Judiciary in the fight against corruption

- key findings of research and recommendations -

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Executive summary

Main findings and recommendations from the project were presented at a press conference at the Belgrade Media center, on January 30th of 2013. Speakers at the conference were Mr Vladimir Goati, President of Transparency Serbia, Mr Nemanja Nenadić, Programme Director of Transparency Serbia and Mr Omer Hadžiomerović, Appellate Court judge and Vice-president of the Association of Judges of Serbia. The project "Judiciary in the Fight against Corruption" was implemented by Transparency Serbia and the Association of Judges of Serbia and supported by the Norwegian Embassy in Serbia.

The goal of the project was to identify results of the reformed judiciary in the fight against corruption, in the application of preventive anti-corruption laws, weaknesses of the system and to recommend solutions. Partners conducted in-depth analyses of the legal framework taking into consideration judiciary and prosecution and anti-corruption legislation. The emphasis was on the work of courts and public prosecutions in corruption-related criminal cases and offences, procedures of misdemeanour courts for violation of misdemeanor provisions of anti-corruption legislation, procedures of the judiciary and prosecution in relation to their duties laid down in the Anti-corruption Strategy and the transparency of their work. Comparative research of the legal framework and work of the judiciary in corruption-related criminal cases was also presented.

Overall Context of the Work of the Judiciary

In 2010 and 2011, the years of the focus of this research, the judiciary in Serbia was burdened with several problems. The judicial network was reorganized (lower number of courts and public prosecutions, new appellate courts) which would itself present a challenge for the work of these institutions, even if there were no other problems. Furthermore, judicial reform included the appointment procedure of all judges and prosecutors, which was conducted in a non - transparent manner and with the influence of politicians. These problems were partly resolved only in late 2012. Besides that, the judiciary faces a huge backlog of cases and the public has a low level of confidence in the judiciary. The judiciary has been attacked in public often, rightfully or not, for the low efficiency in dealing with corruption and other cases. The mechanisms that were aimed at ensuring the accountability of judges and prosecutors and evaluating the quality of their work were not effective in the observed period as well.

Integrity Plans and the Anti-corruption Strategy

Preparation of **integrity plans** is stipulated by the Law on the Anti-corruption Agency (ACA) and the deadline for all institutions, including the judiciary system, was December

31st of 2012. The deadline was extended to March 31st of 2013 by the ACA. Until October 2012, 119 out of 238 judiciary institutions (including all courts, prosecutions, ministries and penal institutions) started preparing integrity plans.

The ACA Law stipulates all institutions should report on a quarterly basis on the fulfilling of their tasks envisaged in the **AC Strategy**. The judiciary (as well as most of the other public institutions) reports only on the request of the ACAS. Even though some recommendations from the AC Strategy and obligations from the Action Plan are not well formulated, reports leave little space for believing that the judiciary is dedicated to fulfilling its tasks. Apart from the ACAS supervision, an internal supervision system of the AC Strategy implementation should be established.

Transparency of Work

Most judiciary institutions aren't active enough in regards of proactive publishing of information on its work. It is especially concerning are the situations when legal obligations are not being respected, such as publishing **information directories**. This problem could be resolved by creating template document that would look the same for all courts or prosecutors of the same instance, and that could be amended with specific data for each of the institutions. Information directories are published by 65 % of the of the basic courts, 88 % of the high courts, 100 % of the appellate courts, 100 % of the misdemeanor courts, 94 % of the commercial courts, 12 % of the primary prosecutors, 19 % of the superior prosecutors and 50 % of the appellate prosecutors.

Annual reports are published by 24 % of the basic courts, 58 % of the high courts, 75 % of the appellate courts, 100 % of the misdemeanor courts, 100% of the commercial courts, 0 % of the primary prosecutors, 4 % of the superior prosecutors and 0 % of the appellate prosecutors.

The issue of **web-sites** is not resolved in a systemic way. Since there are large deviations on the type of documents and other information that can be found and downloaded from web-sites, as well as in regards to the practice of updating them, it is obviously necessary for this matter to be regulated with by-laws of the High Judicial Council and State Prosecutors' Council, through recommendations or on the basis of authorities that should be stipulated in relevant regulations.

Information published on web-sites of courts and prosecutions can serve in some cases as grounds for further research and conclusions. However, since statistical data is not being grouped in a way that allows comparison by category of certain processes, it is not possible to reach clear conclusions in regards to the performance of certain institutions in the anti-corruption area. There is no practice of publishing information on measures undertaken to prevent corruption (e.g. implementing measures from the Anti-corruption Strategy, introducing integrity plans), except in exceptional cases.

The Court Portal doesn't enable an overview of data by categories of cases, except for Commercial Courts. Also, the methodology for statistics on police, prosecutors and courts isn't harmonized. Published decisions on the election of judges and prosecutors do not contain justifications on the basis of which the general public could judge on the method of the implementation of the prescribed criteria.

There is no practice of publishing information on applications and procedures that lead to determining the accountability of judiciary officials for violations of regulations or the ethical code. There is no practice of publishing decisions of prosecutors and courts on web-sites, even in cases that initiate public interest.

Therefore, harmonizing record keeping on cases, enabling search on proceedings of judiciary institutions in different areas, that organize publishing of data on the validation of judges' and prosecutors' work, during their election and periodical verification, proceedings in the cases of determining accountability and practice of proceedings in cases of prosecuting corruption, is necessary. These questions must be specifically treated in the process of creating the new Strategy for Judiciary Reform, that in progress, introducing transparency as one of the key principles of the reform.

The following institutions do have web-sites: 73 % of the basic courts, 81 % of the high courts, 100 % of the appellate courts, 15 % of the misdemeanor courts, 100 % of the commercial courts, 9 % of the primary prosecutors, 12 % of the superior prosecutors and 50 % of the appellate prosecutors.

Partial data on the scope of work in certain institutions points out large disproportions, in areas covered by courts/prosecutors and on the level of judiciary institutions (first instance/higher/appeal), which indicates further necessity of reassessing parameters on the basis of which the number of judges and prosecutors shall be determined.

Misdemeanor Procedures

There is a very small number of initiated cases for breaching the AC laws and other anti-corruption preventing provisions. Even when cases are initiated, procedures are long and they often become obsolete. Therefore, the aim to deter violation is not reached. There were less than 200 corruption legislation-related cases initiated in all administrative courts in Serbia in the previous two years (2010 and 2011). Those were cases for breaching provisions of the Law on Free Access to Information of Public Importance, the Law on ACAS, the Public Procurement law, the Law on the Budget System and the Law on Financing Political Parties. There is a problem with the Law on Free Access to Information of Public Importance – the body authorized to initiate misdemeanor cases (the Administrative Inspection in the Ministry of Public Administration) is overburdened and not stimulated to act in this field. There is a similar problem in regards to the Public Procurement Law, but it should be overcome with the implementation of the new Law

(April 2013) in case resources for implementation of the law and specific norms are provided.

Examples for public procurement misdemeanors cases in the previous period:

Violation of the equality of bidders' only two cases
Only 16 cases for procedures where funds were not secured
Only 2 cases for violation of exception rules (where the law apply)
Only 6 cases related to the negotiation procedure
Only 7 procedures related to the violation of transparency rules
Only 4 cases related to the violation of rules in procedure before the Commission
Only one case for failure to submit a report to the Public Procurement Office - out of about 9,000
42 cases were related to Article 20

Regarding the **Law on the Budget System,** there is an apparent lack of capacities in the budget inspection, absence of local budget inspections, and the SAI covers only a part of budget beneficiaries. In the case of the **ACA Law** and its conflict of interest provisions, case occasionally become obsolete, there are obstacles for obtaining data and in some cases in 2011 there was a lot of tolerance and cases were not initiated by the ACAS. In 2012 the Administrative Court solved 3 cases regarding conflicts of interest.

As problems in this field, one could point to the insufficient motivation of injured parties and public prosecutors to initiate misdemeanor proceedings, lack of whistleblowers protection and the lack of supervision and accountability mechanisms for civil servants not reporting misdemeanors.

Key recommendations are to adopt a new Law on Misdemeanors, to define responsibility for failure to report misdemeanors, to change the supervision of the authorities for some laws and to ensure resources for such supervision, to adopt a whistleblower protection law, to publish systematically information about procedures regarding these offences.

Commercial Courts

There is no comprehensive statistics about the procedures of commercial courts in public procurement cases. However, available information shows that the number of such cases is extremely small.

During the investigation of the procedures in commercial courts in cases related to the enforcement of anti-corruption legislation, we encountered an obstacle. Commercial courts have an automated program for keeping cases, which enables users to search through the data and it is better developed than the program courts of general jurisdiction use. However, within the scope of the search it is not possible to retrieve automatically the

statistics regarding the application of particular regulations. For example, proceedings being held for pronouncing contracts null and void are displayed collectively and an additional criterion does not exist that would enable creating a list of cases, according to the criteria "public procurement contract" or any other. It is the same case also regarding the issue for compensation of damages (a possibility for sorting according to damage for violating a public procurement contract or for violating some other contract).

However, apart from that, it is obvious that the number of cases in which commercial courts acted based on this was very low, or rather, that the number of cases in the area of public procurement, as the most significant anti-corruption law whose violation can be subject to review of these types of courts would be greatly disproportionate with the number of cases that should have been handled. Thus, we received information from commercial courts in Sombor, Uzice, Sremska Mitrovica Leskovac, Subotica, Cacak and Kraljevo that there were no such cases in the observed period. On the other hand, we received two such cases from the commercial court in Pancevo, one from the commercial court in Kragujevac and three from the commercial court in Belgrade (using the method of random opening) that are related to the compensation of damages for violating the Public Procurement Law.

This is why undoubtedly the main conclusion that imposes itself is that the provisions of the Public Procurement Law according to which **each contract in public procurement shall be null and void if concluded in contradiction to the provisions of that law** and the Law on Obligations, according to which anyone can claim a contract is null and void, **is not used sufficiently in practice**. We believe that the problem will be partially resolved with the application of the solutions from the new Public Procurement Law, which provides **authority to the Republic Commission for the Protection of Rights in Public Procurement Procedures**, **to deem contracts null and void**, as a body that has direct knowledge on many cases of violations of the law.

However, it is obvious that other obstacles also exist on the road to protecting public interest and achieving individual interests of participants in public procurement. Primarily, the **court taxes are high and taxes must be paid in order to initiate the procedure for protecting rights**. The second problem is the obvious **indifference of the procuring entities,** even in cases when the law is obviously being violated, **to initiate the procedure of pronouncing a contract null and void**, due to the fact that the problematic procurements have usually already been realized and data on the reasons for initiating such a procedure is not submitted to the Public Attorney's Office. The third problem is the **indifference of the procuring entities to exercise their rights for compensation of damages in court**, whether because they do not have the capacities to handle such cases (i.e. small companies), because they do not want to criticize potential business partners for the authorities or because they cannot prove that the deal with the authorities should have been awarded specifically to them, and not some other company whose rights were violated in the improper procurement. A separate problem is that **procuring entities do not use their right to a sufficient extent** through suing or activating financial security

mechanisms for good business conduct to reduce the damage that occurred due to the fact that the public procurement contract was not realized in the foreseen manner and within the foreseen time frames.

Solutions for these problems should be sought in the reform of the public procurement system, and **establishing accountability of the procuring entities and authorities that supervise them**, as well as the public attorney's offices, **to initiate timely proceedings in order to protect public interest**, but also by **enabling others** (i.e. stakeholders, such as civil society organizations) **to initiate such proceedings** if state authorities fail to perform their job. Regarding commercial courts, it would be of great value if **separate statistics were kept for cases related to public procurement**, in order to facilitate the monitoring of this aspect of the application of law.

Public Prosecution Offices

During two years **13,000 criminal alle**gations were filed with prosecution offices (**17 per day**). The prosecution also dealt with about 5,000 allegations left over from previous years. **The PPO worked on 6,290 allegations and rejected 77,8%.**

The structure of corruption offences that occur most often in criminal allegations is – abuse of power, judiciary corruption, bribe taking, and bribe giving. Corruption is usually reported by the police (59%), injured parties (27%), and occasionally by public authorities (8%), and the PPO itself (5%).

Having in mind the current burden, it is clear that the PPO will face even bigger challenges if they implement a proactive approach to corruption investigation.
It is difficult to tell from the official statistics the actual number of corruption cases, because about 60% of the "corruption related crimes" are abuse of authority in the private sector.

Real corruption is at stake in about 1,000 cases – 955 officials and some citizens have been accused for giving bribes. As far as first instance verdicts are concerned, there are prison sentences, fees, probation sentences, acquittals, rejections.
Apart from sentences, there were 24 security measures - bans to conduct certain functions or duties in 24 cases (17 for abuse of authority and 7 for taking bribes). Sentences included confiscation of material gain in 49 cases of abuse of authority and 3 cases of bribery. The appellate court instance rejected 5/6 of prosecutors' appeals.

The structure of corruption related indictments in the observed years:
Abuse of authority (571)
Bribe taking (62)
Bribe giving (35)
Unlawful mediation (4)
Judicial corruption (1)

There were no other offences, such as bribing voters, irregular budget commitment, political party financing, failure to report assets and income of public officials.

In average, from the moment a crime is committed to the indictment, 38 months elapse. In average there are two persons per indictment. The average value of damage/proceeds of crime is the following: In the sample of 132 cases there were 6 cases for more than 10 million RSD, 18 between 1 and 10 million RSD, 25 between 100 thousand and 1 million RSD, 39 between 10 and 100.000 RSD and 13 for lower values.

The structure of indictments per sector is the following: out of 132 cases in the sample, there were 10 cases related to customs, urbanism and construction- 2 cases, education – 13, judiciary – 4, police – 34, local administration – 10, public enterprises – 24 and health – 17.

The number of criminal allegations with elements of corruption is increasing, even though this number is far lower than the number of cases that actually occur during the year, judging by the research of the public polls, which is a **high dark figure of crime**. This is why it is necessary to enforce legal and other measures in order to **encourage a high number** of witnesses and victims of corruption or participants in corruption acts **to report criminal offenses** (i.e. mandatory exemption from criminal liability, protection of whistleblowers, providing information on the handling of the filed allegations).

The processing of criminal allegations **goes beyond the current capabilities of the public prosecutions** – the number of unresolved cases from previous years is almost the same as the annual inflow. This why it is necessary through **reorganization**, other measures for enhancing **efficiency** (i.e. amendments of procedural laws, using information technology) and **engaging additional personnel** (to start with, those who were returned to work based on decisions of the Constitutional Court), especially in the overburdened prosecutions, however with **better cooperation** with other state authorities, to **ensure better procedures**.

The police most often files **criminal allegations**, the share of injured parties is significant only for filing allegations of alleged corruption in the judiciary, while in **only 5% of the cases, the initiative comes from the prosecution itself**, which indicates the need **of greater activity** and capacity building of public prosecutions, especially in the context of applying recommendations of the European Commission on "**proactive examination of corruption**" (i.e. initiating criminal investigation based on information from audit reports, without waiting for criminal allegations from the State Audit Insitution).

Most criminal allegations and indictments are related to the **abuse of authority** (Article 359 of CC), as a criminal offense that is the easiest to prove. However, **two thirds of the cases** in essence **are not actually considered to be corruption**, due to the fact that it is related to violating rules of business conduct in the private sector. Not counting these

cases, the actual number of indicted persons for corruption in the observed period was around 500 on the annual level. This problem should be resolved after the start of the application of the amended Criminal Code that separates abuse in the private sector as a self-standing criminal offense.

The number of criminal proceedings for individual criminal offenses of corruption is insignificant or does not exist at all, which indicates that the police and public prosecution, but other authorities as well (i.e. the Anti-corruption Agency, State Audit Institution) **should pay more attention to them, because in practice there are examples in which there is serious doubt of these criminal offenses being committed in a larger scope** – unlawful mediation, creating obligations for the budget beyond the approved funds, not reporting property and income of public officials, illegal financing of political parties and election campaigns, giving and accepting bribes in connection to voting.

Sharp delineation of responsibilities between the "special" and other public prosecutions may present an obstacle for the effective prosecution of corruption, bearing in mind the limited capacities of the special department, as well as their competences in regards to organized crime and special measures that can or must be used in these cases. This is why the increase of the **number of personnel on these high level corruption cases, creating legal and technical conditions enabling the prosecution of corruption in other places as well and higher specialisation**, should be taken into consideration, especially bearing in mind the current initiation of investigations in corruption cases from previous years.
Statistics that are currently being kept in public prosecutions **do not show sufficiently the particular significant aspects for fighting corruption** and should be enhanced and **harmonized with the statistics** that the police and courts keep. It is especially important to ensure a clear overview of the situation in regards to **seizing material gain**, **applying special investigative techniques, the rank of the persons accused of corruption, the speed of the procedure, sector in which corruption occurs and modality of the corruption acts,** in order to create new anti-corruption policies based on this data.

For criminal offenses of corruption there is **special monitoring** that the Republic Public Prosecutor's Office conducts, which is a mechanism that should be kept in the future as well. However, it is necessary to also ensure **other aspects of control of the correctness of the decisions of the public prosecutions**, especially in cases of dismissing criminal allegations (i.e. publishing anonymous justifications for such decisions as well as broader comprehension of the term "injured party" that can initiate criminal proceedings or continue the prosecution of criminal offenses of corruption).

Criminal Proceedings

From the analysis of the previous overview and practice of courts, several conclusions impose themselves:

1) **Criminal offenses of corruption (pursuant to its definition in the National Anti-corruption Strategy) are not grouped in one chapter**, but rather in several chapters of the Criminal Code.
2) **The Code on Criminal Procedure limits the possibility of implementing special measures for revealing and proving of criminal acts (evidentiary activities) by limiting it to only four offenses of corruption** (abuse of authority, unlawful mediation, bribe accepting and bribe giving), although, the Criminal Code prescribes other corruptive criminal offenses (violation of the law by the judge, public prosecutor and his deputy, service fraud, revealing an official secret, abuse of authorities in business, abuse related to public procurement and abuse of an official position by a responsible person);
3) **All first instance courts of general jurisdiction (first instance, higher and appellate) are authorized to adjudicate these criminal offenses**;
4) **No special requirements are prescribed for judges who are in charge of adjudicating criminal offenses of corruption,** in the sense of having a certain number of years of working experience and necessary training. **Only for the judges of the special departments in the Superior Court in Belgrade and Appellate Court in Belgrade** a certain number of years of experience is required, as well as the advantage for deploying judges that possess special professional knowledge and experience in the fight against organized crime and corruption. However, it is not organized in detail what kind of special knowledge is needed and where they obtained it;
5) **Judges are deployed to special departments by presidents of the court, or the High Judicial Council,** in the case of judges from other courts, and with an annual schedule of work, thereby, without special criteria and measures on the basis of which this is being done;
6) **Judges in these special departments have specific status** because they are being appointed into that department with their own consent and for the period of at least six years;
7) Before the courts **the most common form of corruption that appears is the criminal offense of abuse of authority**;
8) The most often activity of this offence is the “abuse of an official position“

Recommendations for improving the legal framework for adjudicating criminal offenses of corruption:

1) **Amending the Code on Criminal Procedure to define the term of corruptive criminal offense**, as it was done for organized crime. That would make revealing and prosecuting these criminal offenses more efficient because the implementation of all special measures for their revelation and proving would be possible (evidentiary activities), because they are now limited to only four criminal acts. Besides that, their implementation would be possible according to the newly prescribed criminal offenses of corruption in the Criminal Code;

2) **Amendments to the Law on Seizure and Confiscation of the Proceeds from Crime for broadening the possibility of its implementation to all criminal offenses of corruption**, because it is now limited to only four criminal offenses;
3) **Prescribing necessary continuous training for all judges who adjudicate criminal offenses of corruption**, as well as the obligation of the Academy in that sense;
4) **Prescribing clear criteria and procedures for the "election" of judges into special departments and their status** that will guarantee expertise and integrity in trials for criminal acts of corruption under the jurisdiction of those departments;
5) **Securing a sufficient number of judges and personnel in special departments**, as well as spatial-technical conditions for work, that will allow adjudicating within a reasonable deadline in those cases;
6) **Prescribing jurisdiction to a few courts for adjudicating criminal offenses of corruption,** outside the jurisdiction of the Special Department of the Superior Court in Belgrade, to secure professional expertise of judges for adjudicating such offenses;
7) **Reassessing the need for a more precise determining of criminal offenses of abuse of authority.**

Introductory Remarks on the Project and Methodology

About the Project

The organization Transparency-Serbia in cooperation with the Association of Judges of Serbia implemented a project named "Judiciary in the Fight against Corruption" during 2012 with the support of the Embassy of the Kingdom of Norway in Serbia (donor). The goal of this project was to establish the results of the reformed judiciary in the fight against corruption as well as the application of anti-corruption laws, to identify the weaknesses of the system and provide recommendations for eliminating and overcoming them.

The project consisted of a few stages, amongst which were the preparation of research methodology, gathering information, gathering information and analysis of foreign experience in prosecuting criminal offenses with elements of corruption, analysis of the gathered documents, determining the weaknesses of the system and formulating recommendations for eliminating them. Within the scope of the project, three round tables were held in Novi Sad, Nis and Ivanjica where there were meetings and consultations with representatives of the profession (judges of the criminal departments, misdemeanor judges and prosecutors) about their observations on specific anti-corruption issues and problems they face in prosecuting criminal offenses of corruption.

Research Methodology and Gathered Information

Starting with the definition of corruption in the National Strategy for Fighting Corruption (2005) we selected criminal offenses with elements of corruption that are included in the research, particularly:

a. abuse of authority (Article 359 of CC)

b. violation of a law by a judge, public prosecutor and his deputy (Article 360 of CC)

c. improper use of budgetary funds (Article 362a of CC), or rather the untitled criminal offense from Article 74a of the Law on the Budget System from 2002, based on the amendments from 2006)

d. unlawful mediation (Article 366 CC), or rather the criminal offense of "illegal intermediation" from previous versions of the CC

e. soliciting and accepting a bribe (Article 367 of CC)

f. bribery (Article 368 of CC)

g. giving and accepting bribes in connection to voting (Article 156 of CC)

h. failure to report property or reporting false information about the property (Article 72 of the Law on the Anti-corruption Agency)

i. untitled criminal offense from Article 38 of the Law on Financing Political Activities

With an aim to realize the goals of the projects, a research methodology was prepared that included the following areas:

1. *Procedures of courts (criminal departments of general jurisdiction) in prosecuting criminal offenses of corruption*

   1.a. review of the situation and analysis of the substantive and procedural laws, as well as the legal scope for adjudicating criminal offenses of corruption,

   1.b. review of the situation and analysis of the institutional-legal scope of adjudicating criminal offenses of corruption (the organization of the court network and its jurisdiction),

   1.c. review of the situation and analysis of the human potential for adjudicating criminal offenses of corruption (number of judges, their status and training),

   1.d. review of the situation and analysis of court practice in adjudicating criminal offenses of corruption regarding:

   - the number of validly resolved cases,
   - the number of proceedings in progress,
   - number of criminal offenses, for each criminal offense of corruption,
   - the number of the accused persons and their status (officials or responsible officers, as well as whether they are at management positions or not),
   - times of committing criminal offenses,
   - the time of the duration of the proceedings,
   - number of cases in which special investigative techniques were used,
   - number of cases in which detention was ordered and how long it lasted,
   - number of cases in which court expertise was ordered,
   - number of accused that were freed of charges and for whom the proceedings were terminated and for which reasons (abandonment by prosecutor or obsolescence of criminal prosecutions),
   - number of convicted persons and type and level of sanctions, security measures, adjudicated damage claims and seizure of material gain.

2. *Procedures of public prosecutions for criminal offenses of corruption regarding:*
   - The number of cases and indicted persons
   - Structures of criminal allegations sorted by the submitter (Ministry of Internal Affairs, other state authorities, civil society associations and citizens)
   - Number of cases in which special investigative techniques were used,
   - Number of cases in which the prosecutor abandoned prosecuting the case
   - Structures of indictments in summary procedure sorted according to criminal offenses with elements of corruption
   - Procedures according to mandatory instructions of higher prosecutors
   - Procedures of the prosecution according to misdemeanors from anti-corruption laws

3. *Procedures of misdemeanour courts in misdemeanors stipulated in anti-corruption laws, particularly:*
   - Public Procurement Law (Official Journal RS, 116/2008)
   - Law on Financing Political Activities
   - Law on Financing Political Parties
   - Law on Free Access to Information of Public Importance
   - Law on the Budget System

4. *Procedures of commercial courts in cases related to the application of anti-corruption regulations, particularly the Public Procurement Law*
5. *Procedures of judiciary authorities according to recommendations from the National Strategy for Fighting Corruption (2005), Action Plan for enforcing it and Law on the Anti-corruption Agency*

The gathered data refers to the period from 2010 to 2011, and was obtained based on the Law on Free Access to Information of Public Importance. The requests were submitted to primary (a total of 34) and high courts (a total of 26), as well as all primary (a total of 34) and superior (a total of 26) public prosecutions, and the Prosecution for Organized Crime, all misdemeanour (a total of 45) and commercial (a total of 16) courts, but also to the Anti-corruption Agency related to the data from item 5 of the mentioned methodology. The majority of authorities to whom we submitted requests provided the requested data, although in some cases with significant delay.

The review of the gathered data based on the Law on Free Access to Information of Public Importance:

1	Final verdicts and decisions that finalize the proceedings which the court passed in the course of 2010 and 2011 in which the indictments were related to a criminal offense with elements of corruption
2	Copies of decisions which initiated, in the course of 2010, 2011 and 2012, misdemeanor proceedings for misdemeanors laid down in the following regulations: Public Procurement Law (Official Journal RS, 116/2008), Law on Financing Political Activities, Law on Financing Political Parties, Law on Free Access to Information of Public Importance and Law on the Budget System
3	Copies of the decisions that denied or rejected, in the course of 2010, 2011 and 2012, requests for initiating misdemeanor proceedings for misdemeanors laid down in regulations from item 2
4	Copies of requests for initiating misdemeanour proceedings from 2010 and 2011 for misdemeanors laid down in regulations from item 2 that have not yet been processed
5	Copies of decisions that finalized misdemeanor proceedings in the course of 2010 and 2011, that were held for misdemeanors from item 2
6	Copies of claims from 2010 and 2011 which request pronouncing public procurement contracts to be null and void, final court decisions in these cases or information on which stage the procedure is currently in
7	Copies of claims for compensation of damages from 2010 and 2011 for violating public procurement contracts, final court decisions in these cases or information on which stage the

	procedure is currently in
8	Copies of claims for compensation of damages from 2010 and 2011 for cases when procuring entities violated procedures of the Public Procurement Law, final court decisions in these cases or information on which stage the procedure is currently in
9	Copies of claims from 2010 and 2011 that were filed on a different basis, but are related to public procurement procedures or execution of public procurement contracts
10	Number of cases in the course of 2010 and 2011 related to criminal offenses of corruption in which mandatory instructions for Article 18 of the Public Prosecution Law were used
11	Number of cases related to criminal offenses for item 10 in which a lower public prosecutor in accordance with Article 18 paragraph 3 of the Public Prosecution Law took legal ability and filed an objection to the mandatory instructions directly to the public prosecutor
12	Number of rejected criminal allegations filed for criminal offenses of corruption in the course of 2010 and 2011
13	Number of cases in the course of 2010 and 2011 related to criminal offenses of corruption in which "special evidentiary actions" from the Code on Criminal Procedure (Official Journal RS No. 72/2011 and 101/2011) Chapter VII EVIDENCE, section 3. Special evidentiary actions, were used
14	Indictments that the Prosecution filed in the course of 2010 and 2011 in which persons being prosecuted or are being prosecuted due to the suspicion they committed criminal offenses of corruption
15	Copies of reports of judiciary authorities on the enforcements of the National Strategy for Fighting Corruption and the Action Plan

The second part of the data collected through internet research as well as interviews with representatives of relevant institutions.

