excluded from the statistics (former paragraph 4 of Article 359), the actual number of those accused of corruption is significantly reduced and may come down to around 1,000 people - 955 'officials' and some of those belonging to other categories (10 citizens accused of giving bribes, 28 responsible persons in companies accused of taking bribes, etc.).

Statistics also recorded other interesting information. Security measure of prohibition on performing a profession, activity or duty, where can be present in some cases of corruption, was imposed in only 24 cases, of which 17 was related to abuse, and 7 to passive bribery. Various means of confiscation of assets were also quite rarely represented - in 49 cases of abuse and 3 cases of active bribery, although this number is probably higher in reality, since the confiscation may also occur at an earlier stage, for example, when detecting a bribery.

In the sample of charges that we analyzed in detail, the average value of illegal financial benefit or damage was about 2.5 million RSD, while about one quarter of cases of damage or benefit was not clearly expressed. However, this figure is misleading because it was strongly influenced by several large cases with charges worth millions of RSD. In the sample, the total of 6 charges refers to damage or benefit greater than 10 million RSD, 18 cases to a value between one million and 10 million, 25 cases to a value between 100 thousand and one million, 39 cases to a value between 10 and 100 thousand, and 13 cases to the bribery of smaller value.

In more than 70% of cases, the perpetrators of abuse of office were imposed a suspended sentence in the period 2006-2012, while in other cases they were sentenced to jail, along with a negligible percentage of those who were fined. Bearing in mind the fact that the largest portion of the total number of committed offenses are most likely the acts defined under the Article 359, paragraph 1 (basic form) which is punishable by imprisonment of six months to five years, this criminal policy of the courts is expected<sup>12</sup>. The structure of imposed prison sentences is dominated by sentences of more than three months to six months (32.6%), which implies that in these cases sentence was reduced, which was immediately followed by sentences ranging from more than six months to one year (24.5%). Relatively numerous are also penalties in the category 'over one to two years' (17.6%), while others are much rarer. The sentence was reduced in a total of almost 50% of the cases.

When it comes to the offense of receiving bribes (Article 367 of the CC) the percentage of imposed suspended sentences ranges around 20%, while in other cases perpetrators were sentenced to jail

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<sup>12</sup> Cited according to SE, 2014

(the number of cases of acquittal is negligible). The prevailing sentences are ranging from 3 to 6 and 6 to 12 months, which together make up about 75% of the imposed sentences of imprisonment for this offense. The sentencing policy of the courts for this offense was relatively mild, but it can also be an indication that the courts perceive the sentencing policy of legislator as too strict<sup>13</sup>. In relation to the offense of active bribery, it is not reliable to make conclusions about the uniformity of sentencing policies due to the small number of convictions<sup>14</sup>. Recently published data<sup>15</sup> for 2013 reveal the following picture:

- For the offense of giving and receiving bribes in connection with the voting only six criminal charges were submitted, two charges were dropped, indictment were filed in two cases, and in the remaining two cases the perpetrators are unknown.
- For the abuse related to public procurement a total of 11 criminal charges were filed, of which five were rejected. In two cases indictments were raised after investigation.
- For the abuse of office of the responsible person the total of 542 complaints was filed, of which 41 were rejected and 420 indictments were raised.
- For the abuse of office the total 1,388 persons were reported, and 257 of such charges were rejected. Indictments were filed against 621 persons.
- For the criminal offense of violation of law by a judge, public prosecutor and his deputy, the total of 487 criminal charges were filed, while 175 were rejected. However, this was followed by only 27 indictments.
- The improper use of budget funds was noted in only six criminal charges, one of which was rejected. Four indictments were raised.
- Similarly, the trade in influence is practically unknown of - there were only 11 criminal charges (of which three were rejected) and five indictments.
- The number of reported cases for active and passive bribery is the same - 61. The total of 13 charges against bribe-takers were rejected, as well as 18 against bribe-givers, while 38 and 36 indictments were raised respectively.
- For offenses that are regulated by special laws there are no separate data, but they are only presented collectively, so it is not possible to establish the number of cases of reporting and prosecution of criminal offenses prescribed by the Law on Financing Political Activities and the Law on Anti-Corruption Agency.

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<sup>13</sup> The same

<sup>14</sup> The same

<sup>15</sup> [http://webrzs.stat.gov.rs/WebSite/repository/documents/00/01/44/68/SK12\\_191\\_srb-punoletni-2013.pdf](http://webrzs.stat.gov.rs/WebSite/repository/documents/00/01/44/68/SK12_191_srb-punoletni-2013.pdf)

## **6. The Structure of the Repressive Organs System**

The highest court is the Supreme Court of Cassation. There are four appellate courts, higher courts and municipal courts, which have separate units. The adoption of a new network of courts is anticipated. There is Administrative Court, Commercial Courts and the Commercial Appellate Court, magistrate courts and higher magistrate courts. The judges are elected to permanent functions by the High Judicial Council in which six members are judges, one representative of law schools and the legal profession each, and one members by function - Minister of Justice, a representative of the Parliamentary Committee on Justice and President of the Supreme Court of Cassation. The High Judicial Council nominates the candidates who are elected for the first time to judicial office and they are elected by the Assembly. Within the High Court in Belgrade there is a special department for organized crime. The law on organization and jurisdiction of the authorities in fighting organized crime, corruption and other especially serious crimes stipulates that this department prosecutes the cases against the most of the public officials when they are charged for some of the criminal acts of corruption.