The Context of the Work of the Judiciary, Prosecution and Police in Fighting Corruption - Structure, Independence, Accountability

Introduction

Since the changes in 2000, a judiciary reform was set as one of the priorities of each (political) government, however without a clear vision and without agreement with the professionals in this field in how the reform should be executed. The one thing that was indisputable was the public mistrust of the judiciary and prosecution system, and the belief that there is a long history of abuse and judicial errors in the Serbian judiciary, and its susceptibility to political influence.

Even after the changes of the manner in which judges and prosecutors were elected, the high level of public mistrust in the judiciary and prosecution system remained. With the Reform Strategy from 2006 a basic framework was set, and it received support from the very beginning, but its implementation, in particular the general "election" of judges, caused a stir in the justice system, and in society as a whole. The consequences of the reform are being remedied, while at the same time a new five-year National Judicial Reform Strategy is being prepared, and the question in the area of justice is resolving the case backlog and the amendment to the existing network of courts and prosecutors' offices which is set as a short-term political priority, in addition to the return of the unelected judges and prosecutors that has been carried out in a large proportion.

What were the conditions of the judiciary when it welcomed the "Reforming of the Reform"?

Introduction

The main problems in the judiciary were the lack of judicial independence of judges, because of uncertainties about the stability or their positions during the general election or re-election, as well as the announced review of any decision on the election[1], and the lack of resources in some courts, after the reorganization of the network of courts.

At the same time a good system of accountability of judges was established, on paper that did not work because of the delays in the establishing of disciplinary authorities and the failure to adopt criteria and standards, for evaluating the first time elected judges, and the criteria for regular assessment, which would apply in assessing the competence of judges. In such circumstances processing corruption was slow and inefficient.

Legislation guarantees the independence of work also for investigative authorities – the prosecution and the police, however the practice of previous years has shown that it very rarely prosecutes persons close to the ruling structures. There are legal grounds for the effective prosecution of corruption, including the use of special techniques, but these facilities are insufficiently used.

The structure of the system

The structure of the judiciary - the highest court is the Supreme Court of Cassation. There are four courts of appeal, high courts and basic courts, which have separate units. The adoption of a new network of courts is expected. There is an Administrative court, commercial courts and Commercial Appellate Court, Misdemeanour Courts and High Misdemeanour Courts. There are about 2,100 judges[2] . Judges are elected for a permanent position by the High Judicial Council, in which six members are judges; one member is a representative of the law faculty and the legal profession, and other members ex officio are - the Minister of Justice, a representative of the parliamentary board and the President of the Supreme Court of Cassation. The High Judicial Council proposes candidates that are being elected for the first time for judicial office and they are elected by the National Assembly. In the High Court in Belgrade there is a special department for organized crime. The Law on the Organization and Jurisdiction of Government Authorities in the Suppression of Organized Crime, Corruption and Other Particularly Serious Crimes stipulates that proceedings against the highest public officials accused of corruption shall be held before the special department.
Prosecution in Serbia was organized so that the lower prosecutor was directly subordinate to the higher public prosecutor, and each public prosecutor is subordinated to the Republic Public Prosecutor. Prosecutors have deputies and deputy public prosecutors shall perform all

[1] The possibility for the HJC to act in Article 6 of the Amendments of the Law on Judges from December 2010
[2] In December 2009 a general election was conducted or rather a reappointment of judges, because in 2006 the Constitution was changed and then the organization of courts and their seats were also changed. Up to then there were 2,400 judges. Following the amendments to the Law on Judges the HJC took into consideration the objections of the unelected judges, approved 98 and rejected more than 6,000, but the Constitutional Court then passed a decision to return 303 judges.

acts with which the public prosecutor entrusts them with, and the deputy public prosecutor may, without specific authority, take any action for which the prosecutor is authorized. There is a prosecution with special jurisdiction – the Prosecution for Organized Crime, and corruption offenses are under its jurisdiction. In the Prosecution for Organized Crime the work is performed by the public prosecutor and 14 deputy public prosecutors. According to the staff organization scheme, 25 deputies are foreseen.

Prosecutors for Organized Crime are elected by the Serbian National Assembly for a period of 6 years, and the deputies are elected by the State Prosecutors' Council.

The Republic Public Prosecutor's Office established the Anti-Corruption Department which has the jurisdiction in coordinating the work of all subordinate public prosecutors in prosecuting these types of crimes. There are three Republic Deputy Prosecutors working there. In all four Appellate Public Prosecutor's Office in the Republic of Serbia, there is one deputy public prosecutor who specifically follows this particular type of criminal ofenses.

Prosecutors for Organized Crime are responsible for the prosecution and criminal offenses for abuse of authority, when the defendant or the person who accepted a bribe, an official or responsible person who holds a public office to which he was elected, appointed or assigned by the National Assembly, the Government, the High Judicial Council or the State Prosecutors' Council.

The Ministry of Internal Affairs, within the Criminal Police Administration for fighting organized crime, has a Department for combatting financial crime, in which there is a specialized Section for combatting corruption. There are 12 law officers of the MIA. In all police departments in the Republic of Serbia a department for combatting corruption has been established.

Fighting corruption within the police is within the competence of the Sector for Internal Control of the MIA which is directly subordinate to the Minister (not the Director of the Police).

There are, however, separate departments for the control of the legality of the work in the Police Administration of the Police Directorate, Department for the safety and legality of the Gendarmerie Command of the Police Directorate and Department for the control of the legality of the work in the Police Administration for the city of Belgrade, and in 27 regional police administrations there are people who are involved in the control of the legality of the police.

Resources

Legal requirements provide for adequate judicial salaries, whilst the working conditions, in terms of the number of caseloads, the number of employees and office space, vary from court to court.

According to the Law on Judges[3], a judge is entitled to a salary in accordance with the dignity of the judicial office and his responsibility. A judge's salary means a guarantee of his

[3] Article 4

independence and the security of his family. Judicial salaries or the coefficient for calculating their wages is provided by the Law on Judges[4], and the Law on the Budget of RS determines the basis for the level of the salaries and the manner of funding these salaries. The basic salary is 32.178,36 dinars net with taxes and social security dues, which is multiplied by the coefficient depending on the type of court in which the judge is appointed. The coefficient ranges from 2.5 foreseen for judges of misdemeanour courts to 6.00 foreseen for the President of the Supreme Court of Cassation. There are no regulations that prohibit the reduction of judges' revenues.

According to data from the Association of Judges of Serbia, the courts have unequal conditions in terms of office space for judges and the administration. In some courts there is a lack of space, while in some, especially in smaller cities and towns in Serbia, there is space to spare. Since the reorganization (which will be reorganized again) abolished municipal courts in nearly 130 municipalities, now only court units exist in their place, and in a large number of cases the court buildings, which were renovated last year, are now empty and unused.

In addition, given that the criminal cases are tried only in the seats of the courts, parties travel from distant places to the seats, while judges travel to the court units. In many courts, according to the Association of Judges of Serbia internet access is provided only in the offices of the presidents of the courts. The Ministry of Justice, however, denies the claims and says that all judges have access to the internet and therefore access to the judicial portal with the database of 5.5 million cases and access to a database of all current legislation.

According to data from the beginning of 2011, the Ministry of Internal Affairs employs around 43,000 people, of whom about 25,000 are "uniformed police officers", however the number is lower than the actual demand. There is a lack of about 14,000 people, and the biggest problem is the insufficient number of "uniformed police officers", in Belgrade only about 2,000 are lacking.

During the first nine months of 2011 police unions organized strikes twice, demanding higher salaries, payment of special allowances in accordance with the union contract and better working conditions.

In the part of the police which deals with fighting organized crime and corruption there is a particular dissatisfaction with wages. In fact, all persons engaged in fighting organized crime who are employed in the prosecution, the courts, prisons are entitled to salaries increased by 100 per cent, while the employees of the Department for Combatting Organized Crime[5] are not entitled to this increase. Thus, the prosecutors in the Special Prosecutor's Office have a salary of about 220,000 dinars, while an inspector in the SSAOC has about 65,000. Therefore, the employees of the Ministry of Internal Affairs engaged in these activities filed about 100 lawsuits that are currently being resolved.

In the prosecutor's office they also emphasize the major difference between wages in the Prosecution for Organized Crime and the regular prosecution, *while at the same time the Prosecution for Organized Crime can independently decide whether to prosecute a case or pass it to the regular prosecution*. So it happened that the superior prosecution prosecuted

[4] Article 37-40

[5] Law on the Organization and Jurisdiction of State Authorities in the Suppression of Organized Crime, Corruption and Other Particularly Serious Crimes

equally complicated cases as the special prosecutor's office, as in the case named Index - the corruption scandal at the Law Faculty in Kragujevac.

In the Serbian budget money allocated for the MIA is unified. The police requested a separate budget for the criminal police, but these requirements have not been met yet. Even the Minister Ivica Dacic himself declared during the previous years that he is not satisfied with the budget because “the police is constantly receiving new tasks and has fewer and fewer resources”. He also criticized police equipment, stating that “the fight against cyber-crime cannot be done on computers from the previous millennium nor can a 'zastava 101' chase a 'mercedes' that goes 200 miles per hour”. The MIA does not provide official data on the computer equipment in the police, or rather the data, nor do they provide the data on the integrated computer system for the investigation and criminal intelligence system due to the fact that they are treated as an official secret, marked strictly confidential. Within the Serbian Ministry of Internal Affairs there is an Administration for Information Technology, which in its structure, among others, has the Department for Computer Infrastructure.

According to available data, computer equipment of the police varies, or rather is satisfactory on the republic level (which refers to the unit that is responsible for the fighting corruption - SSAOC), while at the level of individual police administrations and police stations the situation is much worse. It often happens that the used-scrapped equipment from the republic level is sent to the police administrations throughout Serbia.

Within the Criminal Police Administration for fighting organized crime, there is a Department for suppressing financial crime, in which there is a specialized Section for combatting corruption. In addition, police officers who deal with commercial crime in the Office of Crime Prevention of the Crime Police Administration in the headquarters in the MIA, are also engaged in discovering and repressing corruption

In all police administrations on the territory of Serbia there is a section for combatting corruption.

Otherwise, there are 15 positions foreseen for the Section for combatting corruption and 12 officers working. There are 30 officers working in the entire section, which also covers the prevention of money laundering and prevention of counterfeiting money and securities. There is an operational network in local police administrations that cooperates with SSAOC, but the problem is that the PA are poorly equipped, and the fact that the members of the police force are paid less and therefore are less motivated than their specialized counterparts from SSAOC.

The specialized police unit most often cooperates with the prosecution for organized crime. If the case is not within its jurisdiction, it is sent to the superior and primary prosecution. In these prosecutor’s offices no separate persons are strictly designated for handling corruption cases, however as the MIA states, the operative officers know “who in which prosecutor’s office will understand the problem of the matter best”.

The Department for suppressing corruption in the Republic Prosecutor’s Office is not an operative unit and is in charge of statistics and analytics.

The technological infrastructure in the prosecution is adequate, even though there is space for improvement. Although most prosecutors have their own computers and use an automated

system for monitoring cases, some computers are lacking an internet connection. In some offices there are no computers and cases are monitored by hand due to the fact that a network and automated software is lacking for monitoring cases.
The prosecution believes that they do not have a sufficient number of prosecutors to handle the existing caseloads and that additional prosecutors and administrative personnel will be required when the public prosecutor takes over investigative authority[6] as provided for in the transitional provisions of Code on Criminal Procedure.

Judicial Tenure and Independence

Judicial Tenure is guaranteed by the Serbian Constitution, which provides that a judicial position is permanent, except when elected to the judicial position[7] for the first time and by the Law on Judges according to which judicial tenure is continuous from the first election for a judge until retirement, except that a person who is elected as a judge for the first time is elected for three years[8].

However judicial tenure was interrupted due to the adoption of a new constitution, which resulted in the mandates of the judges elected in the general election to be challenged by a statutory provision according to which all election decisions taken at the general election of judges were to be reviewed.

The judges are elected and dismissed by the High Judicial Council, and the Serbian National Assembly elects judges for the first time for judicial positions, exclusively on proposal of the HJC.

Prior to a judge's retirement, he can be dismissed if convicted of a criminal offense carrying an unconditional prison sentence of at least six months or for an offense that makes him unworthy of the judicial position, when working incompetently or committing a serious disciplinary misdemeanor.

Incompetence is considered insufficiently successful performance of the judicial duty, if a judge receives an "unsatisfactory" evaluation, in accordance with criteria and merits for evaluating the work of judges[9].

The initiative for dismissing a judge can be filed by anyone, and the dismissal procedure shall be initiated by the president of the court, the president of the directly higher court, the president of the Supreme Court of Cassation, the minister in charge of justice, the authorities responsible for performance evaluation and the Disciplinary Commission. Dismissal proceedings may be initiated by the High Judicial Council, ex officio.

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[6] Survey conducted among the prosecutors for the needs of the report " Serbian Prosecutorial Reform Index", ABA ROLI, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html
[7] Serbian Constitution, Article 146
[8] Law on Judges, Article 12
[9] Law on Judges, Article 63 Evaluation of the work of judges of lower instance courts is conducted by comittees that are formed in the directly higher courts. The committees consist of three judges, that are elected by a secret vote on the session of all judges, for a period of four years. One comittee is formed for every 100 judges whose work is being evaluated.

After the adoption of the new Constitution of Serbia and a new network of courts, with new structures, titles and responsibilities, a transitional provision of the new Law on Judges in 2008 stipulated that judges elected under previous laws in the courts continue to peform their duties in the courts until the judges elected in accordance with the new law take their positions, after which their duties cease[10]. The Law also stipulates that the High Judicial Council decides on the number of judges that need to be elected, which the HJC did in June of 2009, estimating that instead of 2,400 only 1,838 judges were required. The Serbian Constitutional Court upheld this decision in July of 2009 and the constitutionality of the provision by which the duty of a judge ceases if the judge is not elected in the general election of judges. The general election, however, had numerous allegations of irregularities, individual explanations were not submitted for the non-elected judges, which the EU insisted that the mistakes of the process be remedied. Authorities decided to remedy the mistakes with new amendments to the Law on Judges with which the HJC was tasked with reviewing the decisions of the first composition of the High Judicial Council on the termination of mandates of judges, in accordance with the criteria and merits for the evaluation of the qualifications, competence and integrity, that delivers a constant composition of the High Judicial Council. With these amendments, however, it was foreseen that the HJC reviews the decisions of the first composition of the High Judicial Council on the election of judges, with which, according to the assessment of the Association of Judges of Serbia, judicial tenure and independence was once again jeopardized. The Ministry of Justice argued that those decisions will be reviewed only in the disciplinary procedure provided by law and that it will be specified in a bylaw. There were interpretations that the provision of reviewing the election of the already re-elected judges was actually related to the four judges who were elected in the general election and before the election they were subject to disciplinary procedure.

The High Judicial Council, during the procedure of reviewing the decisions the first composition of that body, adopted 98 objections and rejected 630. The revision procedure was followed by numerous controversies regarding the composition and legitimacy of the second composition of the HJC. During the process of reviewing decisions a judge, who was a member of the HJC was arrested on charges that he abused his position[11] 13 years ago, while another judge, a member of the HJC, resigned, stating that he had resigned due to manner in which decisions were made in that body[12].

Meanwhile, the Constitutional Court heard the appeals of the unelected judges and on the 11th of July, 2012, shortly after the elections in Serbia, decided to return 120 judges to their judicial positions. In the following weeks the Constitutional Court decided to return about 200 judges and 120 prosecutors and deputy prosecutors.

[10] Article 99, 101

[11] The arrested judge claimed in a later statement to the media that the proceedings against him were framed because he opposed the manner of the work of the HJC

[12] "I beleive that the day will come when a clear picture and precise rules and procedures for election and promotion will exist, and also the dismissal of holders of judicial mandates, based on which the most honest and educated cadre will be able to be elected in courts, and then only based on achievements, attained dignity and authority will be able to be promoted in the judicial hierarchy. Also, I would like to believe that the HJC will ensure all of the mentioned above as well as the most important principle and then we will be watching closely that the independence of judges and courts is affected in no way and by no one. This would ensure that authority, respect and confidence of the public exists in the courts and the judges as well as unbiased application of law", said the judge Milimir Lukić.

Regulations

The legislative framework sets a solid basis for judicial independence, due to the fact that, apart from the law, the Constitution also guarantees judicial independence, judicial tenure, stipulates the existence of a supreme court – the Supreme Court of Cassation, the manner of electing the president, stipulates the manner of electing judges and dismissing them and those provisions of the Constitution can be amended only with two thirds of a majority in the National Assembly with an obligatory confirmation on a referendum by a majority of votes of the voters. The Constitution also prohibits influencing judges and prohibits political activities of judges.

The basic principles of judicial independence, independence of judges, judicial tenure that are proclaimed in the Constitution are confirmed by the Law on the Organization of Courts and Law on Judges. One of the basic principles for performing judicial authority is in the Law on the Organization of Courts which lays down that the judicial authority belongs to the courts and is independent from legislative and executive authorities, that court decisions are mandatory for all and that they cannot be subject to extra-judicial control. It is forbidden to use a public position in office, the media and any public appearance that may unduly influence the course and outcome of court proceedings, as well as any other influence on the court and pressure on the parties in the proceedings.

The Constitution provides that courts are independent in their work[13]. The Supreme Court of Cassation is the highest court in Serbia[14] and the National Assembly elects the president of the Supreme Court of Cassation, on the proposal of the High Judicial Council, after obtaining an opinion of the General Session of the Supreme Court of Cassation and the competent parliamentary board[15].

The Constitution provides judicial tenure[16], an exception is a person being elected for the first time for a judicial position for the period of three years. The Law on Judges stipulates in detail the election of judges – apart from the general requirements and necessary professional experience after passing the bar exam, qualification, competence and worthiness are also set as requirements[17]. Both personal and professional biographies are taken into consideration for all candidates.

A judge can be dismissed on his own request, if statutory requirements occur or for statutory reasons, as well as if not elected to permanent office[18] (judges elected for the first time are elected for a period of three years). The High Judicial Council passes the decision on the termination of a judicial mandate. The judge has the right to appeal to this decision to the Constitutional Court. The decision of the Constitutional Court is final.

The Law on Judges provides in detail the procedure of dismissal, laying down that a judge shall be dismissed if he is convicted of a criminal offense carrying an unconditional prison

[13] Serbian Constitution, Article 142
[14] Serbian Constitution, Article 143
[15] Serbian Constitution, Article 144
[16] Serbian Constitution, Article 146
[17] Candidates are evaluated based on the Decision for establishing criteria and merits for assessing qualification, competence and worthiness for being elected as judges and presidents of courts
[18] Serbian Constitution, Article 148

sentence of at least six months or for an offense that makes him unworthy of judicial duty, when working incompetently or committing a serious disciplinary misdemeanor. Incompetence is considered insufficiently successful performance of the judicial duty, if a judge receives an "unsatisfactory" evaluation, in accordance with criteria and merits for evaluating the work of judges. According to the Regulation on the disciplinary procedure and disciplinary responsibility of judges the Disciplinary Commission files a motion to dismiss a judge to the HJC when it determines the judge's responsibility for a serious disciplinary misdemeanor.

The initiative for dismissing a judge can be filed by anyone. The dismissal procedure shall be initiated by the president of the court, the president of the directly higher court, the president of the Supreme Court of Cassation, the minister in charge of justice, the authorities responsible for performance evaluation and the Disciplinary Commission.

The Law on Judges jeopardizes judicial tenure with two transitional provisions – the transitional provision of the Law on Judges from December of 2008 that stipulates that the general election of all judges, due to the fact that the new Constitution had been adopted previously and that a new organization of courts was established. Then after the election was finalized, new amendments to the Law on Judges from December of 2010 stipulated that the High Judicial Council shall examine all the decisions of the unelected judges, but also the decisions by which the judges were elected within the general election[19].

According to the Constitution[20], the High Judicial Council is an independent body that ensures and guarantees the independence of courts and judges. The High Judicial Council has 11 members – the President of the Supreme Court of Cassation, the Minister of Justice and the President of the Board of Justice of the National Assembly of Serbia, as well as members according to position and eight elected members that are elected by the National Assembly, in accordance with law. Of the eight members, six are judges with permanent judicial mandates, and two are "respectable and prominent lawyers with at least 15 years of professional experience, of which one is an attorney, the other a professor of a law faculty".

The Constitution provides that while performing his judicial duty, a judge is independent and subordinated only to the Constitution and law, that any influence on a judge when performing his judicial duty is forbidden, and that judges are forbidden to be politically active. A judge shall at all times maintain confidence in his independence and impartiality. The laws governing legal proceedings (Code of Civil Procedure, Code on Criminal Procedure, Code on Administrative Procedure) stipulate the reasons for the challenge of judges and disregard of these provisions is a serious breach of procedure. A judge shall refrain from trying proceedings where there is reason to cast doubt on his impartiality.

The Ethics Codex provides that a doubt in the impartiality of a judge is particularly enhanced by family, friendly, business, social and similar ties with parties in the proceedings and their representatives. A breach of the Principle of Impartiality and Independence represents a disciplinary misdemeanor.

The Law on the Anti-corruption Agency provides that a holder of public office shall report to the Agency any prohibited influence which he is exposed to in the discharge of public duty,

[19] Amendments to the Law on Judges, Article 5 i 6
[20] Article 153

and it informs the competent authorities of the claims of the holder of public office, in order to initiate disciplinary, misdemeanor and criminal proceedings[21].

Judges have the right to associate for the purpose of protecting their interests and preservation of the independence of the judicial duty[22]. In Serbia since 1997, there is an Association of Judges of Serbia[23], which consists of around 1,800 members out of a total of 2,400 judges.

Praxis

The judiciary is subjected to strong pressure from the Government and representatives of political parties, and the pressure was particularly strong during the general election of judges. According to the judges, the Law on Judges and its amendments, compromised the principle of independence, and that independence depends entirely on the personality of the judge.

The European Commission Progress Report on Serbia in 2010[24] showed the re-election as an issue of serious concern, noting that the process was carried out in a non-transparent manner, and that objective criterion, developed in collaboration with the Venice Commission, were not applied.

Although judges should not bear adverse consequences for the decisions they pass, it happens that a decision that is not in accordance with the will of a part of the public or political parties or other centres of power causes improper campaigns against the judges, and may result in the initiation of dismissal proceedings even before the second instance decision, which is additional pressure on judges in the second instance.

A typical example of the pressure of state authorities and the judiciary authorities was a letter from April of 2009, in the run up to the general election of judges, which the Ministry of Economy, through the Ministry of Justice sent to the President of the Supreme Court of Serbia, which she then sent to all district courts in Serbia. The letter asked the court to postpone the trial and execution of decisions in labor disputes.

The State Secretary at the Ministry of Economy Nebojsa Ciric stated that the Ministry was "forced into doing this in order to preserve jobs and production in a number of companies", because the compulsory enforcement of orders based on obligations for back wages and other benefits of employment could lead to the stop of the production process and the loss of existing jobs. This is why he demanded of the State Secretary of the Ministry of Justice Slobodan Homen to recommend to the courts in 2009 to stop proceedings in such cases. Homen forwarded the letter to the Acting President of the Supreme Court of Serbia Nata Mesarović[25], who was elected as Acting President three weeks prior to this incident. She forwarded the letter to all district courts, and the case became public when the president of a district court informed the Supreme Court that he had received the letter but will not forward it to the municipal courts. Then the collegium of the Supreme Court ruled that judges shall, in

[21] Law on the Anti-corruption Agency, Article 37
[22] Law on Judges, Article 7
[23] http://sudije.rs/en/about-us/history
[24] http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf
[25] Nata Mesarovic was elected the President of the Supreme Court of Cassation eight months later and was at the head of the High Judicial Council that conducted the general election of judges

labor, as in all other cases, pass decisions on the basis of the Constitution and laws, and recalled that the judiciary is independent and separate in performing its competences from all other branches of government, independent and impartial.

In April of 2010 the Ministry of Justice initiated proceedings for the removal of a judge who dismissed an indictment which charged hooligans for threatening a journalist from the stands, the author of articles on hooligans. The Association of Judges of Serbia claims that the indictment was dismissed because the prosecution brought a poor indictment. The procedure for removal was initiated before the second instance decision, State Secretary Slobodan Homen said that the High Judicial Council, headed by Nata Mesarovic must decide on the initiative of dismissal as soon as possible to "because only the effective and rapid handling of cases sends a message that the initiative is not pressure of the executive authorities on the courts, but that there are facts that point to a specific violation of law by a specific judge". He also said that the decision of the judges may be "subject to the Republic Public Prosecutor's competence" or rather that the decision can be prosecuted if the HJC finds any illegal conduct.

The HJC or the Supreme Court of Cassation did not react to the political pressures, however the President of the Appellate Court in Belgrade said it is unacceptable for a dismissal of charges to be commented in a manner which jeopardizes the independence and impartiality of the court and calls for dismissal and disciplinary responsibility of the judge who passed the decision in the first instance.

"This country does not need judges who will judge in fear of authority outside of judicial power. Such judges are more damage for a state than any incompetent judge. Incompetence, if any, can be easily corrected, but the fear lasts, spreads and threatens legal security and equality of all citizens when law is concerned… The Constitution and the Law precisely lay down the reasons for disciplinary responsibility and dismissal of judges, which certainly cannot be the dissatisfaction of the parties or of the executive authorities", said the President of the Appellate Court Radmila Dragicevic Dicic.

The procedure for removing the judge from Pozarevac who tried Marko Milosevic is a good example. The initiative was filed by a party in the proceedings to the disciplinary prosecutor (though in public it had been represented that the Ministry of Justice had filed this charge). In 2012 the case was still pending before the disciplinary bodies of the HJC, but it had been unofficially interpreted that there was no responsibility of the judge because she had scheduled the hearings in a timely fashion, while it was the parties in the proceedings that created the problems. However, while the harangue against the judge lasted, she was interviewed by the media, and the Acting President of the Court filed a disciplinary complaint due to the fact she commented on the procedure.

According to data from previous years, in 2007 two judges requested to be dismissed from duty, during 2008 sixty judges were dismissed on personal request, one judge was dismissed from duty for a conviction of a criminal offense, one for negligent performance of duty, and one due to a conviction in an offense making him unworthy of judicial duties. In 2009 four judges were dismissed on personal request, whilst one judge was dismissed due to a conviction for an offense making him unworthy of judicial duties. Also, one judge was dismissed for being convicted of a criminal offense. During 2010 thirteen judges were dismissed on personal request.

The Disciplinary Prosecutor of the HJC was appointed in December of 2010, along with the Disciplinary Commission.

The Law on Judges and the Regulation on the Disciplinary Procedure and Disciplinary Responsibility of Judges provide that anyone can file a disciplinary complaint against a judge to the disciplinary prosecutor. The prosecutor takes the complaint into consideration, rejects it or submits a proposal to the Disciplinary Commission for disciplinary procedure if he considers that there is reasonable doubt that a disciplinary offense has been committed. The Commission may reject the proposal or he may adopt it and impose sanctions. If it is a serious offense, the Disciplinary Commission may propose the dismissal of judges to the High Judicial Council.

168 disciplinary complaints were filed in 2011 to the Disciplinary Prosecutor of the High Judicial Council. In almost all the cases the complainants were parties unsatisfied with the outcome of the litigation and trial. This is why the disciplinary prosecutor proposed the initiation of proceedings to the disciplinary committee in only one case in the previous year. This case was resolved in 2012 with the dismissal of the judge[26].

There was an increase of the number of disciplinary complaints in 2012 (in the first eight months around 200 complaints were filed, more than in the entire course of last year). Among them there were around ten cases in which the acting presidents of courts or public prosecutors filed disciplinary complaints against judges. Five cases resulted in proposals submitted to the Disciplinary Commission, and the Commission passed first instance measures. There are five more cases currently in progress with the Disciplinary Prosecutor (and deputy) that were filed by acting presidents of court or public prosecutors.

The reason for such a low number of complaints against judges that presidents of courts file, according to the claims of certain judges and officials of the Association of Judges, is that they do not want to create resentment among their colleagues, or rather the fact that after the termination of the duty of the president of the court, they will return to work with the judges against whom they should have filed a complaint (except if the judge is dismissed), and that the interpersonal relations could be damaged because of the complaint. Apart from that, as they claim from the Association of Judges, the acting presidents of courts are aware that a high number of judges has “political background”. Due to the fact that the acting presidents can be replaced at any time, they do not wish to jeopardize their positions by filing complaints. On the other hand, the acting presidents themselves claim that there are no political reasons for hesitation, but rather no subjective responsibility of judges, that they were minor omissions and that they would file complaints if the offense were graver.

“The acting presidents’ situation” in judiciary has already lasted for three years, and the deadline to elect presidents of all courts in Serbia was March 31st of 2010. The last postponement, from September of 2012 was carried out at the proposal of Minister Nikola Selaković. The reason was stated to be that it is necessary to wait for all the unelected judges whose complaints the Constitutional Court will adopt, in order for them to be able to apply for the elections for presidents of courts, and until a new network of courts is established. Towards the end of 2012 a new reason arose – the new network of courts is being awaited, or rather the working group of the Ministry of Justice needs to finalize the proposal for amending the Law on the Seats of Courts.

[26] This was for a judge of the Appellate Court who delayed passing a verdict for eight years

The Law on Judges and the Serbian Constitution explicitly prohibit judges to be members of political parties, to be politically active in any way, as well as to perform any kind of public or private paid work. Mid-august of 2010 an opposition party at the time, the Serbian Progressive Party[27] claimed that 500 unelected judges joined this party. This data was not confirmed, and four unelected judges that became members of the party appeared in front of reporters. They claimed that they were not elected because they were not "suitable" for the top of the judiciary or local authorities and ruling parties.

The judges in Serbia have one professional association – the Association of Judges of Serbia that represents the interests of judges and is particularly active in the protection of judges' rights that were not re-elected in the general election.

Prosecution and Ministry of Internal Affairs – regulations

According to the Constitution the Public Prosecutor's Office is an independent authority. The Republic Public Prosecutor, on proposal from the Government, after obtaining an opinion from the competent board of the National Assembly, is elected by the National Assembly. The Republic Public Prosecutor is elected for a period of six years and can be re-elected. The Republic Public Prosecutor's duty ceases if he is not re-elected, on his own request, when requirements stipulated in the law occur or by dismissal for reasons provided in the law.

The decision on termination of the Republic Public Prosecutor's duty is passed by the National Assembly, in accordance with the law, based on a proposal for the decision of dismissal from the Government.

The National Assembly also elects public prosecutors on proposal from the Government. The mandate of a public prosecutor lasts six years and he can be re-elected. The deputy public prosecutor replaces the public prosecutor in performing prosecutorial duties and is obliged to act according to his instructions. The National Assembly, on the proposal of the State Prosecutors' Council shall elect a deputy public prosecutor who is being elected to this position for the first time. The mandate of the deputy public prosecutor who has been elected for the first time to the office is three years. The State Prosecutors' Council elects deputy public prosecutors to permanently perform this duty. The State Prosecutors' Council shall decide on the promotion of deputy prosecutors, or their election to a higher public prosecution.

The Republic Public Prosecutor shall be responsible for the work of the Public Prosecutor's Office as well as his own work to the National Assembly. Public prosecutors are responsible for the work of public prosecutor's offices and for their own work to the Republic Public Prosecutor and the National Assembly, lower public prosecutors are also responsible to the immediately higher public prosecutor. Deputy public prosecutors are responsible to public prosecutors.

The decision on terminating the duty of a deputy public prosecutor is passed by the State Prosecutors' Council. Public prosecutors and deputy public prosecutors can appeal this

[27] http://www.rts.rs/page/stories/sr/story/9/Srbija/750776/Neizabrane+sudije+u+SNS-u.html

decision for termination of duty to the Constitutional Court. Filing an appeal excludes the right to lodge a constitutional appeal.

The State Prosecutors' Council is an independent authority that shall ensure and guarantee the independence of public prosecutors and deputy public prosecutors in accordance with the Constitution. The State Prosecutors' Council has 11 members.

The State Prosecutors' Council is composed of the Republic Public Prosecutor, the minister in charge of judiciary and the president of the competent board in the National Assembly, as well as members by duty and eight elected members that are elected by the National Assembly, in accordance with the law. The elected members are six public prosecutors or deputy public prosecutors who are permanent holders of these duties, of which one is from the territory of autonomous provinces, and two are respectable and prominent lawyers with at least 15 years of professional experience, of which one is an attorney, and the other a professor of a law faculty.

The mandate of the members of the State Prosecutors' Council is five years, except for members who are there according to their duties.

The State Prosecutors' Council advertises the election for public prosecutors and deputy public prosecutors and applications are submitted within fifteen days from the date of advertising, and then it obtains data and opinions on the qualifications, competence and integrity of the candidate, as well as data and opinions from authorities and organizations in which the candidate previously worked in the legal profession. When proposing and electing a candidate for the public prosecutor's duty the State Prosecutors' Council takes into consideration the qualifications, competence and integrity in accordance with provisions of the Regulation on criteria and merit for evaluating qualifications, competence and integrity of candidates for holding the public prosecutor's office.

Within its competence provided in the law, the State Prosecutors' Council determines a list of candidates for electing the Republic Public Prosecutor and public prosecutors that it submits to the Government which further proposes one or more candidates for the election of public prosecutors. Also, the Government proposes to the National Assembly the candidates for being elected for the first time for deputy public prosecutors and elects deputy public prosecutors to be permanent deputy public prosecutors.

Each proposal, or rather decision on the election is passed by the State Prosecutors' Council and must be accompanied with a justification[28].

For promoting a holder of the public prosecutor's duty the basic criteria is the evaluation of the work of the public prosecutor and deputy public prosecutor, which is expressed with a grade that is registered in the personal list of the public prosecutor, or deputy public prosecutor[29]. The public prosecutor evaluates the work of the deputy public prosecutor after obtaining the opinion of the collegium of the public prosecution, and the immediately higher public prosecutor evaluates the work of a lower public prosecutor, after obtaining the opinion of the collegium of the higher public prosecution.

[28] Law on Public Prosecution, Article 78-83

[29] SPC should adopt the Regulation of criteria and merits for evaluating the work of PP and deputies. The Association of Public Prosecutors prepared a draft

The Director of Police heads the Police Directorate, and the director is appointed and dismissed by the Government on the proposal of the Minister, therefore he is accountable to them for his work and the work of the Directorate. The organizational units in the seats and regional police administrations are headed by Heads of Administrations, and police stations by Commanders.

The Law on the Police provides the appointment of the director by the Government after a vacancy announcement procedure is conducted (and based on the Directive on the manner of determining whether requirements have been met for selecting the candidate for the police director), whilst the internal appointments and promotions are carried out in accordance with the Law on the Police[30] and Law on Civil Servants, that stipulate conducting evaluations on a regular basis. The work of the staff is evaluated by the head of the organizational unit, and the work of the heads of organizational units is evaluated by the police director, or rather the holder of public office who is competent for carrying out certain work and tasks or police officers they entrust with this task.

Extraordinary promotion is also possible in the police[31]. Specifically, employees whose work in the last two years was evaluated with the highest positive grade, and who has spent at the current position at least half of the time required for directly acquiring a higher position may be promoted to a higher position prematurely.

In the Department for fighting organized crime appointments are made with prior consent from the Prosecution for Organized Crime.

The Law on Public Prosecution provides that the public prosecutor and deputy public prosecutor are independent in performing their duties. Any influence of the executive and legislative authorities on the work of the public prosecution and handling of any case is forbidden, by using public office, the media, or in any other manner that could undermine the independence of the work of public prosecutors[32].

The immediately higher public prosecutor can issue a lower public prosecutor a mandatory instruction to act in certain cases when there is doubt of the efficiency and legality of handling the workload, and the Republic Public Prosecutor can do the same for each public prosecutor. Mandatory instructions are issued in written form and shall contain a reasoning and justification for its issuance.

A lower public prosecutor who considers that the mandatory instruction is unlawful and groundless can file an objection with a justification to the Republic Public Prosecutor within eight days from receiving the instruction[33].

No one from the public prosecution has the right to determine the work of the public prosecutor and deputy public prosecutor, nor can anyone influence the decision-making process in cases. The public prosecutor and deputy public prosecutor shall justify their decisions only to the competent public prosecutor[34].

[30] Law on the Police, Articles 112, 116
[31] Law on the Police, Article127
[32] Law on Public Prosecution, Article 5.
[33] Law on Public Prosecution, Article 18
[34] Law on Public Prosecution, Article 45

Prosecutors in Serbia shall file an appeal for any acquitting verdict, and in case the deputy public prosecutor believes there is no place to appeal, he shall make an official report in which he will provide a detailed explanation of this decision, made with the consent of the public prosecutor[35].

Praxis

While prosecutors are guaranteed autonomy by law, the possibility of internal and external influence is a matter for concern. It was reported that prosecutors are subject to mandatory instructions by their superiors on any aspect relating to cases, and often there has been doubt of influence by political authorities in high profile cases. Political authorities are seen as having too much influence on the selection process of prosecutors and members of SPC, diminishing its role as an independent body that manages public prosecution[36].

In 2009 during the re-election 220 prosecutors or deputy prosecutors whose position was supposed to be permanent, were dismissed, or rather they were not elected, which de facto meant their mandates had ceased. Decisions of the State Prosecutor's Council based on which these positions ceased did not contain individual justification[37]. After the Constitutional Court started taking the appeals of the unelected persons into consideration, through amendments of the law the decision-making on appeals was transferred to the High Judicial Council and State Prosecutor's Council. The SPC during 2011 adopted objections from 29 prosecutors; however the Constitutional Court decided to return 122 more prosecutors to work in July of 2012.

The whole constitutional and legal model for electing prosecutors and deputy prosecutors is subject to dispute. The Deputy RPP and President of the Association of Prosecutors Goran Ilić indicated that the independence of the prosecutions is vitally jeopardized by the constitutional decision that public prosecutors are elected by the National Assembly on the proposal of the Government, as well as the fact that members of the State Prosecutor's Council are elected by the National Assembly, which means that the prosecution is "subordinate to the executive authorities".

The "acting presidents of courts and prosecutors situation" is a specific form of pressure, being maintained in the judiciary, and is also being maintained in the police. The Police Director's mandate has also expired in June of 2011, and the vacancy announcement for selecting a new director was not published at the time, due to the disagreement inside the ruling coalition, or rather the Democratic Party from which the Prime Minister was and the Socialist Party of Serbia from which the Deputy Prime Minister and Minister of Internal Affairs was. This is why the Government decided the Police Director should remain in this position as the acting director, and this situation still remains. In the meantime the vacancy announcement was published, the media speculated which candidate had the best chance of being selected based on party affiliation, and one candidate was arrested for suspicion of accepting a bribe, after which he went on hunger strike claiming that he had been framed because of the candidacy.

[35] Mandatory Instructions of the Republic Public Prosecutor from May of 2009
[36] Findings of the American Association of Lawyers Initiative for Rule of Law http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html
[37] European Association of Judges and Prosecutors for Democracy and Freedom (MEDEL): http://www.uts.org.rs/index.php?option=com_content&task=view&id=216&Itemid=65

Some of the largest cities in Serbia have not had a Head of Police appointed for years (Niš, Novi Sad) because the Minister refused to sign the decisions of appointment that the Police Director proposes. The Minister, in fact, cannot independently decide on the appointment, thus preventing direct political interference and the promotion of "political staff", but due to political dissent the acting director situation was maintained which is not conducive to the fight against crime.

Some assessments show that there is a large number of professional and competent employees in the prosecution, however, especially in smaller cities, the bigger problem is corruption rather than unprofessionalism, and additionally, it is apparent that part of the highest positions have been politically appointed. This is why there is a lot of political interference in investigations – the police and prosecution start working on a case, only to be stopped – and not permitted to process the case in politically sensitive examples. What serves as evidence for such a state is that following the change of power in 2012 many cases were opened (from the package of "disputed privatizations"), which shows that investigative authorities had already been working on those cases, however they could not be processed due to the lack of political will.

An example of the "delayed" reaction is the case of embezzlement in the public enterprise Kolubara. Mid 2009 a story appeared in the media of the use of machines that were privately owned, for a fee, with "inflated" prices that caused great damage to the budget[38].

A month later the Republic Prosecutor's Office stated that it was very familiar with this case and that it has been examining these allegations for quite some time[39].

Almost two years later, in January of 2011 a Belgrade TV station broadcasted a series of abuses[40], and following the broadcast of this TV show, the previous director of Kolubara was arrested. The indictment was filed in January of 2012. The trial has not started yet[41].

Prosecutors avoiding to investigate people that are affiliated and connected with the ruling parties is not necessarily a direct result of political pressure, but also "self-censorship" that has developed over the years of political pressure. The re-election in 2009 sent a message that the careers of prosecutors depend on politics, and this is the reason that often deters prosecutors and deputies from prosecuting people with political protection[42]. Politicians and the public are well aware of this fact, so when politicians want to declare they are truly decisive in fighting corruption, they most often send political messages that "no one, regardless of their party affiliation, will be protected"[43].

There is a concern that the prosecutors shall have more responsibilities according to the new Code on Criminal Procedure[44], due to the fact that the prosecutorial structure remains rigidly hierarchical. It was reported that there was such a high level of uncertainty among

[38] http://www.novosti.rs/vesti/naslovna/aktuelno.239.html:246832-Ukrali-celu-elektranu
[39] http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=08&dd=19&nav_id=377082
[40]http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=01&dd=31&nav_category=11&nav_id=489337
[41] In the meantime the trial began for the previous director for another indictment, for fraud with iron waste
[42] Interview with the Deputy RPP and President of the APP Goran Ilić
[43] http://www.naslovi.net/tema/186255
[44] The new CCP provides introducing "prosecutrial investigations".

professional prosecutors in recent years, particularly because of the process of re-election and the review of the decisions on re-election, that there is a perception that prosecutors make decisions in a position of fear of internal and external consequences. It has been noted that the probability of a situation in which the public prosecutors may be influenced by their own perception of what certain individuals who possess political power want, and in particular what the media reports. It should be borne in mind that a large number of media is controlled by political parties. Prosecutors, even at the lowest level, often have to seek guidance from higher prosecutors in the hierarchy for any criminal matter that is at least indirectly associated with corruption. And while only written instructions are allowed, verbal instructions are more often the rule than the exception, which in some ways creates parallel lines in formal and informal communication in regards to the great number of important decisions the prosecutors pass: whether to prosecute, how to qualify an offense, who to prosecute, when to initiate the proceedings, whether to seek custody, whether to launch a shortened form of proceedings or defer prosecution or to conclude a plea agreement, as well as decisions regarding appeals against verdicts or decisions[45].

When performing investigations the police attempts to avoid manipulation and interference in cases by involving the prosecutor and the investigative judge at an early stage of the pre-trial proceedings. This way the possibility of interfering with the work of the police is reduced because the prosecutors demand a report every three months on what has been done on the case, or rather the case can be politically stopped only with the simultaneous pressure on the police and the prosecution. The claim that the police, by connecting with the prosecution is trying to escape the influence of politics, is confirmed by claims of some high officials of the prosecution that, even though there are problems with political pressure on the prosecution, there are greater problems with the police. When the police receives criminal allegations, these allegations are processed by the prosecution, however the problem is that there are no criminal allegations filed against people who are affiliated with the authorities.

Apart from the fact that there is a widespread belief of political pressure on the judiciary, prosecution and police, there were no investigations of these pressures. What happened was entirely in contradiction – everyone who had anything to do with certain cases was not re-elected during the elections and those who were working on a particular case for which the representatives of the ruling powers were interested in, were promoted[46].

Transparency of work and accountability, as a mechanism to combat corruption within the judiciary and the police

The laws provide for publicity in the work of the judiciary, that verdicts and court records be available to the public, that judges are subject to a financial disclosure report, and part of this report is also made public, and the High Judicial Council has the duty to inform the public on a regular basis about its work and submit an annual work report.

[45] Findings of the Prosecutorial Reform Index for Serbia
http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html
[46] Cases "Jataci" and "Milan Obradović"
http://www.rts.rs/page/stories/sr/story/135/Hronika/382621/Reizbor+odlo%C5%BEio+su%C4%91enje+jatacima.html

The law provides that sessions of the HJC can be open to the public, however the Rulebook of the HJC stipulates that sessions are closed to the public and the minutes of the meeting of the Council are generally not available to the public, but the HJC may choose to make certain minutes or certain parts of the minutes available to the public[47].

The publicity of the work of the Council is carried out by publishing general acts in the Official Journal, holding press conferences, issuing press releases and publishing them on the web-site of the Council.

The High Judicial Council has the duty to submit a report on its work to the National Assembly of Serbia once per year. The HJC adopts the report for the previous year no later than the 1st of March of the current year, publishes it on the web-site and presents it to the public at the annual press conference[48].

The Law[49] provides for the publicity of court proceedings, except in cases that are explicitly stipulated in the law when a particular private or public interest is being protected. According to the Code on Criminal Procedure, anyone who has a justifiable interest can be allowed to examine, transcribe, copy or record certain criminal records, except those marked "official secret – strictly confidential".

Based on the Law on the Anti-corruption Agency judges and prosecutors have the duty to report to the Agency their property and income 30 days from the day they were appointed to that position. Also, once a year they have the duty to report changes on the data from the previous period, and they have the duty to file these reports two years after the termination of office.

The Rulebook of the HJC provides that the sessions of the HJC are closed and that the minutes are not available to the public. The High Judicial Council in principle informs the public of its activities through the web-site and press releases.

On the web portal of courts[50] it is possible to follow the status of cases in primary and high courts and in commercial courts in Serbia. The portal can be searched by courts, judges, names of participants in the proceedings, by reference numbers.

The High Judicial Council has a directory from May of 2011 on its web-site. Also, on the web-site of the High Judicial Council there are reports on the work of courts in Serbia, for the period from the 1st of January to the 30th of June of 2010 and annual work reports of the HJC for 2009.

The Law stipulates that the work of the public prosecutor and deputy public prosecutor is public, except when the law stipulates differently.

The Law on the Police provides that the police has the duty to objectively inform the public of its activities, without revealing confidential information. In relations with the media the police shall act in accordance with the law and according to professional guidelines that the Minister provides through instructions.

[47] Rulebook of the HJC, Article 29
[48] Law on HJC; Article 19 Rulebook of the HJC, Article 37
[49] Code on Criminal Procedure , Code on Civil Procedure
[50] www.portal.sud.rs

The Ministry of Internal Affairs has a Bureau for Public Relations through which it issues press releases and manages contacts of police officials and the media. Members of the police force are not allowed to make statements to the media without the media obtaining approval through the Bureau. Police administrations have spokespersons through whom they publish press releases and manage contacts of media with the local police officials.

Within the MIA the flow of information is organized in such a way that information is delivered to the Bureau, indicating whether the prosecution and investigative judge provided consent for publishing certain data.

The prosecution communicates with the public exclusively through the spokesperson of the Republic Public Prosecutor's Office.

There is high tension and level of frustration between the media and the public prosecution. The policy of the prosecution is mostly closed and hierarchical, due to the fact that there is only one spokesperson for the entire public prosecution that is situated in the RPP in Belgrade and one spokesperson for the Prosecution for War Crimes. In order for prosecutors to have any contact with the media, they either have to obtain approval from the spokesperson or to give him the authority to deal with this issue. Very few legal and regulatory guidelines exist on the type of information in criminal cases that can be available to the media and in which stage. There is an impression that public prosecutors are lacking proactivity in expedite delivery of information to the media even in cases for which the public expresses great interest. This lack of proactivity together with the strict hierarchy eventually prevents society from obtaining accurate and timely information.

Some of the standards were set by the Commissioner for Information of Public Importance in his decisions that prosecutors have the duty to provide an applicant internal acts and decisions, and if they contain confidential and operative information without any evidence, these parts should be removed from the information they provide. A stand was taken that the prosecution shall provide justification of decisions on dismissing criminal charges or of renouncing criminal prosecution. In practice, it is generally respected, but not always.

The web-site of the Republic Public Prosecutor contains statistical data ending with 2007, and the directory has not been updated for 14 months.

The police publishes data on arrests in the form of press releases, along with statistical data on the activities of the MIA. The police, however, does not inform the citizens about the handling of filed charges or complaints. Strategic Intelligence Analysis on Corruption of the Sector for Internal Affairs of the police states the data, based on a survey of 2,224 citizens that those who have encountered corruption in the police and reported it in a large percentage do not know what happened after they reported the incident.

Specifically, 13 per cent of the citizens said that police officials solicited bribes, from those who were demanded to give a bribe, 30 per cent reported it to the police, while 25 per cent gave the bribes immediately, others have reported to their acquaintances who work in the press or the MIA.

The problem is that of those who reported corruption, the gross majority does not know whether there allegations were handled or claim they were not handled at all (37,5 or rather

47,5 per cent). Therefore, the Sector concluded that there is little insight into the procedures of the MIA: "Citizens do not know what happened with complaints on corruption they reported nor were they informed of the handling of the case. It is necessary to ensure feedback on the handling of their complaints on corruption or rather they should be informed timely what has been done against police officers who have been accused of corruption, stating the reasons for taking certain measures".

The same survey included 10,128 police officers and 13,5 per cent of the surveyed knew that their colleague accepted a bribe, however of 1,367 of them who knew, as many as 77 per cent did nothing, 11,7 per cent reported it to their superiors, 3,9 per cent to the criminal police, and 7,5 per cent talked to their colleague.

Accountability

Judges have the duty to justify all their decisions by specifying each piece of evidence presented in the course of the main proceedings, transfer the opinions of the parties involved in the proceedings on the evidence and in the end provide their own opinion and the reasons why he did or did not accept a certain opinion/evidence and in which way he came to the conclusion on a particular piece of evidence that was presented. A verdict without a justification is unlawful and is solid grounds for its revocation in appeal proceedings before a higher court.

A complaint for the work of a judge can be filed directly to the Disciplinary Commission that was established by the High Judicial Council[51], directly to the High Judicial Council or through the president of the court. A disciplinary misdemeanor[52] is negligent performance of the judicial duty or judicial conduct unworthy of a judge, and it can be sanctioned by a public reprimand, a salary reduction up to 50% for a year and prohibiting any promotion in the course of three years. A procedure for dismissal is initiated for a serious disciplinary misdemeanor[53].

Judge's immunity refers to his responsibility for his stated opinion and voting in the course of passing a verdict, except when the subject of the matter is a criminal offense of breaching the law by the judge himself. Due to the fact that corruption is incriminated through different criminal offenses, in this sense a judge shall not be protected by his immunity.

[51] http://www.vss.sud.rs/doc/akti/Odluka%20dis%20komisija%20Sl%20gl%20102%2030%2012%2010.pdf

[52] Violation of the principle of impartiality, ommitting to request recusal in cases where there were reasons for his recusal, or rather exclusion, unjustified delay in preparing decisions, unjustifiable prolongation of the proceedings, accepting gifts contrary to regulations that stipulate conflict of interest, entering inappropriate relationships with the parties or their legal representatives in the proceedings he is conducting, conducting activities that are by law incompatible with judicial duty, violating provisions of the Ethics Codex in a great extent is considered to be, amongst others, a misdemeanor

[53] A serious disciplinary misdemeanor is committed when the misdemeanor caused serious disturbance in the execution of judicial authority or performance of the tasks of the courts or severe damage to the reputation and confidence of the public in the judiciary, especially due to obsolenscence and if a greater damage was caused to the property of a party in the proceedings, as well as in the case of the misdemeanor offense being repeated three times.

For damages a judge or prosecutor causes through unlawful or improper work, the Republic of Serbia shall be held accountable. When it is established by a decision of the Constitutional Court, a final decision of the court, or rather a settlement before the court or other competent authority, that the damages were caused intentionally or by gross negligence, the Republic of Serbia can request from the judge or prosecutor for compensation for the amount paid.

The High Judicial Council decides whether requirements are met for compensation, or rather the SPC, on request from the ministry in charge of judiciary.

Participants in court proceedings have the right to complain of the work of judges when they believe that there was any forbidden influence on the course and outcome of the proceedings. The presidents of courts decide on the complaints.