The Prosecutor's Office in Serbia is organized hierarchically, led by the Republic Public Prosecutor and its organization follows the organizational structure of the courts. Prosecutors have deputies. Deputy Public Prosecutor shall perform all the acts he is entrusted with by the Public Prosecutor, and, without any special authorization, he can take any action to which the prosecutor is authorized. There is the prosecution of special jurisdiction - Prosecution for Organized Crime, whose competence also includes the offenses related to corruption. The systematization of jobs stipulates that the prosecutor's office employes 25 deputies. The Organized Crime Prosecutor is elected by the Assembly of Serbia for the period of 6 years, and deputies are elected by State Prosecutorial Council. The Republic Public Prosecutor's Office formed the Department for the Fight against Corruption whose jurisdiction is coordinating the work of all subordinate public prosecutions in prosecuting these types of crimes. This department employs three deputy state prosecutors. Each of the four Appellate Public Prosecutor's Offices in the Republic of Serbia employes one deputy public prosecutor who particularly monitors this type of crime.

The Prosecution for organized crime is responsible for dealing with cases of corruption involving some public officials. The jurisdiction extends to crimes against official duties, when the defendant or the person taking a bribe is an official or responsible person who performs a public function on the basis of election, nomination or appointment by the National Assembly, the Government, the High Judicial Council or the State Prosecutorial Council. Such a definition omitted some of the highest public officials - MPs and the president of Serbia, as well as some of the officials with significant responsibilities in other levels of government (eg. executive powers in the Autonomous Province of Vojvodina and cities).

The Ministry of Internal Affairs, within the Criminal Police Directorate in the Department for the fight against organized crime, has a department for combating financial crime, within which there is a specialized Department for the fight against corruption. All police departments in the Republic of Serbia have a Department for the fight against corruption.

The fight against corruption within the police is under the jurisdiction of the Internal Control Sector of the Ministry of Internal Affairs, which is directly subordinate to the Minister (and not to the director of the police). There are, however, separate Departments for control of legality in the work

of the Police Administration, Police Directorate; Department for Security and legality of the Gendarmerie Police Directorate; and the Police Department for the control of legality of police administration for the city of Belgrade, while 27 regional police departments employ people who are involved in the control of legality of police work.

## 7. Prosecuting Corruption

The amendments to the Code of Criminal Procedure from 2009 enabled the use of special techniques and measures for corruption offenses that are not part of organized crime. Special techniques are applicable in cases with ‘ordinary’ suspects. Given that there is no obligation to inform the suspect that his communication is monitored, in cases where the investigation with the use of special techniques did not result in the indictment, that is, that the material was not used in criminal proceedings, the public has created the impression that these measures are used much more than what is actually the case in reality.

Code stipulates ‘Special provisions on the procedure for criminal acts of organized crime, corruption and other serious criminal offenses’ and special rules of procedure for such offenses. In the Criminal Police Directorate the application of measures is implemented by police officers from the Department for special investigative methods, while in the the Police Department of the City of Belgrade this is performed by the officers for electronic surveillance, and in some regional police departments in the territory of Serbia this is conducted by the police officers of the Department for the implementation of measures within the Criminal Police Department.

The measures include monitoring and recording of telephone and other conversations or communications by other technical means and optical recording of persons, providing simulated business services and conclusion of simulated legal affairs, automated computer search of personal and other related data, their electronic processing and the engagement of undercover investigator. Special evidentiary actions may be determined towards the person for whom there are grounds for suspicion of committing any of the offenses referred to in Article 162 of the Code, and it is not possible to collect evidence for a criminal prosecution in any other way or if their collection would be very difficult. Special evidentiary actions may specifically be ordered against a person for whom there are reasonable grounds to believe that he is in the process of preparation of any of these offenses, and the circumstances indicate that the offense could not be detected, prevented or proved in any other way, or it would cause disproportionate difficulties or great danger. When deciding on the establishment and the duration of specific evidence gathering procedures, the organ will especially assess whether the same result could be achieved in a manner that restricts the rights of citizens in a smaller extent.

If the public prosecutor does not initiate criminal proceedings within six months from the day when he was introduced to the material collected by using special evidentiary actions or if he declares that it will not be used in the process, and that he will not initiate the proceedings against the suspect, the preliminary proceedings judge shall issue a decision on the destruction of the collected material. The material is destroyed under the supervision of the judge for preliminary proceedings who makes a report on this. If, during the implementation of special evidentiary actions, there were any action contrary to the provisions of the Code or instructions of the proceeding body, the collected data cannot be used to form court’s decision. If the implementation of special evidentiary actions resulted in the collection of the material about a criminal offense or an offender was not covered by the decision on determining the specific evidentiary actions, such material can be used in the procedure only if it relates to any of the offenses referred to in Article 162 of the Code.

The proposal for determining special evidentiary actions and the decision on the proposal is recorded in a special register and kept together with the material on the implementation of special

evidentiary actions in a separate file folder marked 'special evidentiary actions' and marked with a degree of confidentiality, in accordance with the regulations governing classified information .

*Surveillance and recording of communication* refers to communication conducted through telephone or other technical means or to the surveillance of electronic or other address of the suspect and the seizure of his letters and other mail. It is determined by the judge for preliminary proceedings and by a reasoned order. Secret surveillance of communication can last for three months, and for the necessity of further evidence gathering can be extended up to three more months.

The command is executed by the police, Security Information Agency or Military Security Agency. The implementation of secret surveillance of communication shall be followed by daily reports that are submitted to the judge for preliminary proceedings and the public prosecutor at their request, along with the collected recordings of communication, letters and other mail addressed to the suspect. The postal, telegraphic and other enterprises, as well as the companies and persons registered for transmission of information are obliged to enable the implementation of surveillance and recording of communications to the state authority that executes a command, and to submit letters and other shipments, with the acknowledgment of receipt. If during the secret surveillance of communications becomes revealed that the suspect is using another phone number or address, state body will expand secret surveillance of communications to that phone number or address as well, and shall immediately notify the public prosecutor. The judge for the preliminary proceedings will decide on the proposal on expansion within 48 hours of receipt of the proposal and shall make a note in the report.

Upon the completion of secret surveillance of communications the authority submits collected materials to the judge for preliminary proceedings along with a special report that contains: monitoring starting and ending time, the data on the official who conducted monitoring, a description of the implemented technical means, the number and available data on persons covered by the supervision, the assessment of the appropriateness and the results of monitoring implementation.

*Secret monitoring and recording of the suspect* can be determined in order to: 1) detect contacts or communication of suspect in public places, in premises, or in places where access is limited, except in the apartment; 2) determine the identity of the person or locating persons or things. Places and premises, or means of transport of other persons may be subject to secret surveillance and recording only if it is probable that the suspect will be present there, or that he will use these means of transportation.

Based on the reasoned request of the prosecutor, the court may determine *a simulated purchase, sale or provision of business services or simulated giving or receiving bribes*. An authorized person who performs simulated business does not make an offense if that action is defined as a criminal offense by the criminal law. However, it is prohibited and punishable for that person to incite another person to commit a criminal offense. Upon conclusion of simulated affairs, the government body that carries out the command submits to the judge for preliminary proceedings the complete documentation of special evidentiary actions, evidence and a special report containing the time of the conclusion of simulated tasks, the information about the person who performed simulated tasks,

unless this was conducted by an undercover agent, the description of technical means used, and the number and available data on the persons involved in the conclusion of simulated affairs.

*Computer data search* includes computer search of already processed personal and other data and their comparison with the data related to the suspect and the crime.

*Controlled delivery* refers to the authorization of the Republic or public prosecutor for special jurisdiction so that for the purpose of gathering procedure evidence and for the detection of suspects he can determine the controlled delivery that would, with the knowledge and under the supervision of the competent authority, allow the delivery of illegal or suspicious shipments within the territory of the Republic of Serbia, and their further entering, crossing or exiting the territory of the country.

Upon the reasoned request of the prosecutor, the court may determine *the involvement of undercover agent* if the implementation of other special evidentiary actions could not collect evidence for a criminal prosecution or if that collection would be very difficult. The order can specify that the undercover investigator can use technical means for photographing or tone, optical or electronic recording. Hiring an undercover investigator lasts as long as it takes to gather evidence, but no longer than one year. It can be extended for another six months by a special decision. In order to protect the identity of the undercover agent, the competent authorities may amend the information in databases and issue ID cards with changed data. It is forbidden and punishable for an undercover agent to incite any offense.

During the engagement, undercover agent submits periodic reports to his immediate superior. Upon completion of the engagement of an undercover agent, a senior officer submits to the judge for preliminary proceedings the evidence and the report containing the start and end of engagement of the undercover agent, the code or pseudonym of the undercover agent, the description of the applied methods and technical resources, the data on persons covered by a special evidentiary action and the results achieved. The judge for preliminary proceedings will deliver the materials and report to the public prosecutor.

The undercover agent can be examined in criminal proceedings as a witness under the code or a pseudonym. Investigation will be done so that the identity of an undercover investigator is not revealed to the parties and clients. The undercover agent is invited by his senior officer who immediately before testing gives statement before the court to confirm the identity of an undercover investigator. The information about the identity of an undercover investigator who is examined as a witness constitutes secret information. The court decision cannot be based solely or to a decisive extent on the testimony of an undercover agent.

## 8. Media Coverage of Corruption

### The Cases of Corruption in Media

When analysing media reporting on corruption cases, or suspected cases of corruption, and the response of competent authority in the chain between the police, prosecutor's office and judiciary, we should take into account the specific position and role of the media in Serbia in recent years.

In recent years, all relevant reports on the situation in the media (Transparency - Serbia, Assessment of Social Integrity, 2011<sup>16</sup>, report of the Anti-Corruption Committee<sup>17</sup>, the assessments of the presidents of most important associations of journalists) agree in their estimate that investigative journalism in Serbia is not developed enough, that there is censorship and a high level of self-censorship. The occurrence of intentional information leaks from the investigation and pre-trial proceedings to selected media is presented even in the European Commission report on Serbia's progress towards European integration, as well as in the screening report on Chapter 23 of the accession negotiations.

Therefore, it is not surprising that the media in Serbia can present an extremely low number of corruption cases which they discovered on their own and by means of research work, whether they came into the possession of documents that indicate suspicious cases, or that they reported the allegations of persons who were witnesses in corruption, or victims or participants in the corrupt chain.

The total extent of the corruption is abundantly presented in media. According to the research conducted by the NGO Birodi, in November and December 2013, 240 reports on the theme of corruption were broadcasted at major TV stations, while the number of articles in the daily newspapers was 934<sup>18</sup>. This study showed that the most favorable presentation in the reports and articles was given to Serbian Government and SNS, as a pivot party authorities, and in a much lesser extent as anti-corruption bodies and whistleblowers, or victims of corruption. Negative portrayal was mainly recorded among the public sector (economy and public institutions), private companies, suspects and accused of corruption, local governments, especially in Belgrade, and the Democratic Party as a party whose president was the mayor of Belgrade.