The system of complaints exclusively serves for resolving individual problems the parties in proceedings encounter – they are a means for obtaining the scheduling of a hearing or finalization of judges' verdicts when judges are delayed in this process – however they do not represent grounds for determining whether judges that the grounded complaints refer to perform poor quality work for objective or subjective reasons, or rather their work in not carried out in a professional manner.

Parties in proceedings file almost 5,000 complaints annually, however the exact number is difficult to determine, due to the fact that regulations allow for the same complaint to be filed in more than one place – the court where the case is being handled, the higher court, the High Judicial Council and the Ministry of Justice. In 2011 it was determined that around 280 complaints were grounded. The basic problem regarding complaints is that there is no systematic handling of the causes of grounded complaints, therefore not a lot has been learnt from previous experience.

The question whether the fact that a complaint to the work of a judge was grounded should be entered into the personal judge's list, in order for this to be taken into consideration for the grade the judge would be given in the course of his evaluation. The Law on Judges provides for disciplinary measures and evaluation grades to be entered, whilst the Law on the Organization of Courts provides that, apart from the explicitly enumerated items, "other data related to the work of the duty of judges" should be entered as well. The presidents of courts should be the ones to submit the data that should be entered in the personal judge's list to the High Judicial Council, however this is not the case in practice.

A grounded complaint in most cases does not even serve as grounds for filing a disciplinary charge against a judge.

Corruption cases in which judges, prosecutors and deputy prosecutors are suspected are processed by the Prosecution for Organized Crime and the Department for Fighting Organized Crime of the MIA[54]. In cases when the suspects are members of the police force, the Criminal Police Administration of the MIA is competent (which the SSAOC is a part of), that is subordinate to the Police Director. At the same time the internal control of the police is conducted by the Sector for Internal Control, which is directly subordinate to the Minister.

[54] Law on the Organization and Competences of State Authorities in Preventing Organized Crime, Corruption adn Other Especially Serious Crimes

The Sector for Internal Control of the Police acts based on proposal, allegations and petitions from individuals and legal entities, regarding written statements of the members of the police force and upon their own initiative, or rather based on collected information and other findings. The Head of the Sector for Internal Control of the Police informs the Minister of all the cases when the police took or omitted to take action for which they consider to be against the law, and to take necessary action in due time[55].

Everyone has the right to file allegations to the Ministry against a police officer if he considers that his rights or freedoms were violated as a result of an illegal or improper action of a police officer.

The head of the organizational unit in which the police officer works shall be the first to take into consideration each allegation filed against the police officer as well as the circumstances concerning it. If the stand of the submitter of the allegations and the stand of the head of the organizational unit are in accordance with each other, it can be concluded that the procedure of resolving the allegations is finalized. In the case where the submitter of the allegations agrees with the stands of the head of the organizational unit, as well as in cases when the allegations indicate a suspicion of a committed criminal offense that is prosecuted ex officio, the head of the organizational unit shall cede the entire case file to the commission, that shall conduct the further procedure for resolving the allegations. The allegations in the Ministry are handled by a commission consisting of three members, specifically: the Head of the Sector for Internal Control of the Police, a representative of the police authorized by the Minister and a representative of the public. The representative of the public who participates in resolving the allegations on the territory of the police administration, on proposal of the authorities of the local self-government, is appointed and dismissed by the Minister. The representative of the public that participates in resolving the allegations to the work of police officers in its seat, on proposal of the organization of the professional public and non-governmental organizations, is appointed and dismissed by the Minister. The representative of the public is appointed for a period of four years with the possibility of being reappointed.

The procedure of resolving the allegations in the Ministry is finalized by submitting a reply to the submitter of the allegations within 30 days from the day the procedure was finalized by the head of the organizational unit. The reply to the submitter of the allegations signifies the procedure is completed, and the submitter of the allegations has at his disposal all legal and other means for protecting his rights and freedoms[56].

Apart from the Sector for Internal Control of the Police, whose competence and authorities are provided in the Law on the Police[57], the Department for Control of the Legality of Work in the Police Administration of the Police Directorate, the Department for the Safety and Legality in the Command of the Gendarmerie of the Police Directorate and the Department for Control of the Legality of Work in the Police Administration for the city of Belgrade also control the work of the police.

Prosecutors have functional immunity for actions taken in the line of official duty and can be arrested for a criminal offense committed while performing official duties only with the approval of the National Assembly or the competent board in the National Assembly[58].

[55] Law on the Police, Article 179
[56] Law on the Police, Article 180
[57] Articles 171-179
[58] Serbian Constitution, Article 162

The public prosecutor and deputy public prosecutor also cannot be held accountable for opinions they expressed in performing their prosecutorial duty, except when there is a case of a criminal offense of violating the law by the public prosecutor, or rather the deputy public prosecutor.

No one has immunity from criminal prosecution or arrest in the police.

The public prosecutor and deputy public prosecutor can be dismissed when there is a final verdict for committing a criminal offense for a prison sentence of at least six months or an offense that makes him unworthy of the public prosecutorial duty, when he is performing his duties unprofessionally or for committing a serious disciplinary misdemeanor.

The disciplinary procedure is laid down in the Law on Public Prosecution that stipulates the Disciplinary Commission conducts the disciplinary procedure on proposal of the Disciplinary Prosecutor that files the proposal based on a disciplinary allegation. An appeal can be filed against the decision of the Disciplinary Commission to the State Prosecutors' Council within eight days of the day of receiving the decision. The decision of the State Prosecutors' Council is final and the disciplinary sanction is entered into the personal list of the public prosecutor, or rather the deputy public prosecutor.

The Codex of Police Ethics provides that the external control of the police laid down by law that is carried out by the legislative, executive and judicial authorities, and it ensures the accountability of the police to the state, the citizens and their representatives. The police fulfils its duties in procedures in which complaints of the work of the police are taken into consideration, as well as allegations, petitions and similar briefs that concern its work. The police participate in promoting accountability mechanisms, based on communication and mutual understanding of citizens and the police[59].

Regarding the submission of allegations to the work of the prosecution, this matter is laid down in the Regulation on the Administration in Public Prosecutions: "Everyone who has a justifiable interest and addressed the public prosecution for handling issues within the competence of the public prosecution, has the right to file a petition or allegations to the work of the public prosecution and to be informed about the decision on the petition or allegations".

The public prosecutor has the duty to inform the submitter of the petition or allegations on the measures taken within 30 days from the day of receiving the allegations, or rather petition. Petitions or allegations can be filed directly to the superior prosecutor or through the SPC, ministry in charge of judiciary, RPP or other superiors in the public prosecution.

The Protection of the Integrity of Judges, Prosecutors and Members of the MIA

The mechanisms that are supposed to ensure the integrity of judges and prosecutors are laid down in the Constitution, the Law on Judges, the Law on Public Prosecution, Law on the Anti-corruption Agency, as well as in procedural laws – Code on Criminal Procedure and Code on Civil Procedure. There is an Ethics Codex of Judges that the High Judicial Council

[59] Codex of Police Ethics, Article 44

passed and whose violation represents a disciplinary misdemeanor, as well as the Ethics Codex and Standards of Judicial Ethics of the Association of Judges of Serbia, an organization that has in its membership three fourths of the judges in Serbia. The laws also lays down in detail the provisions that shall prevent conflict of interest, especially in the process itself, through provisions on recusal and exclusion of judges in the proceedings.

The Ethics Codex that the HJC passed in December of 2010 and published in the Official Journal, establishes the ethics principles and rules of conduct of judges that judges need to abide to with a goal to maintain and improve the dignity and reputation of the judges and the judiciary. Ethics principles are: independence, impartiality, professionalism and accountability, dedication to performing the judicial duty and freedom of association.

The Ethics Codex provides that a judge can conduct other tasks that are of importance for improving the reputation of the judge and enhancing the work of the court, or rather provides which extrajudicial activities do not interfere with the regular and proper performance of his judicial duty.

When it comes to the court staff, the Law on the Organization of Courts provides that the court staff shall diligently and impartially perform their duties and protect the reputation of the court.

The Codex of Judicial Ethics of the Association of Judges of Serbia from 1998 and Standards of Judicial Ethics of the Association of Judges of Serbia from 2003 contain the same principals – independence, impartiality, professionalism, integrity, dedication and commitment to standards, or rather the Codex.

The adoption of the Ethics Codex for Prosecutors is a duty laid down in the Law on Public Prosecution: "The public prosecutor and deputy public prosecutor shall act in accordance with the Ethics Codex adopted by the State Prosecutors' Council in performing their duties"[60]. There is a draft of this document prepared by the SPC.

The draft of the Codex provides that the public prosecutor and deputy public prosecutor cannot jeopardize with their behaviour the integrity, dignity, righteousness and impartiality of the public prosecution through their activities and behaviour in their private lives, that the public prosecutor and deputy public prosecutor cannot, in the course of performing their duties, as well as following the termination of them, in any way use the data they obtained in the course of performing the public prosecutor's duty for attaining personal or another person's gain and that public prosecutors and deputy public prosecutors cannot accept gifts, awards, gains, privileged positions or hospitality from others or perform any another job that is in contradiction with the law or by-law, or could jeopardize his integrity, righteousness and impartiality.

Provisions on conflict of interest are laid down in the Constitution and the Law on Judges and the Law on Public Prosecution, and they are also laid down in detail, along with issues regarding gifts and pantouflage, in the Law on the Anti-Corruption Agency and are applicable to all holders of public office, amongst who are judges and prosecutors.

[60] Law on Public Prosecution , Article 47

The Serbian Constitution provides that judges, public prosecutors and deputy public prosecutors are not permitted to be politically active.

According to the Law on Judges, a judge cannot hold a public office in authority bodies that pass legislation and executive authority bodies, public services and authorities of autonomous provinces and units of local self-government.

A judge cannot perform any public or private paid work, nor can he provide legal services or advice for a fee. Exceptionally, a judge can be a member of a management institution responsible for training in the judiciary, based on a decision of the High Judicial Council, in accordance with a special law (such as the Judiciary Academy). Other services are also incompatible with the judicial duty, work and activities that are contrary to the dignity and independence of judges or that damage the reputation of the court.

The deputy public prosecutor shall inform the public prosecutor in written form of another duty, work or private interest for which there is a possibility of being incompatible with his duty, as well as of work or private interests of his immediate family for which there is a possibility of being incompatible with his duty. The public prosecutor informs the higher public prosecutor of such a duty, work or private interest, and the Republic Public Prosecutor informs the State Prosecutors' Council[61].

The Law on Public Prosecution provides that the public prosecutor and deputy public prosecutor cannot perform duties in authority bodies that adopt legislation and executive authority bodies, public services and authorities of autonomous provinces and units of local self-government, be members of political parties, perform public or private paid work, nor provide legal services or legal advice for a fee[62].

The High Judicial Council decides what actions are in contradiction with the dignity and independence of judges and harmful to the reputation of the court, based on the Ethics Codex. The HJC decided in two cases prior to the adoption of the Codex, in the course of 2010. Upon request for passing a decision on the incompatibility of the judicial duty with the work of a court interpreter, the HJC established that this duty and the work of an interpreter are incompatible. Also, in handling a request of a judge it was established that the work of the president of the commission for conducting procedures and passing decisions regarding requests for returning land is incompatible with the judicial duty, due to the fact that the special law stipulates that a judge shall be appointed to be the president of the commission.

The Law on the Anti-corruption Agency provides that all holders of public office, including judges and public prosecutors, have the duty to report to the Anti-corruption Agency all movable and immovable property they possess. The Agency publishes on its web-site parts of this data and by law it has the authority to check the accuracy of the submitted data.

The law also provides that holders of public office cannot receive gifts related to the duty they perform, except for commemorative gifts, or rather protocol gifts, and that they need to report to the authority for which they perform their duty all received gifts. Services and travel are also considered to be gifts. The authority submits a copy of the register of gifts for the previous year to the Agency by the 1st of March, and the Agency publishes it on its web-site by the 1st of June.

[61] Law on Public Prosecution, Article 66
[62] Law on Public Prosecution, Article 65

The law also contains a two year limit following the termination of office during which the holder of public office cannot work in the field related to the duty he previously performed without approval from the Agency[63].

Provisions on conflict of interest laid down in the Law on Civil Servants apply to members of the police force, however they are not (with the exception of the minister, state secretaries and police directors) subject to the Law on the Anti-corruption Agency regarding conflict of interest, gifts and pantouflage, as well as reporting their property.

Members of the Department for fighting organized crime of the MIA of Serbia are subject to the requirement of reporting property[64]. In the police a mechanism for internal reporting property does not exist.

A possibility exists for parties in proceedings in each court proceeding to demand recusal of a judge. The reasons are provided in procedural laws. The Code on Criminal Procedure lays down the reasons for recusal, amongst others, if the judge has been injured by the criminal offense, if one of the parties in the proceedings is his spouse, ex-spouse, relative or friend, if in the same criminal proceedings the judge conducted evidentiary activities, or participated in the proceedings as a judge, prosecutor, defender, legal representative or proxy of the injured party, or plaintiff, or was heard as a witness or as a expert witness, if he participated in the same case before a lower court or if he participated in the same court in passing the verdict that is being appealed and if there are circumstances that can cause doubt of his impartiality. These provisions shall apply accordingly to prosecutors, or rather deputy prosecutors.

The Code on Civil Procedure provides that judges have a duty to refrain from performing their duty if there are reasons for doubting their impartiality. A judge cannot perform his duty in proceedings if he himself is a party in the proceedings, if he is a legal representative or proxy of a party in the proceedings, if he has a coauthorized, a cooobligatory, or a refund debtor relationship with the party, or if he was a heard as a witness or expert witness in the same case, if he is a shareholder, member of the company or member of a cooperative when one of the parties in the proceedings is his claimant or debtor, if a party in the proceedings or its legal representative or the proxy of the party is his relative or spouse or rather common law marriage spouse, etc. A judge can be recused if there are circumstances due to which his impartiality could be questionable.

The Government of Serbia adopted the Police Codex in 2006. The Law on the Police provides[65] that behaviour in contradiction to the Police Ethics Codex, that damages the reputation of the police force or damages the interpersonal relations amongst the employees, is a serious violation of duty for which a disciplinary measure of salary reduction, deployment to a lower position in the hierarchy for a certain period, conditional or unconditional termination can be imposed.

According to the Codex police officers have the duty to oppose any action of corruption, refrain from unlawfully obtaining any gain for themselves or others, refrain from accepting

[63] Law on the Anti-corruption Agency, Article 38
[64] Law on the Organization and Competences of State Authorities for Preventing Organized Crime, Corruption and Other Serious Crimes
[65] Law on the Police, Article 12

gifts and refrain from performing work that is incompatible with their official duty and that could influence their work and damage the reputation of the police and the state[66].

The Police Ethics Codex is studied at the Center for Basic Police Training, however in practice members of the police force have poor knowledge of its provisions. In practice, there are no procedures for violating the Codex, and the system for determining unethical behavior functions poorly because for shortcomings in the work of the police there are several departments and bodies in charge, of which the central one, the Sector for Internal Control, is directly subordinate to the Minister instead of to the Parliamentary Board for Security (this has been the case since 2002), which jeopardizes its independence.

In a survey of the Sector for Internal Control from the first half of 2011, 78,8 per cent of the police force stated they had not attended lectures or seminars on corruption, while 8,7 per cent of the police force stated they had attended.

Prosecuting Corruption

Trial proceedings in a few major uncovered corruption cases last extremely long, the courts complain of the poor indictments and the prosecution complains of the slowness of the courts and the penal policy, or rather a large number of verdicts below the legal minimum.

Proceedings in which 86 people were indicted for corruption at the Law Faculty in Kragujevac started in 2007 when the indictment was brought. The indictment was amended in March of 2008. From December 2008 until September 2009 the trial was postponed due to the request for the recusal of the judge, prosecutor, president of the court, absence of the participating parties in the proceedings. The indictment includes 159 criminal offenses, 75 witnesses need to be heard during the trial, and the interrogation of witnesses started in June of 2011. The trial proceedings are still in progress.

The trial proceedings for 35 persons indicted for corruption and abuse in bankruptcy procedures started in January of 2007 and still has not been completed. The proceedings have lasted this long, according to the assessment of the president of panel of judges[67], due to the voluminous indictment that was amended 6 times, and in which criminal offenses were described in 49 items, numerous court expertise, re-elections in the judiciary and changes in the composition of the panel of judges, the Prosecution proposed 315 witnesses, and around 200 have been interrogated by now. A few proceedings were separated from the case and verdicts have been passed for abuse of authority.

The amendments to the CCP from 2009 enable the application of special techniques and measures and criminal offenses of corruption that are not within the scope of organized crime.

Special techniques are therefore applied in cases with “ordinary” suspects. Due to the fact that there is no obligation of informing suspects that their communications are under surveillance, in cases when the investigation that uses special techniques does not result in an indictment or rather the material is not used in the criminal proceedings, the public gets the impression that these measures are used more often than they actually are in reality. The Code on Criminal

[66] Police Ethics Codex, Article 19
[67] http://www.blic.rs/Vesti/Hronika/199908/Sudjenje-stecajnoj-mafiji-na-dugom-stapu

Procedure provides, namely, that a person that is under surveillance can (however does not have to) be informed by the investigative judge if the material is not used in the criminal proceedings. This provision led to the practice of not informing on conducting surveillance.

The legal grounds for the application of special investigative methods is laid down in the Code on Criminal Procedure which stipulates "Special provisions on proceedings for criminal offenses for organized crime, corruption and other extremely serious crimes" and special rules for proceedings for organized crime, corruption and other serious criminal offenses.

In the Ministry of Internal Affairs in the Criminal Police Administration the application of measures is carried out by police officers of the Department for Special Investigative Methods, in the Police Administration for the city of Belgrade police officers of the Department for Electronic Surveillance, and in certain regional police administrations on the territory of Serbia police officers of the Section for Application of Measures within the Department of Criminal Police, by implementing the measures upon receiving orders from the investigative judge.

The measures include surveillance and recording telephone and other conversations or communications by other technical means and optical recording of persons, providing simulated business transactions and concluding simulated legal transactions, automated computer search of personal and other data associated with them and electronic processing and the use of undercover investigators.

Regarding statistical data, it is likely that only a small part of criminal offenses of corruption are prosecuted through the action of specialized units of the MIA and prosecutors. Namely, the Prosecutor's Office for Organized Crime submitted requests for the investigation of 195 persons, of the total number of 232 how many were reported in 2010, and 94 people were indicted in this period. These statistics, however, include both corruption and organized crime, therefore the most common criminal offense amongst them was abuse of authority (66 requests were filed for conducting an investigation), then the unauthorized production and placing on the market of narcotic drugs (38 requests were filed for conducting an investigation) and the criminal offense of fraud (36 investigations requested).

Statistical data on cases of corruption that is collected, processed and presented by the Ministry of Internal Affairs of the Republic of Serbia, are related to activities and results of the work of the Ministry in the pre-trial proceedings, or rather until filing criminal allegations.

According to data of the MIA for 2010, 3,858 criminal offenses with the element of corruption were discovered, and a total number of 3,814 were reported.

The Republic Public Prosecutor's Office, or rather the Department for Fighting Corruption in the RPP has the most comprehensive data on the processing of offenses related to corruption.

According to the data of RPP for 2010:

Criminal offense:	Police filed criminal charges:	Investigations:	Charges:	First instance convictions	Appeals PP to first instance verdicts	Granted appeals PP
Abuse of	3.591	1.529	1.164	425	418	70

authority						
Accepting bribes	152	137	91	44	69	12
Bribery	252	71	42	27	27	1

The offense of abuse of authority in the public expertise is disputable and amendments to the CC have been announced, due to the fact that it is also applicable in cases when the offender holds a high position in a private firm.

The new CCP introduces prosecutorial investigation, which should result in a more efficient procedure. The prosecution expects that in the suppression of corruption it will promote the necessity of teamwork, both of the police and prosecutors in the prosecutorial investigation, and of all state institutions involved in fighting corruption and its prevention.

According to this concept of investigation, the prosecutor is responsible for collecting evidence based on which he will decide whether to indict a person or not to. With this novelty the practice up to now, where the court presented the evidence ex officio, has been changed. Apart from that, it is foreseen that the public prosecutor heads the pre-trial proceedings, decides not to take or delay criminal prosecution, conducts the investigation, concludes with the defendant a plea agreement and an agreement on testimony, and is authorized to file an appeal and submit extraordinary legal remedies

A plea agreement was publicly labelled in the media to be potentially corruptive, however the public expertise mainly defended the introduction of this institute[68].

The prosecution claims that a plea agreement leaves no room for corruption because both the defender and defence counsel are present at the settlement, the requirements are precisely stipulated in the settlement, and the court controls the legality and approves or disapproves the settlement[69].

The Department for Fighting Corruption of the RPP, apart from keeping statistics of criminal offenses related to corruption, operates as a body for internal control of the work done in cases of corruptive criminal offenses.

The lower public prosecutions have the duty to inform the Department of the Republic Public Prosecutor's Office of all decisions passed in cases with corruption characteristics, which in the case of dismissal of criminal charges or abandonment of prosecution, must be made in an assembly composition with the mandatory participation of the public prosecutor, as well as to submit a copy of the first instance verdict and the plaintiffs' appeal, if filed, and then also submit the second instance verdict to the RPP.

In the course of 2009 the RPP acted in 908 such cases, as well as in cases from previous years, specifically in 760 cases in 2008, and in 578 cases in 2007. This enables the control of the work of the prosecution in each individual case and provides professional assistance in the form of opinions, suggestions and instructions for clarifying certain cases, with special

[68] http://www.politika.rs/rubrike/ostali-komentari/Sporazum-o-priznanju-krivice.lt.html

[69] Assessment of thhe Deputy RPP Olgica Miloradović at the Conference on the Integrity of Institutions in Fighing Corruption, September 2011

emphasis on the consistent application of legal provisions on the mandatory seizure of material gain obtained by committing a criminal offense.

The Role of the Judiciary in Fighting Corruption

The Definition, Legal Framework and Authorities

The National Strategy for Fighting Corruption defines corruption as a relation based on abuse of authority in the public and private sector with a goal to acquire personal gain or gain for others.

The Criminal Code does not contain a separate chapter in which criminal offenses of corruption can be found, in accordance with its definition in the National Strategy for Fighting Corruption. However, starting from this definition, amongst the criminal offenses provided in the **Criminal Code, we can label as criminal offenses of corruption the following:** abuse of authority from Article 359, violation of the law by a judge, public prosecutor or deputy public prosecutor from Article 360, fraud in service from Article 363, unlawful mediation from Article 366, soliciting and accepting bribes from Article 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 234-a and abuse of authority by the responsible officials from Article 234 (this provision enters force on 15.04.2013).

The Perpetrators of these Crimes Could Actually be Responsible Officers.
An official within the meaning of the Criminal Code is a person discharging official duties in a government authority; elected, appointed or assigned persons in a government authority, local self-government body or a person permanently or periodically discharging official duty or office in such bodies; a person in an institution, enterprise or other entity who is assigned periodical discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest; a person who is in fact assigned discharge of official duties or tasks or a member of the military.

A responsible officer is considered to be a person who based on law, regulations or authorities performs a specific scope of tasks in respect of management, surveillance or other activity within the scope of work of a legal entity, or is in fact entrusted with discharge of particular duties.

Chapter XXIX-a of the Code on Criminal Procedure Lays Down Special Provisions in the Proceedings for Criminal Offenses of Organized Crime, Corruption and Other Extremely Serious Criminal Offenses.

However, apart from the fact that in the title of this chapter criminal offenses of corruption are mentioned, this Code does not provide a definition for the criminal offenses of corruption, it is only stated in Articles 504-a paragraph 5 that the group of criminal offenses consists of: abuse of authority, unlawful mediation, accepting bribes and bribery. In accordance with this provision, regarding these criminal offenses (apart from others that are enumerated, that are not criminal offenses of corruption), it is possible for prosecution authorities to apply special

measures for revealing and proving these criminal offenses, specifically: surveillance and recording telephone and other conversations and communication, providing simulated business transactions and providing simulated legal transactions; controlled delivery; automatic computer search of personal and other related data. Regarding these criminal offenses, but only when they are committed by an organized crime group (organized crime), it is possible to also apply special measures: undercover agent and cooperating witness.

The new Code on Criminal Procedure, that is being applied for now only for criminal offenses of organized crime and war crimes, does not indicate a single criminal offense as a criminal offense of corruption, however in Article 162 it stipulates that special evidentiary actions are permitted for criminal offenses of abuse of authority, unlawful mediation, accepting bribes and bribery. These actions are: **secret surveillance of communication; secret monitoring and recording; simulated deals; computer search of data; undercover agent; as well as an agreement on testimony of the convicted person.**

First instance jurisdiction for trials for criminal offenses of corruption is divided between primary and high courts, as well as the Special Department of the Superior Court for Organized Crime.

The primary court has jurisdiction to adjudicate criminal offenses for the abuse of authority from Article 359 paragraph 1 paragraph 2; fraud in service from Article 363 paragraph 1 and paragraph 2; unlawful mediation from Article 366 paragraph 1, paragraph 2, paragraph 3 and paragraph 4 of the CC and abuse of authority in economy from Article 238 paragraph 1 and paragraph 2 of the CC.

The superior court has the jurisdiction to adjudicate these criminal offenses in their qualified form, as well as criminal offenses of violating the law by a judge, public prosecutor and his deputy, accepting bribes and revealing an official secret.

The Law on the Organization and Competences of State Authorities in Suppressing Organized Crime, Corruption and Other Especially Serious Crimes lays down the jurisdiction of the **Special Department of the Superior Court in Belgrade** to adjudicate criminal offenses for the abuse of office, specifically abuse of authority, unlawful mediation, accepting bribes, when the defendant or the person who has accepted a bribe is an official or responsible officer who holds public office on the basis of election, nomination or appointment by the National Assembly, the Government, the High Judicial Council or State Prosecutor's Council, as well as for the criminal offense of abuse of authority under Article 359, paragraph 3 of the CC when the value of material gain is over 200.000,00 dinars. This department will have jurisdiction for prosecuting other criminal offenses, when they are committed by an organized criminal group (organized crime).

The Law on Seizure and Confiscation of Proceeds from Criminal Offenses provides that provisions of this Law shall also apply to criminal offenses of abuse of authority from Article 359 paragraph 3 of the CC, fraud in service from Article 363 paragraph 3 of the CC, unlawful mediation from Article 366 paragraph 5 of the CC, accepting bribes from Article 367 paragraph 1 to 3, 5 to 6 of the CC and bribery from Article 368 paragraph 1 to 3 and paragraph 5 of the CC. For criminal offenses of unlawful mediation, accepting bribes and bribery provisions of this chapter shall apply only if the material gain acquired from a criminal offense, or rather the value of objects acquired by a criminal offense exceeds the amount of 1.500.000,00 dinars.

As we can see criminal offenses of corruption in the first instance are under the jurisdiction of judges in the primary and high courts and the Special Department of the Superior Court in Belgrade. Judges do not need to meet any specific requirements, or rather specific knowledge and qualifications for adjudicating these criminal offenses, except for judges of the Special Department of the Superior Court in Belgrade. The President of the Superior Court in Belgrade allocates judges to this department for a period of 6 years with the written consent of the judge. The judges must have at least 8 years of professional experience in the area of criminal law. It is also possible for the High Judicial Council to refer a judge from another court to work in the Special Department of the Superior Court in Belgrade for a period of 6 years with written consent from the judge. It is laid down that judges who possess necessary knowledge and experience in the area of fighting organized crime and corruption have an advantage for being allocated to this Department.

The Appellate Court has the second instance jurisdiction for all these criminal offenses. In accordance with the Law on the Organization and Competences of State Authorities in Suppressing Organized Crime, Corruption and Other Especially Serious Crimes a Special Department for handling cases of criminal offenses under the jurisdiction of the Special Department of the Superior Court in Belgrade is established in the Appellate Court in Belgrade. The President of the Appellate Court in Belgrade allocates judges to this Department of the Appellate Court for a period of six years with the written consent from the judges and they also must possess at least ten years of professional experience in the area of criminal law. Also, there is a possibility that the High Judicial Council refers a judge from another court to work in the Special Department of the Appellate Court in Belgrade for a period of six years with the written consent from the judge. It is also laid down that when being allocated to this department judges that possess necessary knowledge and experience in the area of organized crime and corruption have an advantage.

In the Special Department of the Superior Court in Belgrade there are 15 judges and five technically equipped courtrooms for prosecuting criminal offenses under its jurisdiction. A panel of three judges (professionals) conduct proceedings of this Department.

There are two panels of five judges in the Special Department of the Appellate Court in Belgrade.

Public Prosecutors in Anti-corruption Cases

Proceedings for all criminal offenses shall at some point find their way before the competent public prosecutor. This will be the primary, superior or prosecutor's office for organized crime. Due to this, the statistics of the prosecutors' office are a good indicator of the realistic situation in prosecuting corruption, whether concerning the cases that have been reported, or concerning what comes before the courts.

Statistical data from the prosecutors' themselves are not conducted for each criminal offense individually, but rather for those that occur most often. Four such criminal offenses can be corruptive – abuse of authority, violation of law by a judge, public prosecutor or his deputy, accepting a bribe and bribery.

Table 1: Number of received criminal allegations in 2010 and 2011 their status

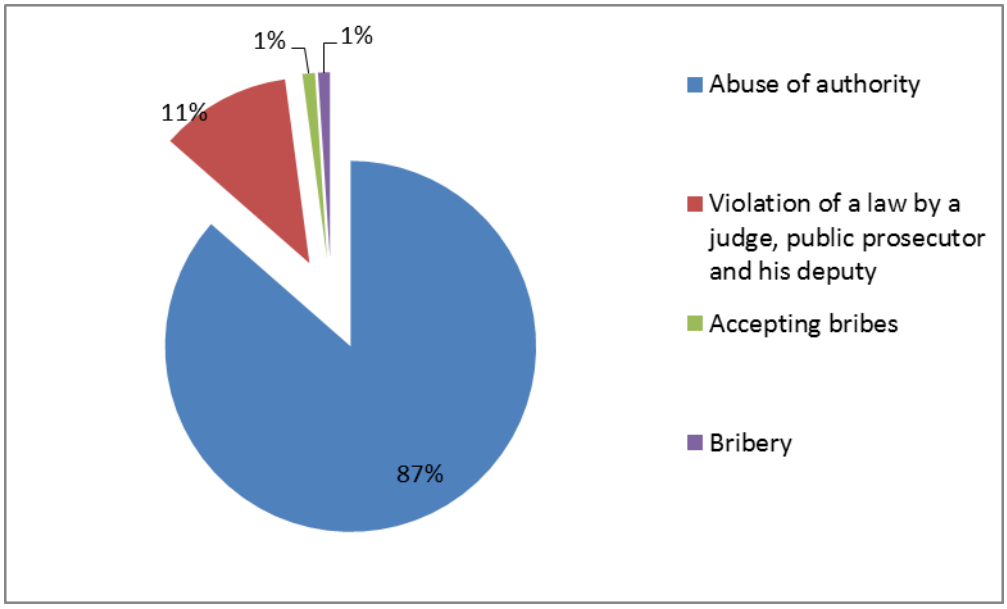
Article of CC	CHARGE							Unresolved allegations with other authorities
	Unresolved from the previous period	Newly received	Rejected	From this (pub. 4) by Art. 18 CC	Indictment in summary procedure	Direct indictment	Unresolved allegations in PP	
1	2	3	4	5	6	7	8	9
II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22								
Abuse of authority	4456	9989	2802	3	1152	99	294	5605
Violation of the law by a judge, public prosecutor and their deputy	589	2248	1974	0	8	3	71	420
Accepting bribes	56	286	53	0	1	2	11	41
Bribery	53	420	66	0	107	23	0	78
TOTAL :	5154	12943	4895	3	1268	127	376	6144

As we can see from this table, the number of criminal allegations that exist for corruption is not low at all. In the two years of observation **13,000 such allegations (around 17 per day)** reached the Prosecutor's Office, and they had more than 5,000 allegations in progress from previous years.

However, the highest number of criminal allegations do not reach that stage – as high as **77,8%, is rejected whilst the remaining 22,2% are initiated by an indictment or an indictment in summary procedure**. Also, these statistics show that the public prosecutor's office cannot process all criminal allegations for these offenses at the rate they are coming in.

As we have seen, during the two years of observation 13 thousand allegations were received at the same time, **the prosecution** in one way or another **decided on slightly less than half that number – 6,290**. This means that a possible increase in the number of charges, if there is no change in the organization of prosecutor's offices or changes in regulations, would result in an additional reduction in efficiency. It should be noted that prosecutors depend on the actions of other bodies - both in the investigation and at the trial stage.

Chart 1: Types of crimes by the criminal charges



As it can be seen, by far the largest number of criminal allegations in this group of criminal offenses are related to the abuse of authority, as high as 87%, the next 11% of the allegations were for violations of the law by a judge or prosecutor, and bribery accounted for 1% in statistics. It should be noted that criminal allegations for other criminal offenses of corruption are so few that no separate statistics were kept for them (e.g. unlawful mediation, bribery related to voting, improper use of budgetary funds, criminal offenses stipulated by the Law on the Anti-corruption Agency and the Law on Financing Political Activities.

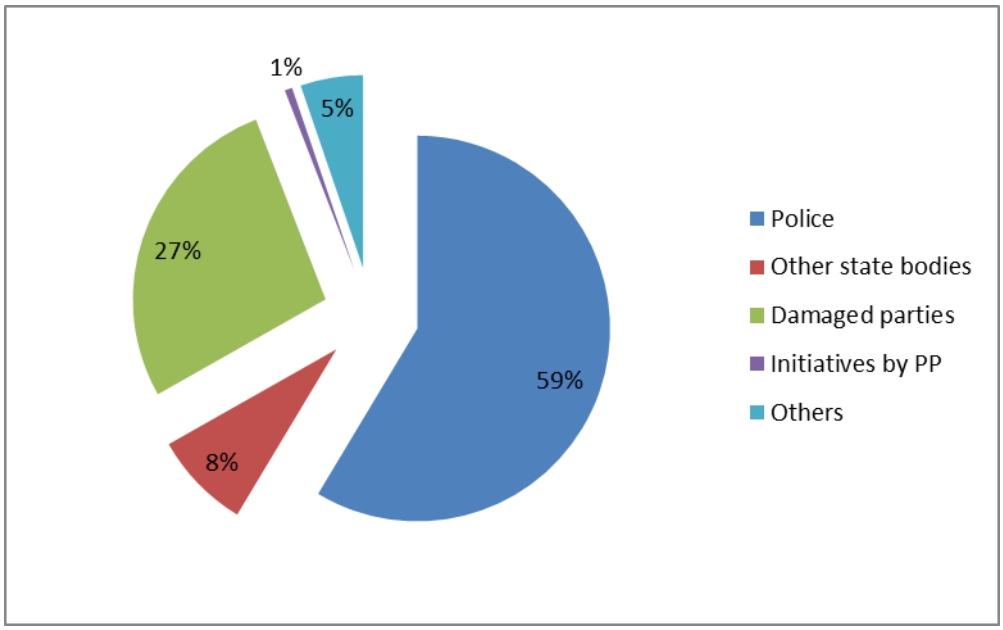
Table 2: Who filed criminal charges?

Article of CC	Persons filing criminal allegations					
	Police	Other state bodies	Damaged parties	INITIATIVES by PP	OTHERS	TOTAL
1	10	11	12	13	14	15

II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22						
Abuse of authority	6934	1027	1572	79	436	9989
Violation of the law by a judge, public prosecutor and their deputy	70	19	1938	0	231	2248
Accepting bribes	233	10	31	0	9	286
Bribery	388	11	11	4	7	420
TOTAL :	7625	1067	3552	83	683	12943

The largest number of criminal allegations comes from the police - as high as 59%, the following number of allegations comes from the damaged parties in 27% of cases, other state bodies in 8%, and only in 5% of cases it is initiated by public prosecutors. The data on a low number of criminal cases initiated by the public prosecutor's office shows that they are quite burdened; however it may be associated with the assessment by the European Commission on the need for a more proactive approach for detecting and prosecuting corruption. Specifically, it could mean that prosecutors do not have to wait for other state authorities to file criminal allegations (e.g. SAI), but rather that they themselves have grounds to examine relevant documents (e.g. reports on the annual financial statement audit) to check whether there are grounds for criminal prosecution.

Chart 2: Structure of the persons filing criminal allegations



However, the statistics on the structure of the persons filing criminal allegations for corruption can be deceptive. For example, information about the victims of corruption who chose to file criminal allegations is often not accurate. In reality more than half of those allegations are filed by persons who believe they have been affected by the conduct of judges and prosecutors (unsatisfied parties and their representatives). In many such cases in general it is not about actual corruption but rather some kind of pressure on the court or dissatisfaction with the conduct and decisions of the court that could be justified and should be reviewed at a higher judicial instance or be subject to disciplinary action for poor quality of work, but not

because of criminal corruption. Regarding bribery only every eighth allegation comes from an injured party.

Participation of other state bodies in reporting corruption is not negligible, in the two years of observation there were more than a thousand of such cases and usually it was for the inspections.

Table 3: Statistics of investigations

Article of CC	Investigation					Charged after investigation
	Unresolved from the previous period	Requested in reporting period	Suspended	Cease	Unomplited from the previous period	
1	16	17	18	19	20	21
II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22						
Abuse of authority	5844	3096	456	86	5700	2207
Violation of the law by a judge, public prosecutor and their deputy	28	2	0	0	21	3
Accepting bribes	106	212	18	0	88	199
Bribery	76	97	13	3	81	71
TOTAL :	6054	3407	487	89	5890	2480

The table shows number of cases where investigation of corruption offenses are initiated and implemented. It is noticeable that the number of investigations that have been launched in the past exceeds almost twice the number of those that are initiated in reporting period, indicating the long duration of the investigation. However, in most cases when the investigation is initiated, eventually indictment is being built - in more than two-thirds of cases. The following possible outcome is a suspension (eg, due to statute of limitations or perpetrator's death), which occurs in about 15% of cases while investigations cease are relatively rare. Some criminal charges do not come to this stage, which is particularly noticeable in allegations for the crime of violation of law by the judge.

Table number 4: Who is charged?

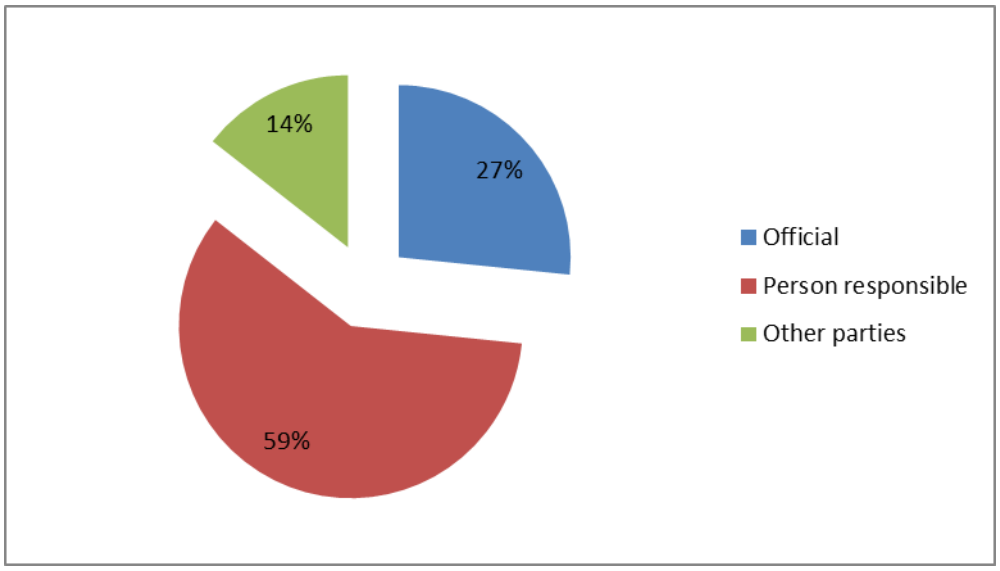
Article of CC	CHARGES
	FEATURE OF THE ACCUSED IN RELATION TO THE

	VICTIM			
	Official	Person responsible	Other parties	Total (pub. 22 to 24)
1	22	23	24	25
II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22				
Abuse of authority	791	1752	429	2936
Violation of law by a judge, public prosecutor and his deputy	6	6	3	15
Accepting bribes	148	28	9	180
Bribery	10	6	158	168
TOTAL :	955	1792	599	3299

Extremely interesting data concerns the status of the indicted person. Specifically, an official, a responsible person in a legal entity (private sector) or "external" persons, for example, citizens who give bribes, those who influence decision-makers in the public and private sectors and help them commit a crime, etc. can be held accountable for the criminal offenses.

Almost three-fifths of the accused of abuse of authority do not reach court for corruption charges, but rather due to various machinations in private firms whose owners or employees they actually are. Therefore, the actual number of indicted persons for corruption is greatly reduced and can be reduced to around 1,000 persons - 955 "officials" and some of those belong to other categories (10 citizens accused of bribery, 28 responsible persons in companies that are accused of accepting bribes, etc.).

Chart 3: Structure accused for abuse of authority



Other interesting data concerns the time of committing criminal offenses for which indictments have been brought. According to statistics of the prosecution, in the reporting period there were 1,358 such cases and in previous years there were 2,016. This indicates a relative accuracy of the conduct of prosecuting corruption, that is, almost 40% of cases for which the proceedings are initiated are actually related to things that happened in the previous 12 months.

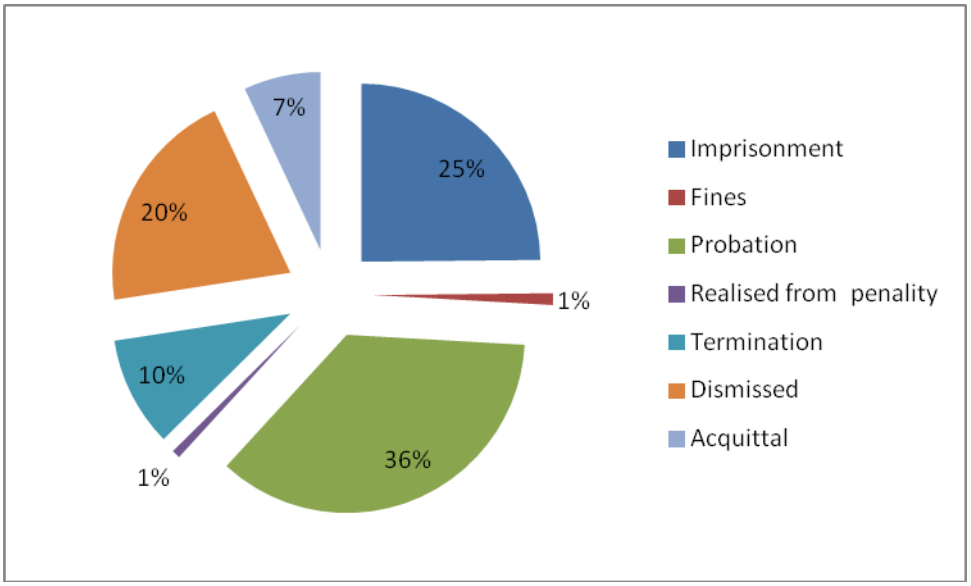
Table 5: What happens after the charges?

Article of CC	First instance verdicts										Termination	Acquittal	Dismissed
	Imprisonment	Fines	Work in public interes	Prohibition of driving	Security measures		Security measures	Realised from penality	TOTAL	Fines as secondary penality			
					Probations	Warning							
1	29	30	31	32	33	34	35	36	37	38	39	40	41
II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22													
Abuse of authority	401	18	0	0	704	0	1	8	1131	12	186	394	143
Violation of the law by a judge, public prosecutor and their deputy	0	0	0	0	2	0	0	0	2	0	2	0	0
Accepting bribes	83	3	0	0	13	0	0	0	99	3	8	24	2
Bribery	31	1	0	0	26	0	0	8	66	8	11	6	0

TOTAL :	515	22	0	0	745	0	1	16	1298	23	207	424	145

In the first instance verdicts the most common outcome are probations - a total of 36%, or 745 in the observed period. The next outcome is a sentence of imprisonment, 515 cases or 25% of the cases. And the outcomes that are favorable for the accused are not rare - in 37% of cases, the charges are dismissed, the termination of the proceedings or acquittal.

Chart 4: The structure of the first instance judgment by the decisions



Statistics show other interesting data. Security measures of prohibition of practicing a profession, activity or duty that can be found in corruption in some cases were imposed in the first instance in only 24 cases, 17 of which were for abuse and 7 for bribery. Various forms of seizure of material gain were also quite rare - in 49 cases, 3 cases of bribery, although the actual number is probably higher, because a seizure can occur at an earlier stage, for example in detecting bribery.

Public prosecutors have typically used the right to appeal the verdict. In half of the cases, the appeals were related only to the sentencing decision. However, the second instance authorities rejected most of these appeals (around five sixths of all cases, where the appeals were rejected more often when it comes to bribery than abuse of authority).

Table 6: Complaints on first instance verdict

Article of CC	Public prosecutors' appeal				
	Filed	Appeals related to the sentencing decision	Confirmed	From wich related to the sentencing decision (col. 47)	Rejected
1	46	47	48	49	50

II. COMMERCIAL CRIMINAL OFFENSES - Chapter 22					
Abuse of authority	975	459	162	87	313
Violation of the law by a judge, public prosecutor and their deputy	1	0	0	0	3
Accepting bribes	143	84	23	13	35
Bribery	50	37	3	2	12
TOTAL :	1169	580	188	102	363

Table 7: Structure of criminal ofencess' prosecution by prosecutions offices and criminal offenses

	Abuse of authority (Ar. 359 CC)	Violation of the law by a judge, public prosecutor and their deputy (Ar. 360 CC)	Improper use of budgetary funds (Article 362a of CC), or rather the untitled criminal offense from Article 74a of the Law on the Budget System from 2002, based on the amendments from 2006)	Unlawful mediation (Article 366 CC), or rather the criminal offense of "illegal intermediation" from previous versions of the CC	Accepting bribes (Ar. 367 CC)	Bribery (Ar. 368 CC)	Giving and accepting bribes in connection to voting (Article 156 of CC)	Failure to report property or reporting false information about the property (Article 72 of the Law on the Anti-corruption Agency)	Criminal offense from Article 38 of the Law on Financing Political Activities
Prosecutor for organized crime	15	0	0	0	3	3	0	0	0
HPP Belgrade	63	0	0	0	19	6	0	0	0
HPP Vranje	11	0	0	1	4	2	0	0	0
HPP Zajecar	4	0	0	0	1	0	0	0	0
HPP Zrenjanin	9	0	0	0	5	4	0	0	0
HPP Jagodina	14	0	0	0	0	0	0	0	0
HPP Kosovska Mitrovica	3	0	0	0	0	0	0	0	0

HPP Kragujevac	24	0	0	0	6	1	0	0	0
HPP Kraljevo	21	0	0	0	5	4	0	0	0
HPP Krusevac	6	1	0	0	1	1	0	0	0
HPP Leskovac	8	0	0	0	1	0	0	0	0
HPP Negotin	5	0	0	1	2	0	0	0	0
HPP Novi Pazar	15	0	0	0	2	1	0	0	0
HPP Novi Sad	11	0	0	0	2	2	0	0	0
HPP Pancevo	8	0	0	0	2	0	0	0	0
HPP Pirot	0	0	0	0	0	0	0	0	0
HPP Pozarevac	7	0	0	0	1	0	0	0	0
HPP Prokuplje	3	0	0	0	1	1	0	0	0
HPP Smederevo	0	0	0	0	0	0	0	0	0
HPP Sombor	18	0	0	0	2	2	0	0	0
HPP Sremska Mitrovica	16	0	0	0	3	0	0	0	0
HPP Subotica	0	0	0	0	0	0	0	0	0
HPP Uzice	7	0	0	1	1	0	0	0	0
HPP Cacak	23	0	0	0	1	1	0	0	0
HPP Sabac	0	0	0	0	0	0	0	0	0
First MPP in Belgrade, partial data	13	0	0	0	0	1	0	0	0
Second MPP in Belgrade	10	0	0	0	0	0	0	0	0
MPP Bor	13	0	0	0	0	0	0	0	0
MPP Vranje	0	0	0	0	0	0	0	0	0
MPP Vrsac	0	0	0	0	0	0	0	0	0

MPP Zajecar	3	0	0	0	0	0	0	0	0
MPP Zrenjanin	0	0	0	0	0	0	0	0	0
MPP Jagodina	12	0	0	0	0	0	0	0	0
MPP Kikinda	19	0	0	0	0	1	0	0	0
MPP Kosovska Mitrovica	7	0	0	0	0	0	0	0	0
MPP Kragujevcu	27	0	0	0	0	0	0	0	0
MPP Kraljevo	6	0	0	0	0	0	0	0	0
MPP Leskovac	0	0	0	0	0	0	0	0	0
MPP Loznica	9	0	0	0	0	0	0	0	0
MPP Negotin	10	0	0	1	0	2	0	0	0
MPP Novi Pazar	6	0	0	0	0	0	0	0	0
MPP Novi Sad	46	0	0	0	0	0	0	0	0
MPP Pancevo	8	0	0	0	0	0	0	0	0
MPP Paracin	4	0	0	0	0	0	0	0	0
MPP Pirot	18	0	0	0	0	1	0	0	0
MPP Pozarevcu	12	0	0	0	0	0	0	0	0
MPP Pozega	4	0	0	0	0	0	0	0	0
MPP Prijepolje	0	0	0	0	0	0	0	0	0
MPP Prokuplju	1	0	0	0	0	0	0	0	0
MPP Smederevo	9	0	0	0	0	1	0	0	0
MPP Sombor	9	0	0	0	0	1	0	0	0
MPP Sremska Mitrovica	0	0	0	0	0	0	0	0	0
MPP Subotica	11	0	0	0	0	0	0	0	0

MPP Uzice	3	0	0	0	0	0	0	0	0
MPP Cacak	20	0	0	0	0	0	0	0	0
TOTAL	**571**	**1**	**0**	**4**	**62**	**35**	**0**	**0**	**0**

Based on partial data – indictments we received from the majority of public prosecutions, we have compiled an overview of criminal offenses for corruption for which public prosecutors initiated prosecution in 2010 and 2011. The majority of cases related to the abuse of authority, a total of 571. Far behind, in second place, come the proceedings initiated for accepting bribes (62) and giving bribes (35). In only four cases proceedings were initiated due to unlawful mediation, in only one for violating the law by a judge, and there was no single case for four of the charges of criminal offenses - bribery related to voting, improper use of budgetary funds, failure to declare property and illegal financing of political parties.

Table 8: Number of prosecutions and the time between the commission of the offense and the indictment

	Time between the commission of the offense and the indictment in months	Number of prosecuted persons	Number of indictments filed
Prosecutor for organized crime	53	116	17
HPP Belgrade	45	225	78
HPP Vranje	33	30	15
HPP Zajecar	50	8	5
HPP Zrenjanin	21	58	12
HPP JAgodina	54	20	14
HPP Kososvska Mitrovica	89	3	3
HPP Kragujevac	32	58	30
HPP Kraljevo	38	74	24
HPP Krusevac	28	25	8
HPP Leskovac	33	22	9

HPP Negotin	31	32	6
HPP Novi Pazar	49	25	17
HPP Novi Sad	40	21	13
HPP Pancevo	45	15	10
HPP Pirot	0	0	0
HPP Pozarevac	0	9	8
HPP Prokuplje	36	14	4
HPP Smederevo	0	0	0
HPP Sombor	46	68	18
HPP Sremska Mitrovica	34	27	19
HPP Subotica	0	0	0
HPP Uzice	33	50	7
HPP Cacak	42	70	23
HPP Sabac	0	0	0
First OPP in Belgrade	66	28	14
Second MPP in Belgrade	39	18	10
MPP Bor	35	20	13
MPP Vranje	0	0	0
MPP Vrsac	0	0	0
MPP Zajecar	54	3	3
MPP Zrenjanin	0	0	0
MPP Jagodina	21	18	12
MPP Kikinda	32	20	20
MPP Kosovska Mitrovica	15	6	7
MPP Kragujevcu	30	36	27
MPP Kraljevo	60	10	6

MPP Leskovac	0	0	0
MPP Loznica	25	12	9
MPP Negotin	31	13	13
MPP Novi Pazar	19	7	6
MPP Novi Sad	50	79	46
MPP Pancevo	34	13	8
MPP Paracin	26	4	4
MPP Pirot	47	23	19
MPP Pozarevcu	0	12	12
MPP Pozega	41	8	4
MPP Prijepolje	0	0	0
MPP Prokuplju	25	1	1
MPP Smederevo	35	22	10
MPP Sombor	51	17	10
MPP Sremska Mitrovica	0	0	0
MPP Subotica	41	13	11
MPP Uzice	26	3	3
MPP Cacak	24	30	20
TOTAL	**38**	**1386**	**628**

The data from this table should be taken with some caution, because in some cases from submitted indictment could not be seen how many persons are accused (deleted all personal data), or to establish exactly when the crime happened. Thus, the data have only indicative importance and to the extent they are correct, suggests that the time that elapses between the moment of the crime and the indictment is very long (on average, over three years) and that average number of accused is two persons, which is logical because of the nature of the corrupt relationship.