Cases that appear in the media can be divided into several categories:

- **New cases, or presented suspicions of corruption, which are based on documents** - such examples are the rarest, and can mainly be found in the articles or broadcasts of specialized media, such as CINS (Centre for Investigative Journalism)<sup>19</sup>, 'Insajder'<sup>20</sup>, and portal 'Pistaljka'<sup>21</sup>. In such cases, it happens that the information about the ongoing investigations and indictments get

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<sup>16</sup><http://www.transparentnost.org.rs/images/stories/materijali/publikacije/PROCENA%20SISTEMA%20DRUSTVENO%20INTEGRITETA%20U%20SRBIJI%20-%20Izvestaj%202011%20strana%20po%20strana.pdf>

<sup>17</sup><http://www.antikorupcijasavet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf>

<sup>18</sup><http://www.birodi.rs/wp-content/uploads/2014/01/BIRODI-III-izvestaj-mediji2.pdf>

<sup>19</sup><http://www.cins.rs/srpski>

<sup>20</sup><http://www.b92.net/insajder/>

<sup>21</sup><http://pistoljka.rs/>



published only after several years (which usually means a change of government and a 'climate'). Of course, even in such cases the reaction is sometimes completely absent.

- **New cases, or presented suspicions of corruption, which are based on the testimonies or statements of others** - these examples are also not common in the media. They mostly refer to citing the allegations of whistleblowers, the reports of the independent state authority bodies or the Council for the fight against corruption, the allegations of trade unions, non-governmental organizations or damaged workers, politicians from the 'opposite camp', former 'insiders' and so on. Period of response (or inaction) is similar to the first case.

- **Cases, or presented suspicions of corruption, which are based on the findings from investigations** - This is a very common occurrence. The media discovers that the police (or more rarely, some other authority) investigates a case, that 'arrest is being planned', and reports on the details of the investigation or preliminary investigation. In many cases (but not all) at that time or shortly afterwards indeed becomes revealed that the announced activity of the prosecuting authorities actually occurred.

- **Statements of the police, prosecutors and courts** - 'Favorite' way of reporting for the majority of the media. The presentation of the statements of the competent authorities, but with a lack of interest to follow up the cases until the end. Therefore, it often happens that the interest of the media to monitor the entire chain drastically decreases - from arrest and indictment, through the start of the trial and until the verdict.

Bearing all this in mind, the presentation of any statistics on the actions of government bodies on the basis of information published in the media about possible corruption would be a challenging task, and certainly would not present the true picture of things. Thus, it could happen that the group of corruption cases that were resolved after media reporting, also includes those that were intentionally 'released in the media', precisely because an investigation or indictment is being planned. On the other hand, the texts in which the topic of corruption is approached in a serious way, do not contain evidence that corruption indeed took place, but only more or less substantiated suspicion, and claims about violated procedures or caused damage.

In such manner, as examples of media reporting - possible cases of corruption indicated by investigative journalism we can use the reports of 'Insajder' called The Sale of Health<sup>22</sup> and Patriotic Robbery<sup>23</sup>, or 'CINS' texts Precision Mechanics, Controversial Privatization<sup>24</sup>, and Privatization of Rubin<sup>25</sup>.

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<sup>22</sup> The questions were focused on the theme - how is it possible that only three people became suspects in the big scandal in connection with the procurement of vaccines in the era of pandemic flu (according to journalist findings, 14 people from the state authorities were suspected). This was broadcasted in late 2011. Shortly after the broadcast, one more person was arrested and charged. The trial was postponed several times. The last news we found is that the next one was scheduled for 24 Jun 2014.

<sup>23</sup> The series from 2012 which dealt with abuses of money from the budget of Serbia that was intended for the financing of public authorities and individuals in Kosovo and Metohija. This issue was later addressed by the inquiry committee of the National Assembly, but the report of this committee was not considered. In July 2014, when journalists of 'Insajder' were closing the investigation of new abuses in Kosovo and Metohija, the Prosecutor's Office for Organized Crime informed them that the investigation is ongoing. In early September, the Prosecutor's Office announced that the

## 9. Corruption Cases

The recently promoted Study of the Council of Europe<sup>26</sup> discussed several cases of criminal prosecution of corruption which have been terminated by final verdicts. This document cites the conclusions reached by the authors of this study:

The common characteristic of all analyzed cases is that almost all procedures lasted long, causing the double negative consequences. On one hand, in the case of convictions, these cases lack the desired effects of general and the specific prevention of such belated conviction. On the other hand, when the procedure ends in acquittal, the accused person is at a disadvantage because for years he awaits a final court judgment in circumstances in which, as a rule, he loses his job or is under suspension at the workplace, because he is suspected of committing an offense in connection with the work performed. Therefore, in any case, 'justice' was relatively slow, especially counting the time from the moment of the crime until the time of the sentence. This particularly applies to cases of abuse of office (with trials for offenses in the so-called extended duration). Criminal proceedings conducted for these offenses lasted even longer than proceedings for offenses of classic bribery, simply because in case of an ordinary bribery is not necessary to implement some economic - financial expertise in order to prove the execution of actions, which usually happens in procedures related to the abuse of office. Proceedings were often unnecessarily long also because they involved a lot of the accused accomplices. Such proceedings with a larger number of accused accomplices are much easier to procrastinate, which happens in the law practice (although it was not observed in this analysis of court cases).

Efficiency of criminal proceedings could be enhanced in case a practice is developed that prosecutors, when possible, insist on separating the case, and not on its merger. It could perhaps be said that it is better, faster, more efficient and easier to have five cases with one defendant, than one case with five defendants. It can be assumed that the length of judicial proceedings is affected by the other 'classic' problems of Serbian justice: witnesses (and defendants) failure to appear at court, an expert's delay to witness in court because he was not paid for his findings and opinion, and other similar problems, which only further complicate with a larger number of defendants in a single procedure and lead to more delays in the proceedings.

However, the offense of abuse of office, which is relatively often present in law practice, is not typical 'classic' corruption offense. The presented examples show that the legal characterization of

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investigation of these abuses was initiated on 25 August 2014, therefore, about two years after the suspicions and some evidence of these abuses were published in the television series.

<sup>24</sup> As stated in the text of 21 July 2014, a problematic privatization enabled Toplica Spasojevic and his partner to become owners of the building in an attractive location. There were also references about their strong links with Miroslav Miskovic, but even that was not enough to end this job with a profit. The union workers of 'IPM' filed several criminal charges in July 2013. The Criminal Police Directorate has not yet sent a report requested by the First basic public prosecutor's office in Belgrade.

<sup>25</sup> An article of 14 April 2014 states that the company 'Invej', which became the owner of a famous beverage factory 'Rubin', for years roughly violated the privatization agreement, but that the Privatization Agency, which was informed about it, did not initiate measures within its jurisdiction. There is no information about the investigation.

<sup>26</sup> A joint project of the European Union and the Council of Europe 'Strengthening the capacity of the police and judiciary to fight corruption in Serbia' (PACS) [www.coe.int/pacs](http://www.coe.int/pacs), Technical documentation, Risk analysis in order to assess the regulatory and organizational obstacles to effective investigations and proceedings in criminal acts corruption.

the abuse of office is used instead of other crimes of fraud, embezzlement or other forms of financial malversations. The fact that it is committed in the service, often links the abuse of power with the corruption, but this is not enough: examples show that the objective characteristics and consequences of acts of commission of the offense stipulated in such a way that it is hard to imagine a situation that could not be included in the criminal offense of abuse of office. For this reason, that crime cannot be regarded as a 'classic' criminal act of corruption to the same extent and in the same manner as active and passive bribery. Also, it seems that prosecutors often find it much easier to operate one such 'umbrella' formulation - incrimination, instead of engaging in meticulous analysis in each case whether the particular offence should be treated as fraud or some other similar criminal offense.

Reconsideration of the criminal policy of first instance courts in conviction cases in the observed sample occurred in almost identical manner. The first instance court would impose a sentence, which was not very strict and was somewhere closer to the minimum, but upon appeal, the competent court became more lenient. All in all, the appellate court justifies its decision by emphasizing that 'the first instance court correctly determined the existence of mitigating circumstances for the defendant, but that the established mitigating circumstances were not given the adequate importance they actually have', so the punishment is further mitigated. The reverse cases did not occur: that the first instance court becomes lenient, and that a more severe penalty is pronounced in the second degree. We need to remind ourselves of the disparities among the criminal policies of the courts in case of the same two offenses committed under different circumstances: a policeman who was sentenced to two years in prison for taking a bribe of 100 euros, and a foreign exchange inspector who was sentenced to 10 months of 'house arrest' for a bribe of 35,000 marks that he requested or 5,000 marks that he de facto received.

The offenses of classic bribery - giving and receiving bribes were most commonly discovered and proved with the help of 'marked banknotes'. Without it, corruption is almost impossible to detect and prove. When there were no 'marked notes', there were acquittals and vice versa - when there were 'marked notes', there were no acquittals. This shows the importance of the so-called simulated legal services as a very important special evidentiary action for proving bribery. The efficacy of this action would be a reason to recommend its application in a more general extent and scope (when simulating passive bribery).

Each of the above mentioned and analyzed cases of bribe-taking, especially those that ended in conviction, were discovered when a citizen who was requested to give bribe went to the police, made a report, and then the entire action with marked bills was organized. Without that, at least judging by these cases, it is virtually impossible to prove corruption. It also indicates that corruption cannot be fought only by means of relevant provisions of law - it is necessary for the majority of the citizens to develop awareness of the damaging effects of corruption and to realize they should not participate in corruption, but should report it to the authorities. Without this honest and adequate cooperation between citizens and police, every fight against corruption ends at the level 'he said - she said', and only sporadic reports of individual cases when someone is asking for a bribe. But, this is perhaps the hardest part of the job in the fight against corruption - to change awareness and habits, and to develop the appropriate sense among the citizens not to accept corruption, but to report it.

### **The Paradigmatic Case of 'Road Mafia'**

Since the formation of the Prosecutor's office for the fight against organized crime and 'special court' (ie special departments of the Belgrade District Court) from 2003 to 2009, fifty convictions in cases of organized crime groups were passed. In order to present these results greater than they are, politicians and the media who follow them called these criminal groups 'mafias'<sup>27</sup>, although this is often not appropriate. In one case, however, it seems that this could be a well-deserved name, according to the scope and level of organization of the participants in the criminal enterprise. In the case of the so-called 'road mafia' the total of 53 people were charged for damage to public enterprise 'Putevi Srbije' (Roads of Serbia) in the amount of 6.5 million euros. In November 2009, in this process 41 people were first instance sentenced to a total of 131 years and ten months in prison. They were sentenced for retaining part of the money collected from tolls on the highway Belgrade-Nis. The three accused committed suicide in the process<sup>28</sup>.