Table number 9: Structure of indictments by value of unlawful gain

Prosecutor's office	Criminal Offence	Sector	Description	Value of gain or damage in RSD

Prosecutor for organized crime	Abuse of authority	Public enterprise	Serbian Railways	80.000.000
HPP Krusevac	Violation of law by a judge...	Justice		25.595.000
HPP Cacak	Abuse of authority	Customs	Irregularities for custom duties	19.000.000
Prosecutor for organized crime	Abuse of authority	Public enterprise	Serbian Roads (damage)	17.000.000
MPP Loznica	Abuse of authority	Social enterprise	Illegal sale of real estate	15.500.000
Prosecutor for organized crime	Accepting bribes	Health	Institue of Oncology, in agreement with pharmaceutical companies	10.000.000
HPP Cacak	Abuse of authority	Municipality official	Building permits	9.360.000
HPP Negotin	Abuse of authority	Inspectorate for road transport	Prepring official minutes	9.181.023
HPP Vranje	Abuse of authority	Police	Illegal transport of goods over the border (damaged budget)	4.587.000
HPP Zajecar	Abuse of authority	Public enterprise	Posting charges	3.620.000
MPP Cacak	Abuse of authority	Banking	Illegal grant of loan	3.188.790
Prosecutor for organized crime	Accepting bribes	Public enterprise	Serbian Roads, took a bribe – an apartment	2.520.000
HPP Vranje	Abuse of authority	Social enterprise	Illegal conclusion of working contract (damged budget)	2.270.000
				2.255.000
HPP Jagodina	Abuse of authority	Public enterprise	Miscalculation of working hours	2.061.000
HPP Kraljevo	Abuse of authority	Education	Appropriation of money from part-time students, the school principal	1.500.000
HPP Prokuplje	Abuse of authority	Municipality official	Allocation of financial assistance	1.500.000
MPP Bor	Abuse of authority	Public enterprise	RTB BOR and RBB Bor, sponsoring FC Rudar	1.416.000

Prosecutor for organized crime	Abuse of authority	City council	City Council of Belgrade	1.391.000
MPP Zajecar	Abuse of authority	Public institution	Director of theater, paid employees more	1.276.000
MPP Pancevo	Abuse of authority	Public enterprise	Award of contract after conducting pp	1.205.332
MPP Zajecar	Abuse of authority	Health	Hospital clerk	1.090.000
MPP Loznica	Abuse of authority	Urbanism	Failure to act upon notification of adaptation and sanation	1.013.637
Second MPP BG	Abuse of authority	Public enterprise	PCE Obrenovac	1.000.000
HPP Belgrade	Accepting bribes	Health	Director of Clinic for Oncology, pharmaceutical company	737.000
HPP Belgrade	Accepting bribes	Health	pharmaceutical company	665.000
First MPP in Belgrade	Abuse of authority	Public enterprise		610.000
MPP Kraljevo	Abuse of authority	Public enterprise	Post office in K. Mitrovica. Officer appropriated his father's pension	576.000
MPP Paracin	Abuse of authority	Education	School principal	531.000
MPP Pancevo	Abuse of authority	Police	Falsifying traffic accidents	499.937
MPP Zajecar	Abuse of authority	Municipality official	Head of municipality council	487.000
MPP Kragujevac	Abuse of authority	Health	Doctor, prescribing more medication	450.000
HPP Belgrade	Accepting bribes	Development fund RS		400.000
MPP Smederevo	Abuse of authority	Health	Director DZ	398.000
MPP Bor	Abuse of authority	Public institution	Sport center	363.000
MPP K. Mitrovica	Abuse of authority	Education	School principal	320.000
MPP Negotin	Abuse of authority	Health	Entering false data for payment of travel costs	317.870
MPP Jagodina	Abuse of authority	Municipality council	Misappropriation of funds for payment	315.000

HPP Belgrade	Accepting bribes	Football club	Demanded bribes for dismissal from club	300.000
MPP Bor	Abuse of authority	Public enterprise	RBB Bor, illegal donations to the women's handball club	280.000
MPP Smederevo	Abuse of authority	Police	Police officer	269.000
HPP Belgrade	Accepting bribes	Health	Oncologist, CHC Bez. Kosa, pharmaceutical companies	234.000
MPP Pancevo	Abuse of authority	Police	Falsifying traffic accidents	194.625
MPP Jagodina	Abuse of authority	Public enterprise	Appropriation of collected service charges of PCE	177.222
Prosecutor for organized crime	Accepting bribes	Justice	Deputy public prosecutor, initiating proceedings	167.000
MPP Cacak	Abuse of authority	Banking	Abuse of codes and unlawful transactions	149.508
MPP Jagodina	Abuse of authority	Post office	Unlawful conclusion of contracts	144.994
MPP Pirot	Abuse of authority	Customs	Ommission of custom surveillance	135.000
MPP Cacak	Abuse of authority	Electricity distribution company	Appropriation of collected service charges from utility companies	100.000
HPP Belgrade	Accepting bribes	Health	Center for oncology KG. Pharmaceutical companies	98.000
Second MPP BG	Abuse of authority	Public enterprise	TEHT EPS	85.000
MPP Bor	Abuse of authority	Public enterprise	PE for housing services	83.000
Second MPP BG	Abuse of authority	Public enterprise	PCE Obrenovac	77.000
MPP Bor	Abuse of authority	Public enterprise	RTB Bor	70.000
MPP Smederevo	Abuse of authority	Police	Police officer	67.000
MPP Bor	Abuse of authority	Public enterprise	Public enterprise for housing services	65.000
MPP Cacak	Abuse of authority	Police	Making an order for refueling	62.850
HPP Novi Pazar	Accepting bribes	Municipality official	Adoption of the act in favor of the bribe giver	60.000

HPP Krusevac	Accepting bribes	City council	Entry in the Register of births	50.000
HPP Belgrade	Accepting bribes	Company	IMR Rakovica, requestes a bribe for delivering goods	50.000
HPP Cacak	Giving bribes	Banking	Obtaining a loan	50.000
HPP Vranje	Taking and giving bribes	Tax administration	Decision of the Tax administration	50.000
MPP Smederevo	Abuse of authority	Police	Failure to pay charged fines into account	38.000
MPP Pirot	Abuse of authority	Education	School principal	33.700
MPP Pirot	Abuse of authority	Public enterprise	Public enterprise	30.000
HPP Belgrade	Accepting bribes	Health	Surgical intervention	30.000
HPP Belgrade	Accepting bribes	Police	Police officer	30.000
HPP Cacak	Giving bribes	Banking	Obtaining a loan	30.000
HPP Kragujevac	Accepting bribes	Health	Surgical intervention	30.000
HPP Zajecar	Accepting bribes	Company	Certificate of passing the driver's test	30.000
MPP Negotin	Unlawful mediation	Firemen	Mediation of severance pay	30.000
HPP Negotin	Accepting bribes	Police	Failure of executing actions	30.000
HPP Kragujevac	Accepting bribes	Health	Surgical intervention	25.000
MPP Pirot	Abuse of authority	Public enterprise	Forester, damage	23.700
HPP Kragujevac	Accepting bribes	Health	Surgical intervention	20.000
HPP Kragujevac	Accepting bribes	Public enterprise	Forestry Directorate, permit for cutting wood	20.000
HPP Kraljevo	Accepting bribes	Police	Preventing disclosure of crime	20.000
HPP Novi Pazar	Accepting bribes	Police	Transfer of goods across the border	20.000
Second MPP BG	Abuse of authority	Police	Police officer	18.500
HPP Belgrade	Accepting bribes	Police	Police officer	15.000
MPP Pirot	Abuse of authority	Police	Failure to pay charged fines into account	14.000
MPP Pirot	Giving bribes	Justice	Attempt of bribing a judge	13.000
Second MPP BG	Abuse of authority	Education	Elementary school	11.600
First MPP in Belgrade	Giving bribes	Police	Attemt of bribing a police officer	10.000
HPP Belgrade	Accepting bribes	Police	Investigation	10.000

HPP Belgrade	Accepting bribes	Police	Police officer	10.000
HPP Kraljevo	Accepting bribes	Education	School principal, taking a student onto the dormitory	10.000
MPP Negotin	Giving bribes	Police	Processing application for issuing a biometrical ID	10.000
MPP Pirot	Abuse of authority	Justice	Bailiff	9.500
HPP Vranje	Accepting bribes	Education	Writing a final paper	9.000
HPP Vranje	Accepting bribes	Company	Certificate of language course	8.000
MPP Jagodina	Abuse of authority	Public enterprise	Enabling the use of stalls at no charge	7.381
HPP Kragujevac	Accepting bribes	Police	Traffic violation	5.000
HPP Kraljevo	Taking and giving bribes	Police	Traffic violation	5.000
HPP Uzice	Accepting bribes, abuse of authority, unlawful mediation	Police	Transfer of goods across the border	5.000
HPP Kraljevo	Accepting bribes	Justice	Bailiff	2.500
HPP Kraljevo	Taking and giving bribes	Police	Traffic violation	2.000
HPP Belgrade	Accepting bribes	Police	Police officer	1.000
HPP Belgrade	Accepting bribes	Police	By subject	1.000
MPP Negotin	Giving bribes	Police	Verifying travel documents	1.000
HPP Prokuplje	Taking and giving bribes	Police	Failing vehicle control	500
Second MPP BG	Abuse of authority	Education	Director rented out space without charge	
MPP Bor	Abuse of authority	Police	Enabling illegal registration	
MPP Bor	Abuse of authority	Police	Unlawful issuance of the certificate of the chassis number	
MPP Bor	Abuse of authority	Public enterprise	PE for housing services, rent free	
MPP K. Mitrovica	Abuse of authority	Police	Enabling registration	
MPP K. Mitrovica	Abuse of authority	Education	Employment without advertising position	
MPP K. Mitrovica	Abuse of authority	Municipality official	Employment without adequate education	

MPP K. Mitrovica	Abuse of authority	Health	Kicking out from work	
MPP K. Mitrovica	Abuse of authority	Municipality official	Unlawful dismissal from the post of Library Director	
MPP Pirot	Abuse of authority	Health	Certificate on injuries	
MPP Pozega	Abuse of authority	Public enterprise	Public procurement	
MPP Smederevo	Abuse of authority	Health	Director DZ, paid leave contrary to Law	
MPP Prokuplje	Abuse of authority	Education	Director inappropriately spent funds	
First MPP in Belgrade	Abuse of authority	Education	School principal, passed grade	
HPP Belgrade	Accepting bribes	Police	Public procurement	
HPP Vranje	Accepting bribes	Health	Falsifying laboratory analysis	
MPP Pancevo	Abuse of authority	Police	Falsifying traffic accidents	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Negotin	Abuse of authority	Education	Illegal employment	
HPP Negotin	Accepting bribes	Customs	Falsifying custom travel declarations	
HPP Negotin	Abuse of authority	Customs	Falsifying custom travel declarations	
MPP Jagodina	Abuse of authority	Construction inspection	Misrepresentation of data in a register	
MPP Cacak	Abuse of authority.	Police	Avoiding police control	
MPP Cacak	Abuse of authority	Police	Issuing a noncancelled travel document	

MPP Cacak	Abuse of authority	Police	Issuing a noncancelled travel document	
MPP Loznica	Abuse of authority	City council	Unlawful suspension of proceedings	

In the sample of indictments we analyzed in detail, the average value of the unlawful material gain or damages was about 2.5 million dinars, while in about one quarter of the cases the amount of damage or gain was not clearly expressed. However, this figure is misleading because it was strongly influenced by several large cases, with charges that are worth millions of dinars. In the sample, a total of six charges are related to damage or gain of more than 10 million dinars, the value of the 18 cases between one million and 10 million dinars, 25 cases between 100 thousand and one million, 39 cases between 10 and 100 thousand, and 13 cases of bribery of lower value.

By sector in which the indictments for corruption were the highest are in the following areas:

- customs – 10
- urbanism and construction- 2
- education – 13
- justice – 4
- police – 34
- municipal and city authorities – 10
- public enterprises – 24
- health – 17

Public Prosecutions

Main Conclusions and Recommendations

The number of criminal allegations with elements of corruption is increasing, even though this number is far lower than the number of cases that actually occur during the year, judging by the research of the public polls, which is a **high dark figure of crime**. This is why it is necessary to enforce legal and other measures in order to **encourage a high number** of witnesses and victims of corruption or participants in corruption acts **to report criminal offenses** (i.e. mandatory exemption from criminal liability, protection of whistleblowers, providing information on the handling of the filed allegations).

The processing of criminal allegations **goes beyond the current capabilities of the public prosecutions** – the number of unresolved cases from previous years is almost the same as the annual inflow. This why it is necessary through **reorganization**, other measures for enhancing **efficiency** (i.e. amendments of procedural laws, using information technology) and **engaging additional personnel** (to start with, those who were returned to work based on decisions of the Constitutional Court), especially in the overburdened prosecutions, however with **better cooperation** with other state authorities, to **ensure better procedures**.

The police most often files **criminal allegations**, the share of injured parties is significant only for filing allegations of alleged corruption in the judiciary, while in **only 5% of the cases, the initiative comes from the prosecution itself**, which indicates the need **of greater activity** and capacity building of public prosecutions, especially in the context of applying recommendations of the European Commission on "**proactive examination of corruption**" (i.e. initiating criminal investigation based on information from audit reports, without waiting for criminal allegations from the State Audit Insitution).

Most criminal allegations and indictments are related to the **abuse of authority** (Article 359 of CC), as a criminal offense that is the easiest to prove. However, **two thirds of the cases** in essence **are not actually considered to be corruption**, due to the fact that it is related to violating rules of business conduct in the private sector. Not counting these cases, the actual number of indicted persons for corruption in the observed period was around 500 on the annual level. This problem should be resolved after the start of the application of the amended Criminal Code that separates abuse in the private sector as a self-standing criminal offense.

The number of criminal proceedings for individual criminal offenses of corruption is insignificant or does not exist at all, which indicates that the police and public prosecution, but other authorities as well (i.e. the Anti-corruption Agency, State Audit Institution) **should pay more attention to them, because in practice there are examples in which there is serious doubt of these criminal offenses being committed in a larger scope** – unlawful mediation, creating obligations for the budget beyond the approved funds, not reporting property and income of public officials, illegal financing of political parties and election campaigns, giving and accepting bribes in connection to voting.

Sharp delineation of responsibilities between the "special" and other public prosecutions may present an obstacle for the effective prosecution of corruption, bearing in mind the limited capacities of the special department, as well as their competences in regards to organized crime and special measures that can or must be used in these cases. This is why the increase of the **number of personnel on these high level corruption cases, creating legal and technical conditions enabling the prosecution of corruption in other places as well and higher specialisation**, should be taken into consideration, especially bearing in mind the current initiation of investigations in corruption cases from previous years.

Statistics that are currently being kept in public prosecutions **do not show sufficiently the particular significant aspects for fighting corruption** and should be enhanced and **harmonized with the statistics** that the police and courts keep. It is especially important to ensure a clear overview of the situation in regards to **seizing material gain**, **applying special investigative techniques, the rank of the persons accused of corruption, the speed of the procedure, sector in which corruption occurs and modality of the corruption acts,** in order to create new anti-corruption policies based on this data.

For criminal offenses of corruption there is **special monitoring** that the Republic Public Prosecutor's Office conducts, which is a mechanism that should be kept in the future as well. However, it is necessary to also ensure **other aspects of control of the correctness of the decisions of the public prosecutions**, especially in cases of dismissing criminal allegations

(i.e. publishing anonymous justifications for such decisions as well as broader comprehension of the term “injured party” that can initiate criminal proceedings or continue the prosecution of criminal offenses of corruption).

Basic Findings on Procedures in Corruption Cases

Basic Findings

Within the scope of this project, **279 court decisions** related to corruption were reviewed.

In **9,7% of the cases they were criminal offenses where the judge, public prosecutor or deputy public prosecutor violated the law** from Article 360 of the Criminal Code, in which **indictments in summary procedure were filed by the injured parties as the plaintiffs** (after their criminal allegations were rejected by the public prosecutor) and all **of them were rejected, due to the fact that the court found that the offense that was the subject of the matter is not a criminal offense**.

In **2,15 % of the cases the criminal offense was accepting a bribe** from Article 367 of the Criminal Code. In 66,66 % per cent of the cases the perpetrator was an official, and in 33,33 % the responsible officer.

Of all the reviewed decisions **75,6 % are related to a criminal offense of abuse of authority from Article 359 of the Criminal Code**, and 64,8 % under the jurisdiction of the primary court and 10,8 % from the jurisdiction of the superior court.

For this criminal offense defendants before the primary court were charged in 63,7 % of the cases for abusing their authority, in 25,7 % of the cases of exceeding limits of their official authority, and in 10,6 % of the cases did not perform official duties. In 69,5 % of the cases responsible officers were accused (private sector), and in 30,5 % of the cases officials (public sector). Of all of the accused 18,9 % were in managing positions, and in 20,7 % of the cases they were persons that had been previously convicted. In 21,5 % of the cases there were more persons accused, and in 9,2 % of the cases the offenders were held in custody during the course of the proceedings, of which 18,8 % of them were held up to 6 months, 12,5 % up to one year and 68,7 % of them up to two years. In 2,4 % of the cases the proceedings lasted up to 6 months, in 4,2 % of the cases up to one year, 11,5 % of the cases up to two years, in 18,9 % of the cases up to three years and in 63 % of the cases over three years. In 40,3 % of the cases financial expertise was conducted. Of all of the accused persons 24,7 % of them were acquitted of the charges or the proceedings against them were terminated, 21,1 % of them were convicted to a prison sentence up to 6 months, 12,1 % of them to a prison sentence up to three years and 2,1 % of them up to two years, and 40% of the accused were given a probation. The perpetrator acquired material gain in 54 % of the cases, and in 33,4 % of the cases they acquired material gain for others, whilst in 12,6 % of the cases immaterial gain was acquired. In 25,9 % of the cases the injured parties received a measure for legal request for property, and material gain was seized from 6,3 of the convicted persons. No security measures were imposed.

Due to the fact that the criminal offense of abuse of authority appears before the court as the most often form of corruption, it is necessary to emphasize that it is specified in the law with a very broad formulation, which can cause problems in practice. Namely, as one of the acts of committing this criminal offense, apart from exceeding the limits of official authority and not performing official duties (which is acting contrary to regulations), "using an official's position" is laid down (which actually represents unreasonable behaviour, and this is not contrary to regulations). Due to the fact that this is a case of examining the viability, and not legality, of someone's behavior, this opens the possibility of different interpretation whether something is viable or not.

These problems are particularly acute due to the underdeveloped mechanism for uniform practice of the court. Namely, there are four second instance appellate courts where proceedings are finalized, and these courts very often do not have uniform practice of the courts, and only a low number of cases comes before the Supreme Court of Cassation, due to its restricted jurisdiction, which disables the court to efficiently perform its duties laid down by law to establish the principle legal positions to ensure uniform practice of the courts.

Conclusions and Recommendations

At round tables – public discussions organized within the scope of this project, held in Novi Sad, Nis and Ivanjica, criminal judges, misdemeanour judges and deputy public prosecutors stated that training in the area of finances would be of great use to them, due to the fact that in a high number of cases regarding criminal offenses of corruption it is necessary to conduct financial expertise. This type of training would help them in obtaining a critical view of the findings and opinions of financial expert witnesses.

From the analysis of the legal framework and the court practice presented above, several conclusions can be made:

1) **Criminal offenses of corruption (in accordance with its definition in the National Strategy for Fighting Corruption) are not grouped into one chapter**, but can rather be found in various chapters of the Criminal Code.
2) **The Code on Criminal Procedure limits the possibility of applying the specific measures for detecting and proving criminal offenses (evidentiary actions) to only four criminal offenses of corruption** (abuse of authority, unlawful mediation, accepting a bribe and bribery), even though other criminal offenses of corruptions are laid down in the Criminal Code (violating the law by a judge, public prosecutor or his deputy, fraud in service, revealing an official secret, abuse of authority in economy, abuse in relation to public procurement and abuse of office by a responsible officer);
3) **All first instance courts of general jurisdiction (primary, superior and appellate) are competent to adjudicate these criminal offenses**;
4) **For judges that adjudicate criminal offenses of corruption no special**

requirements are provided by law, regarding possessing a certain number of years of professional experience and adequate training. By law it is provided that **only judges of the Special Department of the Superior Court in Belgrade and Appellate Court in Belgrade** shall have a certain number of years of experience as well as in the course of allocating the judges for these departments, the judges who possess necessary expert knowledge and experience in the area of organized crime and corruption will have an advantage. However, the specific knowledge and where it is obtained is not provided in the law;

5) **The president of the court allocates judges to the special departments, or the High Judicial Council** if they are judges from other courts, and this is done according to an annual schedule of tasks, whereas there are no specific criterion or merit to base this on;
6) **Judges in special departments have specific status** because they are appointed to this department with their own consent and for a period of at least six years;
7) **The most often form of corruption** before courts **is the criminal offense of abuse of authority**;
8) Most often the action of committing this criminal offense is "using an official's position"

The proposal of measures that could be taken for enhancing the legal framework for adjudicating criminal offenses of corruption:

1) **Amending the Code on Criminal Procedure by defining the term of criminal offenses of corruption**, as it has been done for organized crime. This would make the detection and prosecution of these criminal offenses more efficient because it would enable applying special measures for detection and proving them (evidentiary actions), because now they are limited to only four criminal offenses. Apart from that, their application would be possible for potentially new regulated criminal offenses of corruption in the Criminal Code;
2) **Amending the Law on Seizure and Confiscation of Proceeds from Criminal Offenses and extending the possibility of its application to all criminal offenses of corruption**, because it is now limited to only four criminal offenses;
3) **Lay down continuous mandatory training for all judges for criminal offenses of corruption**, as well as the duty of the Academy in this regard;
4) **Lay down precise criteria and procedure for "selecting" judges to the Special Department and their status** that would guarantee their professionalism and integrity to prosecute corruption for criminal offenses from the jurisdiction of these departments;
5) **Ensure a sufficient number of judges and staff in special departments**, as well as spatial and technical conditions for work, that would enable proceedings in a reasonable time frame for these cases;
6) **Lay down the jurisdiction for only a few courts to prosecute criminal offenses of corruption,** outside the jurisdiction of the Special Department of the Superior Court in Belgrade, in order to ensure the professionalism of judges for adjudicating these

offenses;

7) **Examine the need for a more precise definition of the actions for committing criminal offenses of abuse of authority.**

The Work of Misdemeanour Courts Regarding the Application of Preventive Anti-corruption Laws

Overall statistics

All preventive anti-corruption laws contain provisions on misdemeanor liability. Misdemeanor liability differs from criminal liability. Specifically, misdemeanor charges are usually enough to breach an obligation by law, whilst a person who was required to fulfill this obligation will answer whether the ommission was committed accidently, by gross negligence or with intention.

If, however there is someone's intention of acting towards obtaining unlawful gain or harming or seriously damaging a person's rights, this should be in the competence of criminal prosecution rather than magistrate courts (e.g. abuse of authority). However, in most cases authorities who are required to initiate misdemeanor proceedings are not authorized to determine whether the perpetrators are criminally liable.

Misdemeanor proceedings, based on the Law on Misdemeanors, are initiated by a request to the competent misdemeanor court that a public prosecutor, the competent authority for monitoring the implementation of the law in which the misdemeanor is laid down (usually ministries) or the injured person files. The period of obsolescence is usually one year from the date the misdemeanor was committed, but it can be extended if required (e.g. for the Budget Law).

The initial hypothesis, this study has confirmed, was that the actual number of cases of violation of law is far greater than the number of cases pending before the misdemeanor courts.

Table number 10: Number of proceedings of misdemeanor courts for violation of anti-corruption regulations in 2010 and 2011

Location of misdemeanor court	TOTAL proceedings for misdemeanors from four anti-corruption laws
Belgrade	16
Subotica	5
Mladenovac	2
Nis	35
Prokuplje	3
Smederevo	3
Krusevac	10
Arandjelovac	1
Pozarevac	13
Obrenovac	3

Prijepolje	1
Novi Sad	12
Leskovac	17
Sjenica	2
Negotin	4
Paracin	7
Pirot	7
Loznica	2
Raska	1
Pancevo	5
Kosovska Mitrovica	1
Valjevo	0
Pozarevac	1
Kragujevac	7
Lazarevac	6
Jagodina	2
Sombor	4
Becej	2
Sabac	7
Novi Pazar	0
Sremska Mitrovica	3
Ruma	0
Kikinda	2
Kraljevo	1
Zrenjanin	1
Uzice	0
Total	**186**

As shown in Table number 10, during a two year observation period only 186 proceedings were held before misdemeanor courts for violating anti-corruption regulations, and in many misdemeanor courts there were no proceedings held. The reason for such a low number of cases should be sought primarily in poorly designed mechanisms of control over the implementation of certain regulations, the indifference of the victims and public prosecutors to initiate these proceedings and the short period of obsolescence, which will be discussed in further detail in the case of certain laws.

Among some courts, the most decisions were passed in Nis, then in Belgrade, Leskovac, Novi Sad and Krusevac, and certain courts had no proceedings for violations of these laws.

Law on Free Access to Information of Public Importance

Proceedings were held for the violation of the following provisions of the Law:

- Article 16, regarding failing to act upon a request from an applicant
- Article 18, regarding delivering copies of documents in the requested form
- Article 38, regarding determining the authorized person and taking measures for protecting an information medium
- Article 39, regarding publishing a directory
- Article 43, regarding submitting a report to the Commissioner

The table shows data on the number of misdemeanor proceedings that were initiated for violating certain provisions of the Law (a red number marks the number of cases in which a certain misdemeanor was mentioned in addition to another one).

Table number 11: Misdemeanor proceedings for violating the Law on Access to Information of Public Importance

City	Article 16		Article 18		Article 38		Article 48		Article 45		Article 46		Article 43		Article 39	
BG	1	7			2	1						3				
U							2									
ML																
NI									4				7	2	1	
PK							1						2			
SD																
KS																
AR																
PO	1												7		1	
OB																
PP								1					1			
NS																
LE					1		2	6					6			
SJ													1		1	
NG							1	2					2		1	
PN											1					
PI								5					5			
LO													2			

RA								1					1			
PA																
KM																
VA																
PZ	1			1								1				
KG	1						1	4					5			
LA																
JA											1				1	
SO																
BE								1					1			
SA							1				1		2			
NP																
SM	1					1										
RU																
KI													1			
KV	1	2														
ZR																
UE																
Total	**6**	**9**	**0**	**1**	**3**	**2**	**8**	**20**	**4**	**0**	**3**	**4**	**43**	**2**	**5**	**0**

Therefore, according to these statistics, a total of 15 decisions were passed for failing to act upon the request of applicants in the observed period. On the other hand, the number of such cases is measured in thousands, which can be concluded based on the report of the Commissioner for Information of Public Importance and Personal Data Protection. For example, in 2011 the Commissioner received 2,628 complaints for not obtaining information, in 2010 it was 2,066 and in 2009 it was 1,416. Of these complaints, around 95% were cases when authorities did not deliver information to the applicant or passed a decision on rejecting the request, which is a misdemeanor. Obviously, the system does not work, and primarily in the stage of initiating misdemeanor proceedings, which is in the competence of the Ministry (formerly of State Administration and Local Self-Government) and that it should be changed, by authorizing the Commissioner, who has direct knowledge that the misdemeanors were committed to initiate these proceedings. These changes were anticipated in the proposal for the amendment of the Law on Free Access to Public Information, which were withdrawn from procedure in the second half of 2012.

In the observed period only one proceeding was held, which, among other things, concerns failure to deliver documents in the requested form and only five of which are related to the obligations of the authorities in connection with the authorized person to act upon requests.

Slightly more proceedings related to one of the weakest points of the application of the Law - Publication of Directory – 28. Although most authorities fulfilled this obligation at least at the elementary level, the number of those who have not done it is much greater than the number of those who due to not fulfilling this obligation ended up in court. Thus, in the Commissioner's report for 2011 it is stated that "over 80%" of cities and municipalities

published directories, "over 70% of the courts" and similar. In previous years, the situation was even worse.

In a total of 45 cases proceedings were held for failure to submit an annual report to the Commissioner. Judging again by the annual report of the Commissioner, in early 2011, 697 government bodies fulfilled their obligation of a total number of 2,839 that this requirement applies to, which again points to the large discrepancy between the number of cases in which there has been a violation of the law and the number of those that were sanctioned.

Law on the Budget System

The most proceedings of the observed laws were held for violations of the Law on the Budget System. Authorities for misdemeanors acted for violations of the following articles (the numeration refers to the Law on the Budget System from 2002, with amendments in 2005 and 2006 that were in force at the time):

- Article 5, about the balance in revenues and expenditure
- Article 42, concerning temporary suspension of the execution of the budget
- Article 50, that lays down the responsibility of a holder of office of a direct or indirect budget user for taking commitments
- Article 51, concerning the incompatibility of the positions of issuing orders, accountant and internal controller
- Article 56, 57 and 58 concerning incurrence
- Article 23, concerning preparation and submission of financial plans to indirect users of local self-government budgets
- Article 29, concerning the amendments of the budget and financial plans
- Article 31, concerning the payment of revenues in accordance with law
- Article 35, concerning the responsibility for commitments (to be in accordance with the approved appropriations)
- Article 36, concerning the management of commitments (e.g. that they cannot afford commitments for which funds were not ensured)
- Article 37, concerning the conclusion of public procurement contracts
- Article 38, concerning the obligation that all payments from the budget are made based on bookkeeping records
- Article 61, that establishes the responsibility for budget bookkeeping
- Article 71, concerning an external audit of the budget

When taken into consideration individually, proceedings were held most often following the proceedings regarding incurrence of budget users – e.g. a total of 16 related to Article 56, a total of 34 related to Article 57, a total of 13 related to Article 58. A total of 16 cases are related to the conclusion of public procurement contracts.

Bearing in mind the huge doubts in violating budget regulations that were, amongst other things, determined by findings of the auditor, obviously a small number of violators of budget regulations made it to court.

The main reason for this should be sought in the weak capacities of external surveillance authorities, weak mechanisms of internal control and internal audit, as well as in the lack of incentives for reporting such misdemeanors among the budget users.

An obligation exists for each budget user to introduce a system of internal control that would prevent for violations of budget rules to occur whatsoever. A larger number of users have an obligation to establish internal audit that would provide additional guarantee that the money will be collected and spent in accordance with law. A budget inspection exists within the Ministry of Finance that is authorized to check the legality of budget use for all budget users, and similar inspections should be established at lower levels of government as well. Bodies that could recognize violations of budget regulations within their scope of work are in place (e.g. Public Procurement Office). A State Audit Institution that performs an audit of the final account of the budget and audit of the financial operations of budget users is also in place.

However, the system apparently does not do its work: internal controls, judging from the findings of SAI in many situations does not work properly; internal audits have not been established in all bodies that were obliged to do so; the budget inspection for more than a decade does not have sufficient staff to fulfill the most urgent tasks; some of the bodies that have knowledge of budget violations are not authorized to initiate proceedings, but rather only inform the otherwise congested budget inspection and SAI; officers that have a legal obligation to report a criminal offence or misdemeanor that they found out within the scope of their work, are not motivated to do so, nor is the legal sanction for them a serious one; SAI, besides the fact that each year it prepares more extensive reports, it also covers with its audit only a part of the expenditure of public funds, and then files requests for initiating misdemeanor proceedings after finalizing the report on the audit etc.

Public Procurement Law

The Public Procurement Law, as one of the most important anti-corruption laws, contains many misdemeanor provisions. Amongst other things, misdemeanor proceedings have been held for the violation of the following rules (the numbers of articles are indicated according to the Public Procurement Law from 2008 that is relevant for the observed period):

- Article 6, stipulating the procedure that shall be applied for procurement services
- Article 7, that stipulates for which procurements the Law does not apply to (procedures for cases when the procurement was wrongly subsumed under one of the exemptions)
- Article 11, that stipulates the principle of equality of bidders
- Article 16, that stipulates the language for submitting bids
- Article 20, that stipulates that open procedures are a rule for performing public procurement
- Article 24, that stipulates requirements under which a negotiating procedure without a prior notice can be conducted
- Article 25, that stipulates conducting a design contest

- Article 27, that stipulates the procurement procedure can be initiated if the procurement is envisaged in the procurement plan and if funds for this procurement have been set aside
- Article 28, that stipulates passing decisions on initiating procedures
- Article 29, that stipulates the manner of conducting procurement by the procuring entity
- Article 31, that stipulates the deadlines for submitting tender documents
- Article 32, that regulates the manner of amending tender documents
- Article 34, that stipulates establishing the value of a public procurement service
- Article 36, that stipulates establishing the value of public procurement conducted by lots
- Article 37, that stipulates the manner of determining the value of the public procurement
- Article 51, that stipulates establishing criteria for selecting the most advantageous bid
- Article 54, that stipulates submitting electronic bids
- Article 44-52, that stipulate requirements for participating in a public procurement procedure
- Article 59-68 that stipulate deadlines for public procurement procedures
- Article 69, that stipulates the method of notice publication and articles 70 and 71 that stipulate certain types of notices
- Article 74, that stipulates the obligation to publish a notice on the concluded public procurement contract
- Article 82, that regulate the conclusion of public procurement contracts
- Article 94, that stipulates the content of the report on concluded contracts that are submitted to the Public Procurement Office
- Article 97, that stipulates the obligation to appoint a public procurement officer and enabling the officer to attend training and obtain the certificate
- Article 107, concerning the deadlines and manner of filing a request for the protection of rights
- Article 108, concerning the consequences of filing a request for the protection of rights
- Article 118, that stipulates the duty to act upon the orders of the Republic Commission for Protection of Rights in Public Procurement Procedures

Regarding sanctioning of misdemeanors from this law the main impression is a shocking discrepancy between the number of violations known or the doubt and number of misdemeanor proceedings that have been conducted relating to them.

For example, here are a few absurdities:

- Violation of Article 11, that stipulates the principle of equality of bidders was covered only in two misdemeanor proceedings, even though the violation of this principle regularly occurs in hundreds of requests for the protection of rights the bidders submit
- Only 16 proceedings are related to cases in which the public procurement was initiated even though it was not planned or the funds had not been set aside for conducting it. Contrary to that, audit findings show that such conduct does not occur rarely (in the budget audit for 2010 the value of such illegal procurements is estimated to be

millions of euros). Moreover, the extent of these violations of the law speak eloquently of government arrears to suppliers for road and construction companies, as well as suppliers in health care - none of these debts would not have occurred if funds that should have been set aside had actually existed for performing the public procurement.

- Only 2 proceedings are related to the violation of Article 7, for the procurements that have been exempt from the application of the Law, even though various forms of violations of this provision have been determined by findings of the auditor, and many other are suspected (especially related to unjustified enforcement of confidential procurement or procurement of supposedly exclusive suppliers of the public sector)
- Only 6 proceedings are directly related to the violation of Article 24 – enforcement of the negotiating procedure without prior notice, even though the extent of this happening has been determined by the auditor's findings and even previously, in hundreds of examples that the Public Procurement Office has indicated, stating that the bidders unjustifiably performed urgent procurement even though there was sufficient time to plan the procedure or that exclusive rights due to which there should be negotiations with only one bidder do not exist
- Only 1 proceeding is related to the unlawful enforcement of public procurement by a second bidder, even though this problem has been identified in the auditor's reports
- Only 2 proceedings are related to determining criteria for selecting the most advantageous bid even though various types of irregularities have been determined in hundreds of decisions of the Commission for the Protection of Rights
- Only 7 proceedings are related to the publication and content of certain types of decisions in public procurement. On the other hand, Transparency - Serbia determined, by observing a sample, that procurement entities in a large number of cases do not respect these provisions, regarding the obligatory content of a notice and in some cases the time of publication.
- Only in one case a proceeding was held for the violation of the obligation of publishing a notice for concluding a contract (following a negotiation procedure), even though PPO determined many cases in which this obligation was violated
- Only four cases are related to the violation of provisions regarding filed requests for protection of rights and only one for not acting upon orders from the Commission, even though violations of these rights are not rare
- Only one case is related to not submitting annual reports to the Public Procurement Office, even though PPO does not receive these reports from three fourths of the ones obligated to do so (of around 12 thousand procurement bidders, only around 3,000 reports are filed)
- On the other hand, the largest number of proceedings (42), although still extremely low, are related to the violation of provisions for selecting the type of procedure of public procurement, or rather the violation of Article 20 of the Law. For these cases, usually it concerns the violation of more articles of the law at the same time – enforcing urgent procedures by negotiation for which the requirements did not exist, division of large procurements to many small ones and similar.

Several reasons exist for large differences that occur amongst the misdemeanor convictions and number of committed misdemeanors. The first reason lies in the inadequate legal decisions. Although PPO and the Republican Commission for the Protection of Rights have knowledge of many cases of violations of the law, they have no legal authority to initiate

misdemeanor proceedings directly, but rather, in the best case, let other authorities know about the case – the budget inspection and the State Audit Institution and they also submit the reasons for doing so. As it has already been pointed out in the part concerning the application of the Law on the Budget System, there are serious systematic problems for prosecuting a large number of the misdemeanors – a low number of competent authorities that have the power to initiate misdemeanor proceedings, primarily the budget inspection. Besides that, an additional problem is the fact that misdemeanors from the Public Procurement Law, until the recent amendments, became obsolete within one year. This was too quick for most cases when the State Audit Institution came to budget users. This is how the misdemeanors remained unpunished, except when the SAI found a basis to prosecute them jointly with the violations of the Law on the Budget System, where the deadlines for obsolescence were longer.

Part of these problems are expected to be solved with three amendments of the Public Procurement Law from December 2012, based on which the PPO will be granted the right to initiate misdemeanor proceedings, whilst the Commission for the Protection of Rights will become the first instance authority for misdemeanors.

Law on Financing Political Parties

In the Law on Financing Political Entities numerous misdemeanors were stipulated that political parties and the responsible persons could commit, such as failure to submit annual financial reports and reports on financing campaigns, collecting funds from forbidden sources, spending funds illegally and similar. Misdemeanors can also be committed by companies that finance political parties illegally, as well as other entities who do not submit data necessary for the control to the Agency. A five year period is stipulated for obsolescence.

In the previous Law on Financing Political Parties a variety of acts were stipulated that a political party could be punished for, such as reports and illegal means of financing. One year was stipulated for obsolescence.

However, for violating all these provisions, misdemeanor courts passed only one decision in the observed period, and it was based on the previous Law on Financing Political Parties.

Obviously this was also a result of a low number of initiated proceedings by the competent authorities, primarily the Anti-corruption Agency, even though other obstacles existed, such as a short obsolescence period, incomplete provisions of the previous Law on Financing Political Parties, difficulties for collecting evidence and a long time it took the misdemeanor courts to act on them in some cases. As an example for the Agency failing to act, we can mention the absence of control of data from the final account and other financial reports of parties from April 2011.

Results of the Misdemeanour Courts

Table 12: Results of the misdemeanor courts in cases for violation of anti-corruption regulations

BG	Number of months the proceeding lasted	Average duration of proceeding (months)	Convictions	Rejected or terminated	Acquittal	In progress
SU	10, 30, 12, 26, 13, 11, 23, 6, 4, 14, 14, 7, 13, 30	15,2	15	**	1	
ML	13, 12, 12,	12,3	2		1	2
NI	7, 10,	8,5	2			
PK	9, 24, 4, 8, 3, 5, 3, 6, 10, 7, 15, 20, 11, 5, 10, 9, 6,	9,1	13	4	1	17
SD	4, 1, 2	2,3	3			
KS						2
AR	19	19		1		9
PO						1
OB	6, 9, 17, 22, 5, 9, 7, 15, 8, 18, 6, 4, 17,	11	6	4		3
PP	17, 14,	15,5	2			1
NS	6	6	1			
LE	8, 4, 7, 5, 30, 18, 20, 25, 24, 14, 12, 13,	15	7	4	1	
SJ	8, 12, 24, 6, 3, 5, 4, 5, 4, 8, 12, 5,	8	11	2	1	3
NG	9	9	1			
PN	2, 4, 5, 1	3	4			
PI	9	9		1		
LO	1, 10, 14, 2, 6, 5, 5,	6,1	6	1		
RA	2, 2	2	2			
PA	10	10	1			
KM	12, 6, 12, 1, 2,	6,6	1	4		
VA	3	3	1			
PZ						
KG	2	2			1	
LA	6, 13, 13, 17, 18, 20, 9	13,7	6		1	
JA	33	33		1		5

SO	17, 19	18	2		*	
BE	3	3		1		3
SA	2,5	2,5	1			1
NP	8, 28, 17	17,6	2	1		4
SM						
PU	5	5		1		2
KI						
KV	5, 15	10	2			
ZR	1	1		1		
UE	16	16	1			
Total		**8,1**	**92**	**26**	**7**	**53**

As shown in the table, in around half of the misdemeanor proceedings for violating the observed laws a convicting decision was passed, in 14% there was a rejection or termination (mostly due to obsolescence), in only 4% of the cases the decision was acquitting, whilst in slightly less than 30% of the cases the proceedings were still in progress at the time the data was collected. If only the finalized proceedings are taken into consideration, in ¾ of the cases a convicting decision was passed, and around 1/5 of the proceedings were suspended due to obsolescence.

The average duration of the proceeding was surprisingly long – as high as 8,1 months. Even though each case is separate and although the misdemeanor courts are overburdened, obviously the length of these proceedings must have favored the obsolescence in certain situations. The length of duration of the proceedings differs immensely. The fastest the court acted in a case (this was a termination of proceedings) was when it lasted only a month, and the longest recorded time frame was as high as 33 months (and also was finalized with a termination of proceedings).

Law on the Anti-corruption Agency

The Law on the Anti-corruption Agency stipulates that many misdemeanors can be committed by holders of office (failure to report conflict of interest, property, gifts, forbidden performance of other work and similar), managers of public institutions (not submitting data necessary for the work of the Agency) or companies partly owned by holders of office (failure to inform the Agency about competing for a job with another state body. One year is stipulated for obsolescence.

According to statements made by the Anti-corruption Agency between mid-July of 2011 and 2012 three convicting decisions were passed by misdemeanor courts for holders of office for violating provisions of Article 35 of the Law on the Anti-corruption Agency and untimely submission of reports of property and revenues. In one proceeding, the misdemeanour court acquitted a holder of office for the misdemeanour he committed, however the Higher Misdemeanour Court adopted the appeal of the Agency and returned the case for a retrial and the proceedings were continued. At the same time five proceedings for violation of rules of

conflict of interest and parallel performance of multiple duties or activities have been initiated.

The slow handling of cases by the misdemeanor courts is one of the obstacles for more efficient work, however there are also problems to obtain certain data that would indicate that the misdemeanors were committed (databases other authorities keep that should be compared with data the Agency possesses).

Nevertheless, it is obvious that, even in only a few cases, the number of initiated proceedings could be even higher, for example, in the case of failure to report participating in procedures that lead to concluding contracts with authorities (e.g. companies partly owned by the previous minister Oliver Dulic that was covered in the media).

Main Conclusions and Possible Solutions

Misdemeanor sanctions as a deterrent in preventive anti-corruption laws do not have the desired effect. The main reasons are:

- Low number of initiated proceedings in relation to the number of cases of violation of law
- Relatively long duration
- Frequent obsolescence of misdemeanor prosecution

Even though the number of cases in which misdemeanors are committed from anti-corruption regulations is measured in thousands, judging by the officially available data from the authorities (e.g. the Commissioner for Information, Public Procurement Office and SAI), and in practice probably is measured in tens of thousands, in two years that were observed less than 200 misdemeanor proceedings have been held.

There is a problem with the rapid obsolescence, which is in the newest amendments solved in the area of public procurement and financing of political parties by extending the deadlines from one to three, or rather five years, however it still exists in the Law on Access to Information of Public Information and the Law on the Anti-corruption Agency.

There is a problem with poor determination of authorized and overburdened authorities for initiating misdemeanor proceedings. This is particularly visible regarding the Law on Access to Information of Public Importance, where the Commissioner is in a situation to very often notice a violation that is a misdemeanor and points it out to the administrative inspection, however the number of initiated proceedings is much lower than the number of noticed irregularities. The problem should be solved with amendments to the Law.

A similar problem in the area of public procurement will be partially solved with the commencement of application of the new Law (the Office will be authorized to initiate proceedings, and the Commission to solve them in the first instance), however it is necessary to ensure the resources for enforcing these provisions.

Regarding the Law on the Budget System, the problem is primarily in the low number of budget inspectors, the nonexistence of local budget inspections and the impossibility of SAI to cover all budget users with its examinations.

In the area of financing political parties, the main reason for the low number of cases is related to the imprecisely defined obligations of the Agency in checking the legality of funding of parties outside the period of election campaigns and the lack of systematic control in that area from long ago.

In the area of application of the Law on the Anti-corruption Agency, the relatively low number of misdemeanor proceedings that have been held, apart from the obsolescence and objective difficulties to obtain specific data, the problem lies in the tolerance the Agency has unjustifiably shown for certain misdemeanors (e.g. failure of companies owned by holders of office to inform on taking part in a public procurement procedure).

The problem concerning all the mentioned laws is the insufficient motivation of the injured parties to initiate misdemeanor proceeding on their own or the nonexistence of directly injured parties in some situations, due to which the allegations could be rejected. Similarly, public prosecutors, although generally authorized to initiate misdemeanor proceedings, do not have a special incentive to act in such cases (the problem of evaluating cases).

The second large problem is the nonexistence of protection of the whistleblower – a person who would indicate a violation of the law and the related absence of sanctioning (disciplinary or any other) of officers who noticed in their work, that a misdemeanor had been committed but no measures were taken to initiate proceedings.

The average duration of finalized proceedings is 8,1 months, and in one fifths of cases there was a suspension due to obsolescence.

The situation is the worst regarding the sanctioning of misdemeanors in the Law on Financing Political Activities (previously: political parties), where only one convicting decision has been passed.

It is necessary to amend the Law on Misdemeanors and enable the obsolescence deadline to be extended, enforce measures for the relief and accelerating the misdemeanor courts.

It is necessary to amend the regulations to specify the responsibility for not initiating misdemeanor proceedings when there is knowledge of violations of law.

It is necessary to amend the regulations that determine the authorities for monitoring the enforcement of laws and ensure resources for this type of control.

It is necessary to pass a Law on the Protection of Whistleblowers and extend the concept of the injured party to be an initiator of a misdemeanor proceeding.

It is necessary to systematically publish data on the conduct of misdemeanor proceedings under this Law, and examine the reasons for the lack of uniformity of practice and time taken for the proceedings, and take special care not to create a situation in which a misdemeanor conviction would represent an obstacle for possible later criminal prosecution.

During the investigation of the procedures in commercial courts in cases related to the enforcement of anti-corruption legislation, we encountered an obstacle. Commercial courts have an automated program for keeping cases, which enables users to search through the data

and it is better developed than the program courts of general jurisdiction use. However, within the scope of the search it is not possible to retrieve automatically the statistics regarding the application of particular regulations. For example, proceedings being held for pronouncing contracts null and void are displayed collectively and an additional criterion does not exist that would enable creating a list of cases, according to the criteria "public procurement contract" or any other. It is the same case also regarding the issue for compensation of damages (a possibility for sorting according to damage for violating a public procurement contract or for violating some other contract).

However, apart from that, it is obvious that the number of cases in which commercial courts acted based on this was very low, or rather, that the number of cases in the area of public procurement, as the most significant anti-corruption law whose violation can be subject to review of these types of courts would be greatly disproportionate with the number of cases that should have been handled. Thus, we received information from commercial courts in Sombor, Uzice, Sremska Mitrovica Leskovac, Subotica, Cacak and Kraljevo that there were no such cases in the observed period. On the other hand, we received two such cases from the commercial court in Pancevo, one from the commercial court in Kragujevac and three from the commercial court in Belgrade (using the method of random opening) that are related to the compensation of damages for violating the Public Procurement Law.

This is why undoubtedly the main conclusion that imposes itself is that the provisions of the Public Procurement Law according to which **each contract in public procurement shall be null and void if concluded in contradiction to the provisions of that law** and the Law on Obligations, according to which anyone can claim a contract is null and void, **is not used sufficiently in practice**. We believe that the problem will be partially resolved with the application of the solutions from the new Public Procurement Law, which provides **authority to the Republic Commission for the Protection of Rights in Public Procurement Procedures**, **to deem contracts null and void**, as a body that has direct knowledge on many cases of violations of the law.

However, it is obvious that other obstacles also exist on the road to protecting public interest and achieving individual interests of participants in public procurement. Primarily, the **court taxes are high and taxes must be paid in order to initiate the procedure for protecting rights**. The second problem is the obvious **indifference of the procuring entities,** even in cases when the law is obviously being violated, **to initiate the procedure of pronouncing a contract null and void**, due to the fact that the problematic procurements have usually already been realized and data on the reasons for initiating such a procedure is not submitted to the Public Attorney's Office. The third problem is the **indifference of the procuring entities to exercise their rights for compensation of damages in court**, whether because they do not have the capacities to handle such cases (i.e. small companies), because they do not want to criticize potential business partners for the authorities or because they cannot prove that the deal with the authorities should have been awarded specifically to them, and not some other company whose rights were violated in the improper procurement. A separate problem is that **procuring entities do not use their right to a sufficient extent** through suing or activating financial security mechanisms for good business conduct to reduce the damage that occurred due to the fact that the public procurement contract was not realized in the foreseen manner and within the foreseen time frames.

Solutions for these problems should be sought in the reform of the public procurement system, and **establishing accountability of the procuring entities and authorities that supervise them**, as well as the public attorney's offices, **to initiate timely proceedings in order to protect public interest**, but also by **enabling others** (i.e. stakeholders, such as civil society organizations) **to initiate such proceedings** if state authorities fail to perform their job. Regarding commercial courts, it would be of great value if **separate statistics were kept for cases related to public procurement**, in order to facilitate the monitoring of this aspect of the application of law.

Publicity of the Work of Judiciary Institutions

Introduction

All bodies of authority, even institutions operating within the judiciary, have the obligation of ensuring the publicity of their work. These are primarily obligations deriving from the Law on Free Access to Information of Public Importance (Official Journal of the Republic of Serbia No. 120/2004, 54/2007, 104/2009 and 36/2010), as well as by-laws that compliment this law – Instructions for the Creation and Publication of Information Directories on Public Authority Work (Official Journal of the Republic of Serbia No. 68/2010).

Based on these acts, authorities have the obligation to enable access to information that is in their possession that was created in the course of their work or related to the work of authorities, when someone requests this information from them. In some cases judiciary institutions can deny access, if there is a basis in the Law on Free Access to Information of Public Importance, and this basis is established through an appeal or claim.

Also, all authorities have the obligation to publish information directories on their work, and its content needs to be in accordance with the Instructions. In cases when authorities do not possess their own web-site, they have the obligation to publish this document on the web-site of another authority (i.e. directly higher court or prosecution). Based on these Instructions, information directories shall be updated at least once a month. This document should contain the following chapters:

Mandatory parts of the information directory:
1. the content;
2.the basic information about the state authority and information directory ;
3. the organizational structure;
4. the description of the functions of the officers;
5. the description of rules related to public work;
6. the list of commonly requested information of public importance;
7. the description of the jurisdiction, powers and duties;
8. the description of actions within the jurisdiction, powers and duties;
9. listing of the rules;
10. the services that the authority provides to the interested parties;
11. the procedure in providing services;
12. the review of data on services provided;
13. the data on income and expenditure;
14.the data on public procurement;
15. the data on state aid;
16. the data on paid salaries, wages and other income;
17. the data on the means of work;
18. storing of the information carriers;
19. types of information held;
20. types of information which the state authority uses to enable the access and
21. information on submitting requests for the access to information

Apart from the obligation based on the general law (regarding the fact that it applies to all authorities), judiciary authorities also have the obligation deriving from specific legislation governing their work. For example, based on procedural laws and the Court Rulebook, parties in proceedings have the right to access certain documents related to the court proceedings.

Within the scope of this research certain basic aspects of the publicity of the work of judiciary authorities were examined.

Commercial Courts

Table 13: Commercial courts – information directories and work reports

Commercial courts	**CITY**	Web-site	Information directory	Work report
1	Sombor	www.so.pr.sud.rs	published	ON THE WEBSITE OF THE HJC
2	Subotica	www.su.pr.sud.rs	none	ON THE WEB-SITE OF THE HJC
3	Zrenjanin	www.zr.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
4	Sremska Mitrovica	www.sm.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
5	Pancevo	www.pa.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
6	Novi Sad	www.нема s.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
7	Belgrade	www.bg.pr.sud.rs/	Published	ON THE WEB-SITE OF THE HJC
8	Valjevo	www.va.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
9	Uzice	www.ue.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
10	Cacak	www.ca.pr.sud.rs/	Published	Within the information directory for 2009
11	Kragujevac	www.kg.pr.sud.rs	Published	Within the information directory for 2010
12	Pozarevac	www.po.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
13	Kraljevo	www.kv.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
14	Nis	www.нема i.pr.sud.rs	Published	ON THE WEB-SITE OF THE HJC
15	Leskovac	www.le.pr.sud.rs	Published	Within the information directory for 2011
16	Zajecar	www.za.pr.sud.rs	Published	Within the information directory for 2011
1	Commercial Appellate Court	www.pa.sud.rs	Published	ON THE WEB-SITE OF THE HJC

As shown in the table, the network of commercial courts excels in the field of transparency in comparison to other judiciary institutions. All special courts of this type published information directories, except the court in Subotica. Much of the information on their work

can be found on the portal as well. However, regarding reports, they mostly cannot be found on the web-site of the courts, but rather on the web-site of the highest judiciary instances in the country – the High Judicial Council. In particular cases, mostly from the previous years, work reports were published within the information directory. In accordance with the Instructions of the Commissioner, entire reports should not be entered into the information directories, but rather certain parts of it, and in the document itself there should be a link that leads to the web-site where the work report can be found.