Public discourse in Serbia records often situations where it is suspected that the accused and convicted of corruption are just a little more than 'scapegoats', as the high-level corruption is difficult to reach without at least 'tacit approval' from a political decision-making level. However, there is almost no situation in which such a conclusion can be read from court decisions, as it is the case here: 'the Court believes that Jovetic and Djordjevic are not real organizers of the group and that the real organizers, unfortunately, remain unknown. We have evidence ... that some other people violated the law... it remains unknown who was the organizer 'from Belgrade' who received 40 percent of the money.'<sup>29</sup>

The verdict of the Appellate Court of Belgrade from 18 November 2011<sup>30</sup> significantly changed the first instance verdict. In fact, due to the obsolescence of certain crimes, some participants were party acquitted of responsibility. As a result, at the end the sum of prison sentences imposed was 116 years and two months. The convicted are also obliged to jointly pay PE 'Putevi Srbije' 85.7 million RSD. For the remaining amount, PE 'Putevi Srbije' have been referred to civil action, because there was not enough evidence to decide on these issues in the criminal proceedings.

The Court found that in 2004 Milan Jovetic, the controller in the Department of internal control Toll department, along with several unknown persons organized a criminal group in Belgrade and Nis. The members of the criminal group soon become employees from certain parts of the company (particularly employed in jobs of collecting revenue). The organizers kept 40% of illegal income, for themselves, and employees at toll stations received the remaining amount. One-fourth of the money went to shift leaders, and three-quarters to bill collectors. The group operated in such a way that bill collectors issued fake cards for toll pay to truck drivers with foreign license plates at the starting point of the highway Belgrade - Nis.

It was found that the group illegally issued and charged at least 13,000 illegal tolls. In order to make this theft possible, it was necessary to cheat the system of electronic toll collection and payment control. The workers of the company that maintained software system for 'Putevi Srbija' installed a

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<sup>27</sup> After the 'bankruptcy mafia', this name was given to several other groups, so we got the 'road', 'customs', 'oil', 'traffic', and even 'garbage' mafia.

<sup>28</sup> <http://www.balkaninsight.com/en/article/serbia-s-road-mafia-get-131-years>

<sup>29</sup> Judge Vladimir Vucinic, cited from the article from 'Politika', published in other media, <http://www.balkaninsight.com/en/article/serbia-s-road-mafia-get-131-years>.

<sup>30</sup> Republic of Serbia, the Appellate court in Belgrade, 1, 21/10 <http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/organizovani-kriminal/kz1-po1-21-10.html>

file that allowed the system not to register a duplicate ticket for toll pay. They also built special switches that could, upon the command, triggered illegal toll system for issuing tickets and allow trucks to pass even though the system did not register the payment.

Installed plug-ins enabled bill collectors to print, with the arrival of trucks at the entrance toll gate, two copies of the tickets for the payment, with the same serial number and the time of issuance, and that the electronic billing system registers only one of them. Then one copy was given to the driver of the truck. When the driver reached the end point of the highway, the system allowed the toll he would pay not to get registered, while the ramp would still raise and the truck would pass (pressing the built-in switch would interrupted the connection between computers, electronic control system of collection and ramps). After the first truck would enter the highway, the collector who was a part of the criminal network, would keep a copy of the ticket that was identical to the original, waiting for further commands. When the first truck would get off the highway, and the shift leader and collector would get information about it and they would give the copy to the first incoming truck with foreign plates. On the truck's way out from the highway, the collection was performed normally.

At that point, the system would be 'all-clear' - there was money to cover one registered entry of a truck on the highway, while the money obtained from the first payment at the toll stations became the profit of the criminal group. Confidential communication between shift leaders and toll collectors, which particularly included the information on the serial number of duplicate tickets, was performed from rented apartments in Belgrade and Nis. The installed file and cables at toll gates 'Bubanj potok' and 'Nais' made it possible to do all this without any changes that would be visible on the system of electronic payment. The system was put into function by shift leaders who were part of a criminal group. Although each collector has his own system access code, that was not helpful for identifying the responsible persons, because in times of road congestion there were frequent relocations, and the employees used the codes of their colleagues without specific reporting. This system worked for a long time, which was made possible due to the fact that the criminal group also had its own people among those who were responsible for the control, so they could remove all traces on time. In addition, the control was usually performed at the time of a day when the criminal group was not working.

This case involved the measure of secret surveillance of telephone communications. The authenticity of these recordings was confirmed during the trial. The question of the existence of organized criminal group and the use of special evidentiary actions was one of those that were thoroughly examined during the trial. The Court found that the group was organized in mid 2004. According to the Court, the fact that some of the convicts did not know each other was not relevant for determining that it was a criminal organization.

'When making instructions for monitoring and recording telephone conversations, the law was not broken, and telephone calls were not recorded unlawfully, because these are the conversations that the relevant authorities of the Republic of Serbia can control, according to the regulations applicable at that time. Specifically, Article 232, paragraph 2 of the Law on Criminal Procedure (LCP), which was in force at the time when these measures were taken, as well as Article 504e of LCP, among other things, stipulate that the investigating judge, at a written and reasoned request of the prosecutor, may order the monitoring and recording of telephone conversations and other communications, for persons for whom there are reasonable grounds to believe that they alone or

with others committed the offenses enumerated in paragraphs 1, 2 and 3 of Article 504a. ... In addition, the present recordings and transcripts in the specific case were not the only or exclusive evidence for which any of the accused persons were found guilty. Therefore, using the above transcripts and materials obtained on the basis of orders for surveillance to gain evidence, the first instance court did not violate the criminal procedures, and did not make any substantial violation of criminal procedure under the Article 368, paragraph 1, item 10 in conjunction with Article 233, paragraph 4 of the LCP (that is, 504z of the LCP).’

There is no doubt that the fraudulent scheme was designed in advance, and that unknown persons ‘from Belgrade’ also took part. The media and some of the defendants expressed doubt that it could be someone from the top of a public enterprise or any of their political protectors (‘someone with strong influence in the government’).

The doubts that the verdict, and in particular the investigation preceding the verdict, are not complete, particularly come from lawyers of the convicted. Thus, Dragoljub Djordjevic, defense attorney of indictee Milan Jovetic (and for a while of Zivojin Djordjevic) said that ‘the prosecutor knew who was coming for the money and carried it to Belgrade’, but that ‘this person, however, was not charged.’ He also stated ‘that the prosecutor had a man who electronically, and in every other way, planned the collection of money from tolls’ and that he was convicted, but that ‘the prosecutor did not go any further to find out who actually issued an order to do so’ and that his client ‘an ordinary controller, could not have done that’.<sup>31</sup>

There were mentions in the trial, which were not the subject of further investigation, that during the period referred to in the verdict the toll charges in fact increased, not decreased, which would be a logical consequence of the theft of this magnitude. It is pretty clear signal that, in this or in any other manner, there were also frauds in the collection of tolls for a much longer period of time, and that this criminal proceedings covered only part of the perpetrators. Former Minister Velimir Ilic mentioned that frauds on the highway have been present for at least 15 years, but that was not the subject of further investigation, nor any evidence were presented of that<sup>32</sup>.

The case of ‘road mafia’ is also important because it gave birth to one of the most famous Serbian whistleblowers, Goran Milosevic. Goran Milosevic was temporary employed at this company and was the first to point out the abuses related to the the collection of tolls. The first time he published the information regarding these abuses on the parliamentary internet forum, but without mentioning the name of the company in which the abuse took place. There were no reactions from the MPs. Then he started talking about this subject with his colleagues. After the expiration of the period for which he was hired in early 2006, his contract was not extended, because there was ‘no further need for engagement’ Then he decided to prove the suspicions that nobody wanted to talk about in public. He secretly filmed trucks passing Belgrade and Nis tollgates, as well as the tickets that drivers were given. After that, he needed a proof from the other side - the listing of issued tickets<sup>33</sup>. He tried to obtain it by using the request for access to information.

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<sup>31</sup> <http://www.svedok.rs/index.asp?show=69615>

<sup>32</sup> [http://www.b92.net/info/emisije/istrazuje.php?yyyy=2008&mm=04&nav\\_id=293797](http://www.b92.net/info/emisije/istrazuje.php?yyyy=2008&mm=04&nav_id=293797) 11.07.2008.

<sup>33</sup> Politika“, 11/06/2008, <http://www.politika.rs/rubrike/Politika/Ispovest-insajdera-Kako-sam-otkrio-drumsku-mafiju-i-dobio-otkaz.lt.html>

Since he did not receive the documents upon the request, Goran filed a complaint to the Commissioner for Information of Public Importance. ‘Putevi Srbije’ stated in the appeal that the requested data represent business secrets, and the Commissioner ordered in the decision on the appeal that the data must be given to the applicant and that such secrecy is not based on law. This public company did not comply with the binding decision of the Commissioner. The government also made no contributions to implement this decision, although it was a legal obligation. Moreover, ‘Putevi Srbije’ requested the Supreme Court to annul the Commissioner's decision, which was legally impossible. Only when the Court rejected this request, the documents were submitted to Goran Milosevic. They present one of the evidences that was used in criminal proceedings against this group.

Milosevic appeared as a witness at trial. However, it is interesting that his recordings disappeared from the court files before the main hearing.<sup>34</sup> On the other hand, former minister of infrastructure in 2007 claimed that Milosevic was not initially provided with the information for the investigation, initiated by the director of ‘Putevi Srbija’. The director, who was also the vice president of minister's party, was apparently familiar with the problem, and the management of public enterprise cooperated in the investigation.<sup>35</sup>

### **Abuses in Public Procurements**

Non-governmental organization ‘Toplicki centar za demokratiju i ljudska prava’ (‘Toplica Center for Democracy and Human Rights’), a member of the Coalition of Public Finance, in November 2012 filed criminal charges with the Senior Public Prosecutor's Office in Prokuplje against the former president of that municipality Milan Arsovic, on reasonable suspicion of having committed a criminal offense Abuse of office under the Article 359 of the Criminal Code of the Republic of Serbia<sup>36</sup> (abuse of office and exceeding the limits of official authority from the Public Procurement Law and the Law on Budget System). On 31 May 2013, Higher Public Prosecutor's Office in Prokuplje filed an indictment against a former municipal president and an owner of a private company.<sup>37</sup>

Between 2008 and June 2012, Milan Arsovic was the Mayor of Prokuplje. Aleksandar Mitrovic is the owner and director of the commercial company ‘Proeurobiznis’ from Prokuplje. The two men know each other well. When the businessman discovered that the budget of the Municipality of Prokuplje provided funds for the purchase and installation of three playgrounds in total value of 9.6 million RSD, he incited the mayor to, instead of one public procurement procedure, as it should be according to the law, makes a decision on launching three separate procurement procedures of small value, which he did on 20 March 2012. The president of the municipality did not even take into account the warnings of Municipal Procurement Commission. The Law requires the implementation of unified purchase for all of the same goods and services that are acquired during a single budget year.

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<sup>34</sup> ‘Politika’, 11/06/2008. <http://www.politika.rs/rubrike/Politika/Ispovest-insajdera-Kako-sam-otkrio-drumsku-mafiju-i-dobio-otkaz.lt.html>

<sup>35</sup> [http://www.b92.net/info/emisije/istrazuje.php?yyyy=2008&mm=04&nav\\_id=293797](http://www.b92.net/info/emisije/istrazuje.php?yyyy=2008&mm=04&nav_id=293797) 11/07/2008.

<sup>36</sup> [http://www.nadzor.org.rs/krivicna\\_prijava\\_zbog\\_zloupotreba.htm](http://www.nadzor.org.rs/krivicna_prijava_zbog_zloupotreba.htm)

<sup>37</sup> <http://www.nadzor.org.rs/pdf/Optuznica%20protiv%20Milana%20Arsovica.pdf>

However, he went a step further, ordering the members of the Commission to submit the tender documents only to Aleksandar Mitrovic. All this was apparently done in order to facilitate the commercial company 'Proeurobiznis' to be chosen as the best supplier in the three fictional procurement procedures related to playgrounds. According to the provisions of then applicable law, in case of public procurements of low value it was sufficient that the customer sends an invitation to the addresses of three potential bidders, and there was no obligation to publish a public invitation on the Public Procurement Portal.

Having received the promise of the mayor that the tender documentation in terms of models of children's playgrounds will be adapted to his offer, Aleksandar Mitrovic obtained two false offers, in order to create the illusion of bidders competition. He then submitted his bid and the bids of two more companies to the registry office of the Municipality of Prokuplje. Even before the tender documentation was made, Aleksandar Mitrovic received all information about the import of children's playgrounds and provided a catalog with models of the fields that would be part of the tender documentation. The selection of playground models from the codes in the catalog (playgrounds that could be made by the defendant's company) was conducted at the interview on 20 March 2012 in the office of Mayor of Prokuplje. On the same day when the decision was made to launch three public procurements of low value for playgrounds, Aleksandar Mitrovic, certain that he would be chosen as the best supplier, approached the conclusion of the procurement contract for playgrounds (from one company from Bulgaria). Since 'Proeurobiznis' performed the contracted work, the Municipality of Prokuplje paid the agreed price by two contracts in full and partially by the third one.

On 27 March 2014, the High Court in Prokuplje brought the verdict. The president of the municipality, Milan Arsovic, was sentenced to a prison term of 1 year and 6 months and to a fine in the amount of 150,000.00 RSD. The owner of the company, Aleksandar Mitrovic, was sentenced to a prison term of one year to be served in the premises where he lives and to a fine in the amount of 100,000 RSD. It was decided that the property gain in the amount of 930,232.70 RSD<sup>38</sup> gets confiscated from the company 'Proeurobiznis' Prokuplje. At the moment, the appeal against this verdict is in progress.

This case is interesting on several levels. First, it represents one of the not so many situations in which a conviction for corruption came after the initiation of proceedings by a non-governmental organization. Secondly, in this case the Public Prosecutor's Office responded relatively quickly after the filing of criminal charges, which can be interpreted in the context of the fact that this was a relatively simple case of abuse, with a small number of participants. Perhaps the fact that the accused was a former officials was of importance, but it should also be noted that the criminal charge was filed after a change of government, both at the national and at the local level.

The case is also interesting because it represents an apparent violation of public procurement procedures, which, as such, should be noted by other officials (which did happen), but none of them acted in accordance with their obligations and initiated the process of control or filed a criminal complaint. In this context, it is interesting to note that the abuses of public procurements of low value in Serbia were abundant. Source of information for these cases could be the reports of the State Audit Institution, which, a few years ago, stated numerous situations where the wrong procurement procedure was selected (eg, negotiation instead of an open procedure or public procurement of

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<sup>38</sup> [http://www.nadzor.org.rs/18\\_meseci\\_zatvora\\_bivsem\\_predsedniku\\_opstine\\_prokuplje.htm](http://www.nadzor.org.rs/18_meseci_zatvora_bivsem_predsedniku_opstine_prokuplje.htm)



small value instead of an open procedure). However, the absence of proactive actions of public prosecution or the work of other bodies to establish accountability for these abuses, in most cases, resulted in a relatively small number of them being discovered.

Finally, the case is interesting because there is a relatively small amount of illicit gain. It is estimated at less than one million RSD (based on the purchase price of the equipment and the value estimation of its installation), or only about one-tenth of the total value of public procurement. Regardless of the fact that earnings in Serbia are low, it is hard to believe that defendants were willing to jeopardize their freedom, political and business career just for the sake of achieving such a benefit. Although the verdict determined that the unlawful benefit was acquired by one company, it logically cannot be entirely true. In fact, it would be logical to expect that at least part of the benefit was intended for the mayor (or was intended to pay some of the previous or future favors), and that is in some way one part of illicit benefit should belong to other persons implicated in the case, business owners who made 'service offers' and perhaps to those who might be inconvenient witnesses to these frauds.