Table 14: Commercial courts – scope of work, number of judges and their performance

	Commercial courts	Total of cases 2010 (source)	Total of cases 2011 (source)	Number of judges	Cases finalized 2010	Cases finalized 2011	Cases per judge 2010	Cases per judge 2011
1	Sombor	4513 (inf)	3471 (portal)	5	4215	3597	843	719
2	Subotica	6183 (portal)	3740 (portal)	5	3327	3666	665	733
3	Zrenjanin	5152 (portal)	3689 (portal)	3	3380	2826	1127	942
4	Sremska Mitrovica	4358 (portal)	3558 (portal)	5	2414	3137	483	627
5	Pancevo	4526 (inf)	3858 (portal)	5	2722	3506	544	701
6	Novi Sad	21334 (portal)	17033 (portal)	11	6575	11500	598	1045
7	Belgrade	80374 (portal)	65516 (portal)	40	41871	62213	1047	1555
8	Valjevo	7083 (portal)	5562 (portal)	8	5542	4912	693	614
9	Uzice	5766 (inf)	4075 (portal)	6	4448	3701	741	617
10	Cacak	5151 (portal)	3734 (portal)	5	3150	3791	630	758
11	Kragujevac	10038 (inf)	7940 (portal)	9	6518	8114	724	902
12	Pozarevac	5197 (inf)	4104 (inf)	5	3778	3502	756	700
13	Kraljevo	8728 (inf)	6788 (inf)	7	4218	5627	603	804
14	Nis	10114 (portal)	8959 (inf)	12	5645	7058	470	588
15	Leskovac	7150 (portal)	5433 (inf)	8	2936	4553	367	569
16	Zajecar	4139 (portal)	2990 (inf)	5	2844	2616	569	523
1	Commercial Appellate Court	13655(ON THE WEB-SITE OF THE HJC)		25	12401(ON THE WEB-SITE OF THE HJC)			

We collected data on the work performance of certain courts from a few available sources. In most cases information was available on the court portal, while in other situations it was necessary to compare data or find it in information directories. We found parts of the required data for the Commercial Appellate Court on the web-site of the HJC.

The collected data indicates that significant disparities exist in the burden and performance of judges in certain courts. Thus, the commercial court in Belgrade, in average, in the course of 2011, finalized 1,555 cases, and in Zajecar almost three times less – 523. In the year preceding that one, the court with the most finalized cases per judge was in Zrenjanin – 1,127 and the least in Leskovac – 367. These disparities are, obviously, a result of not only the efficiency of work in certain courts, but also the number (and probably the type) of cases which were adjudicated.

Basic courts

Table 15: Publicity of the work of basic courts

	City	Web-site	Information directory	Work report
1	First Primary Court in Belgrade	yes	yes	yes
2	Second Primary Court in Belgrade	yes	yes	no
3	Primary Court in Bor	no	no	no
4	Primary Court in Valjevo	yes	yes	no
5	Primary Court in Vranje	yes	yes	yes
6	Primary Court in Vrsac	yes	no	no
7	Primary Court in Zajecar	yes	yes	yes, but it does not exist for 2010-12
8	Primary Court in Zrenjanin	yes	yes, can be found on the left side of the starting page, in the vertical row of the folder	no
9	Primary Court in Jagodina	no, address exists but is not operational		
10	Primary Court in Kikinda	yes	yes	yes, only for 2010
11	Primary Court in Kosovska Mitrovica	no		
12	Primary Court in Kragujevac	yes	yes	no
13	Primary Court in Kraljevo	yes	yes	no, page exists but there is no work report
14	Primary Court in Krusevac	yes	no	no
15	Primary Court in Leskovac	yes	yes	yes
16	Primary Court in Loznica	yes	yes	
17	Primary Court in Negotin	yes	yes	
18	Primary Court in Nis	yes	yes	
19	Primary Court in Novi Pazar	no	no	no
20	Primary Court in Novi Sad	yes	yes	yes
21	Primary Court in Pancevo	yes, but the page is not operational	no	no
22	Primary Court in Paracin	yes	yes, but the link does not work	no
23	Primary Court in Pirot	yes	yes	yes
24	Primary Court in Pozarevac	yes	yes	no
25	Primary Court in	yes	yes	no

	Pozega			
26	Primary Court in Prijepolje	no	He	no
27	Primary Court in Prokuplje	no, a page actually exists, but is not operational	no	no
28	Primary Court in Smederevo	no, a page exists, but is not operational	no	no
29	Primary Court in Sombor	no	no	no
30	Primary Court in Sremska Mitrovica	yes	yes	yes
31	Primary Court in Subotica	yes	yes	no
32	Primary Court in Uzice	yes	yes	no
33	Primary Court in Cacak	yes	no	yes, but only the report from 2010
34	Primary Court in Sabac	yes	yes	yes

Among the courts there are many that do not have web-sites or have them, but they are not operational. At the time the research was conducted, this was the situation in the following cities:

- Bor
- Jagodina
- Kosovska Mitrovica
- Novi Pazar
- Pancevo
- Prijepolje
- Prokuplje
- Smederevo
- Sombor

Among the remaining 25 basic courts, that had an active web-site, four did not post information directories:

- Vrsac
- Krusevac
- Paracin
- Cacak

The situation is even worse regarding the publication of annual work reports. Among 25 courts that have web-sites, only the following courts posted these reports:

- Belgrade (First Primary Court)
- Vranje
- Kikinda (only for 2010)
- Leskovac
- Pirot
- Sremska Mitrovica

- Cacak (only for 2010)
- Sabac

Web-sites of basic courts, apart from rare exceptions, were not particularly informative regarding the number of cases resolved in the course of 2010 and 2011. We found such data only for the following:

- Belgrade (First Primary Court)
- Nis (only for 2011), total of 3288
- Novi Sad (only for 2010), total of 2784
- Pirot (only for 2011), total of 872
- Subotica (only for 2010), total of 2040
- Uzice (only for 2011), total of 855
- Cacak (only for 2010), total of 1538
- Sabac (only for 2010), total of 1225

In a few cases, on the web-sites, information was available on the number of new cases arrived in 2011 (Novi Sad – 7,044, Cacak – 2,361, Sabac – 2,747), and in some cases the number of cases in progress also – First Primary Court in Belgrade, Nis – 8,373, Pirot – 2,026, Subotica – 4,164, Uzice 1,858).
The situation is not much better regarding the number of judges working on certain cases. This data can be found on web-sites of courts from the following cities:

- Belgrade (Second Primary Court)
- Vranje
- Zrenjanin
- Kraljevo
- Leskovac
- Novi Sad
- Sremska Mitrovica

None of the web-sites have information regarding corruption cases specifically indicated, and on the web-site of the First Primary Court some information was posted related to a project on the development of integrity plans in the judiciary that was conducted a long time ago. Statistical data on performance was provided in rare cases – in Kikinda and Leskovac.

High courts

Table 16: Publicity of the work of high courts

	City	Web-site	Inf.	Source	Total 2010	New 2010	Cases 2011	New in 2011	Overview of the number of cases	Judges	Finalized in 2010	Finalized in 2011
1	BG	yes	yes	no					3512	79		1542
2	VA	yes	yes	no		90				8		96
3	VR	yes	yes	yes	125		116		234	8	121	116
4	ZA	no	yes	no						7		
5	ZR	yes	yes	no						8		
6	JA	yes	yes	yes	195	130	305	190		8	85	185

7	KM	no	no	no	195						85	
8	KG	yes	yes	no	379	219	395	195	6240	11	177	194
9	KV	yes	yes	yes	no	no	no	no	no			
10	KS	yes	yes	no	no	no	no	no	no	7		
11	LE	not working	no	no	no	no	no	no	no	no	N	N
12	NG	yes	yes	yes	97	57				8		
13	NI	yes	yes	yes	493		363	239			369	
14	NP	yes	yes	no	309					8	167	
15	NS	yes	yes	no	867					22	436	
16	PA	yes	yes	yes	287						166	
17	PI	yes	yes	no	49					8	38	
18	PO	no	yes	no	177			35	61	7	151	
19	PK	yes	yes	no	65					8	42	
20	SD	yes	yes	yes	246		101	74	216	8	131	138
21	SO	yes	yes	yes	202	122			196		131	
22	SM	no	yes	no	388					7	188	
23	SU	yes	yes	no	161					8	104	
24	UE	yes	not working	yes	140	114			210	8	143	
25	CA	yes	yes	yes	170					8	92	
26	SA	yes	yes	yes	307					8	116	

Collecting data on the publicity of the work of higher courts also did not give satisfactory results. Of 26 higher courts, the courts in the following cities do not have a web-site at all or it was not available at the time of research:

- Sremska Mitrovica
- Pozarevac
- Leskovac
- Kosovska Mitrovica
- Zajecar

The situation with the information directories is better. Namely, information directories were found for some of the higher courts that do not have their own web-sites (Sremska Mitrovica, Pozarevac), while in the case of the court in Uzice, a link exists for the information directory, however it is not operational. On the other hand, all higher courts that have web-sites have an information directory.

Work reports can be found less often on the web-sites. They have not been posted for courts from the following cities:

- Kosovska Mitrovica
- Kragujevac
- Krusevac
- Leskovac
- Novi Pazar
- Novi Sad
- Pirot

- Pozarevac
- Prokuplje
- Sremska Mitrovica
- Subotica

Data on the total number of cases that courts handled in 2010 was found for all higher courts apart from those for Kraljevo, Krusevac and Leskovac. In a few courts the number of new cases which arrived during that year is indicated. However, for 2011 the publication of the total number of cases was more an exception than a rule (data was published for four out of 26 courts). Similarly, an overview was published only for courts from Belgrade, Vranje, Kragujevac, Pozrevac, Smederevo, Sombor and Uzice.

During the two years of observation, higher courts had a relatively low number of judges (between 7 and 22, apart from the Belgrade court, that had 79). We could not find the data on the number of judges for Kosovska Mitrovica, Leskovac, Kraljevo, Nis, Pancevo and Sombor.

Finally, the number of finalized cases in 2010 was available for 18 courts, and the number of finalized cases in 2011 only for six (Belgrade, Valjevo, Vranje, Jagodina, Kragujevac, Smederevo).

Based on this incomplete data certain statistics can be drawn about the number of resolved cases by judge in the course of a year. The figures are low, between 5 and 27.

Table 17: Higher courts – data on the number of finalized cases per each judge in 2010 and 2011

	Superior court	2010	2011
1	Belgrade	no data	20
2	Valjevo	no data	12
3	Vranje	15	15
4	Zajecar	no data	no data
5	Zrenjanin	no data	no data
6	Jagodina	11	23
7	Kosovska Mitrovica	no data	no data
8	Kragujevac	16	18
9	Kraljevo	no data	no data
10	Krusevac	no data	no data
11	Leskovac		
12	Negotin	no data	no data
13	Nis	no data	no data
14	Novi Pazar	21	no data
15	Novi Sad	20	no data
16	Pancevo	no data	no data
17	Pirot	5	no data
18	Pozareac	22	no data
19	Prokuplje	5	no data
20	Smederevo	16	17
21	Sombor	no data	no data
22	Sremska Mitrovica	27	no data
23	Subotica	13	no data
24	Uzice	18	no data

25	Cacak	12	no data
26	Sabac	15	no data

Appellate Courts and SCC

The highest court in the country, the Cassation Court in Belgrade, as well as all four appellate courts (Belgrade, Kragujevac, Nis, Novi Sad) have their own web-sites and on them they have published information directories. Also, work reports are available on their web-sites, apart from the Belgrade Appellate Court. Regarding other data, only data on the number of judges is available on the web-sites. In the course of 2010 and 2011, 24 judges worked in the SCC and between 35 and 69 in the appellate courts.

Misdemeanour Courts

There are around 45 misdemeanour courts and one High Misdemeanour Court in Serbia. The situation regarding the publication of documents and information is the following:

Table 18: Misdemeanour Courts in the Republic of Serbia

	City	Web-site	Inf./ report	total 2011, 2010	Overview for 2011, 2010, 6 months 2012	judges	finalized 2011, 2010
1	Arandjelovac	no	web-site of SMC		5384	5	3563
2	Backa Palanka	no	web-site of SMC		6908	6	4842
3	Becej	no	web-site of SMC			5	
4	Belgrade	yes	yes			104	
5	Valjevo	no	web-site of SMC	13156	25620	21	16455
6	Vranje	no	web-site of SMC			8	
7	Vrsac	no	web-site of SMC	6901	9091	6	4771
8	Gornji Milanovac	no	on the portal		8937	5	3878
9	Zajecar	no	web-site of SMC			12	
10	Zrenjanin	no	web-site of SMC			14	
11	Jagodina	no	web-site of SMC			15	
12	Kikinda	yes	yes			6	
13	Kosovska Mitrovica	no	web-site of SMC			10	
14	Kragujevac	no	web-site of SMC			18	
15	Kraljevo	no	web-site of SMC		18609	12	10921
16	Krusevac	no	web-site of SMC	10312	18998	13	10975
17	Lazarevac	no	web-site of SMC			8	
18	Leskovac	no	web-site of SMC			13	
19	Loznica	no	web-site of SMC			11	
20	Mladenovac	no	web-site of SMC			5	
21	Negotin	no	web-site of SMC			4	
22	Nis	yes	has inf. and report		40129	27	23923
23	Novi Pazar	no	web-site of SMC			11	
24	Novi Sad	no	web-site of SMC	32841	78305	30	41419

25	Obrenovac	no	web-site of SMC			5	
26	Pancevo	yes	yes		18231	15	
27	Paracin	no	web-site of SMC		7464	4	4133
28	Pirot	no	web-site of SMC		4704	6	3966
29	Pozarevac	yes	yes	10183	18607	14	11818
30	Pozega	no	web-site of SMC			10	
31	Presevo	no	web-site of SMC			2	
32	Prijepolje	no	web-site of SMC			6	
33	Prokuplje	no	web-site of SMC			7	
34	Raska	no	web-site of SMC			3	
35	Ruma	no	web-site of SMC	13739	24309	15	12940
36	Sremska Mitrovica	no	web-site of SMC			6	
37	Senta	yes	yes, not legal			6	
38	Sjenica	no	web-site of SMC			2	
39	Smederevo	no	web-site of SMC			13	
40	Subotica	no	web-site of SMC		unreadable	11	
41	Sombor	no	web-site of SMC			8	
42	Trstenik	no	web-site of SMC			3	
43	Uzice	no	web-site of SMC / rep. in inf.	6816	12717	8	7731
44	Cacak	no	web-site of SMC			14	
45	Sabac	no	web-site of SMC			16	
1	Higher misdemeanour court	yes	yes			24	

As shown in the table, misdemeanour courts mostly do not have web-sites. It is much easier to list the courts that have web-sites, then those that do not: Belgrade, Kikinda, Nis, Pancevo, Pozarevac, Senta and the High Misdemeanour Court. However, this shortcoming is mostly overcome in most cases with the fact that the key elements – i.e. information directories, are posted on the web-site of the High Misdemeanour Court.

Only in two cases, we found work reports on the internet - for courts from Uzice and Nis. Of the other data we were looking for, it was easiest to find data regarding the number of judges. On the other hand, a consistent practice does not exist for posting data on the number of cases, whether for finalized or proceedings still in progress. For some courts such data is not posted, for others data can be found for 2010, and for some data for 2011.

Public Prosecutions

Of 34 of the primary public prosecutions, most of them have web-sites. Exceptions are the prosecutions from the following cities:

- Novi Sad
- Pozarevac
- Nis

The situation is only slightly better regarding the publication of information directories. These documents are, whether on their own, whether on someone else's web-site, posted only for the primary prosecutions from Sremska Mitrovica, Pozarevac, Kragujevac and Nis. Other

statistical data that was sought was not found on web-sites, apart from the number of public prosecutors and deputy public prosecutors in some cases (Novi Sad, Pozarevac and Nis), where the figures range from 9 to 17.

A slightly better situation can be found for the aspect of the work of the higher public prosecutions. Prosecutions from the following cities have web-sites:

- Novi Sad
- Nis
- Vranje

From a total of 26 SPP, five of them posted their information directories, particularly prosecutions from Subotica, Novi Sad, Sremska Mitrovica, Nis and Vranje. We found annual work reports on the web-site of the SPP from Vranje and data on the number of received criminal allegations and number of public prosecutors only in the case of the SPP from Nis and Vranje – in Nis 2,706 per 10 public prosecutors and deputy public prosecutors, and in Vranje 233 per a total of 7 public prosecutors and deputy public prosecutors.

Of a total of four appellate public prosecutions (Novi Sad, Belgrade, Nis, Kragujevac), two had their own web-site (Novi Sad and Nis) and two posted their information directory (Nis, Kragujevac). Data on the current number of cases in progress was available for Nis (5973), and data for the number of public prosecutors for Nis and Kragujevac (13 each).

The Quality of the Information Directory

For a part of the judiciary institutions an additional analysis for information directories was conducted, especially regarding the fact whether they are updated and a deviation from the stipulated rules was established for all of them, which in a large majority of cases is significant (according to the Instructions, updating shall be conducted at least once a month). In the sample there were a total of fifteen courts of general jurisdiction, commercial and misdemeanour courts. Even though the sample was limited, this clearly indicates that information directories, even when they are published, cannot be considered an entirely reliable source of information of the work of judiciary institutions.

The institutions for which information directories were not updated between 3 and 6 months:
Appellate Court in Novi Sad
Misdemeanour Court in Pancevo

The institutions for which information directories were not updated between 7 and 12 months:
Primary Court in Kragujevac
Primary Court in Nis
Primary Court in Pozarevac
Primary Court in Subotica
Magitrates Court in Belgrade
Commercial Court in Belgrade
Superior Court in Kragujevac
Misdemeanour Court in Gornji Milanovac
Misdemeanour Court in Kikinda

Misdemeanour Court in Nis

The institutions for which information directories were not updated longer than 12 months:
Primary Court in Novi Sad
Commercial Court in Pancevo
Superior Court in Nis

Data on web-sites of other institutions

On the web-site of the **Ministry of Justice** (since 2012 of Justice and State Administration), an information directory was posted, as well as a work report. There is a special section titled "The Fight against Corruption". However, within this section of the web-site only the text of the National Strategy for Fighting Corruption and a presentation from 2008 which presents measures for the realization of the GRECO recommendations and basic norms of the Law on the Anti-corruption Agency are posted.

On the web-site of the **High Judicial Council,** an information directory is posted, as well as work reports for 2010 and 2011. Also, a list of judges by courts in Serbia is posted along with work reports for all courts in the Republic for 2010.

On the web-site of the **State Prosecutors Council** an information directory is posted, whilst we did not manage to find other data that was significant for research.

Publicity of Work - Main Conclusions and Recommendations

Most of the judicial institutions are not active enough in terms of proactive disclosure of information about their work. This is especially troubling in situations **where legal obligations are not respected**, such as publishing a directory. It is obvious, except for the liability for failure to fulfill legal obligations, that it is necessary to do something concerning cooperation and training. For example, it is obvious that the problem of **preparing the directories could be mostly solved if a standard form for preparing it existed and was the same for all the courts or prosecutor's offices of the same rank**, and then could be further supplemented by specific information for each institution. Also, for this work to be done properly, the courts and prosecutors who are senior in rank should be taking the lead.

The issue of web-sites has not been systematically addressed. Since there are **wide variations according to the type of documents and other information that can be found and downloaded from the presentations**, as well as the practice of updating data, it is obviously **necessary to edit this material in acts of the HJC and SPC**, through recommendations or under the authority of relevant regulations that would be made mandatory.

The information published on the website of the courts and prosecutors' offices may serve in some cases as a basis for further research and conclusions. However, **because the statistics are not grouped in a way that allows comparison by theme to which some proceedings are related to**, it is not possible to make clear conclusions regarding the impact of certain institutions in the fighting corruption. There is no practice of publishing information on the measures taken in the field of preventing corruption (e.g. enforcement of the anti-corruption strategy, introduction of integrity plans), except sporadically. The judicial review portal does not provide data on groups of cases, **except for commercial courts**. Also, the methodology by which the police, prosecutors and courts keep statistics is not unique. Published **decisions on the appointment of judges and prosecutors do not include the reasoning according to which the public could judge about the application of the criteria**. There is no practice of **publishing information about complaints and proceedings for the accountability of judges and prosecutors** for violation of regulations or ethical codes. There is no practice of **publishing the decisions of the prosecution and courts on the Internet**, even in cases that have aroused great interest among the public.

For all these reasons it is necessary to **standardize the method of keeping the records of all the cases, allow proceedings of judicial institutions to be searched by particular areas of interest, that govern the disclosure of information on performance evaluation of judges and prosecutors, during their election and periodic tests, procedures in cases of determining responsibility and practice of the prosecution of corruption cases**. Special attention needs to be paid to these issues and in the process of preparing the **new Judicial Reform Strategy and the Anti-corruption Strategy,** that are in progress, **introducing transparency** as one of the key principles of reform.

Partial information about the workload of individual institutions have shown wide disparities, both in areas that courts/prosecution cover as well as judicial institutions by level (primary/superior/appellate), which further highlights the need to examine parameters that serve as grounds for determining the actual number of judges and prosecutors.

Judiciary and the Prevention of Corruption: Integrity Plans and the National Strategy for Fighting Corruption

Judiciary authorities indisputably have the most significant role in fighting corruption from the repressive aspect, however they also have significant tasks in the area of preventing corruption, primarily on preventing corruption in their own ranks. Regulations lay down two strong mechanisms for achieving this role of the judiciary system – through introducing integrity plans and through enforcing the obligations laid down in the National Strategy for Fighting Corruption and Action Plan for Enforcing the Strategy.

By analysing the operation of the judiciary authorities in these two areas, one gets the impression that judiciary mostly seriously took the obligation regarding the preparation of integrity plans, a significant number of authorities initiated the preparation of these plans in a timely fashion, and after the extended deadline[70] it will be possible to give a final assessment of the scope in which this obligation was met, but also of the quality of the performed work[71]. On the other hand, the Strategy does not have follow-up mechanisms of accountability for enforcing or rather not enforcing decisions and one gets the impression that many authorities, amongst who we count judiciary authorities as well, do not have the adequate attitude towards obligations laid down by law. They do not respect even the minimal legal obligation of reporting on a regular basis, and from the reports obtained upon request of the Agency it cannot be concluded that judiciary authorities are dedicated in enforcing the recommendations of the Strategy and the measures indicated in the Action Plan[72].

Integrity Plans

Legal obligations

The Law on the Anti-corruption Agency lays down the obligation for state authorities, organizations, authorities of the autonomous provinces, local self-governments, public services and public enterprises to adopt their integrity plans.

The law lays down that "an integrity plan contains legal and practical measures with which it prevents and removes the possibility for corruption to occur and develop, especially:

[70] The deadline for preparing the integrity plans was extended from the 31st of December of 2012 to the 31st of March of 2013

[71] The Anti-corruption Agency shall not perform individual evaluations of the integrity plans, but rather will conduct an analysis by the systems, in order to have insight of potential existence of system authorities. Nevertheless, as stated by the Agency, a certain number of individual plans shall be analyzed, based on random sampling and the failures will be pointed out to these authorities

[72] It is important to emphasize that the chapter of the Strategy in which the recommendations are indicated for the judiciary, these recommendations also include the police, and that related to this fact other state authorities – the Ministry of Justice, the Government and the National Assembly are responsible for enforcing a certain numbers of measures.

- assessment of the exposure of the institution to corruption;
- data on the person responsible for the integrity plan;
- description of the work process, manner of decision-making and determining the tasks that are particularly susceptible to corruption;
- preventive measures for reducing corruption;
- other parts of the plan defined in the guidelines[73].

The integrity plan is passed by the state authorities, authorities of territorial autonomy and local self-governments, public services and public enterprises. The Agency prepares and publishes an assessment of the integrity plans, or rather guidelines for preparing and enforcing the integrity plan, with deadlines.

State authorities, authorities of territorial autonomy and local self-governments, public services and public enterprises pass integrity plans in accordance with the guidelines and inform the Agency on this. The Agency monitors the adoption and enforcement of integrity plans[74].

The Agency prepared and published Guidelines for Preparing and Enforcing Integrity Plans ("Official Journal RS", 80/10) in October of 2010. The Guidelines define the structure of the integrity plan, the manner of preparing it by stages, performing certain tasks, deadlines for finalization, manner of monitoring the preparation and manner of enforcing integrity plans. The preparation of integrity plans for the first time introduces in a systematic manner one of the mechanisms for good management in the public sector in the Republic of Serbia.

The integrity plan represents a preventive anti-corruption measure. This is a document that is a result of self-assessment of the susceptibility of an institution to the risks for corruption to occur or develop, as well as the exposure to ethically and professionally inadmissible actions. The goal of the adoption of the integrity plan is strengthening the integrity of the institution, which includes uprightness, professionalism, ethics, institutional entirety, as well as the manner of acting in accordance with moral values.

The goal of the integrity plan is to ensure the efficient and effective operation of institutions. This can be achieved through simplification of complicated or repeal of unnecessary procedures, controlling and reducing discretionary authorities of managers, strengthening the accountability of employees, increasing the transparency in work, strengthening professionalism and ethics, then through training, establishing standards, introducing an efficient system of internal control and eliminating inefficient practice and inapplicable regulations.

In order for these procedures to be enforced, it is necessary to perform an analysis for preparing an integrity plan, what are, for example, the complicated and unnecessary procedures, what are the discretionary authorities of managers and what are the consequences, in which areas is it necessary to deliver training for employees and similar.

The aim of the integrity plan is not resolving individual cases of corruption, but rather the establishment of mechanisms that will prevent and remove circumstances for corruption to occur, unethical and unprofessional procedures in all areas of operation of the institution.

[73] Law on the Anti-corruption Agency, Article 58
[74] Law on the Anti-corruption Agency, Article 59

A special aim of the integrity plan is raising awareness of officials and employees of the damaging effects of corruption, in the direction of achieving "zero tolerance for corruption".

Through the integrity plan the institution conducts an assessment of the quality of regulations, staff and procedures in practices in all areas of operation (management of the institution, finances, staff, public procurement, information...). An important characteristic of the integrity plan is that it enables the employees in the institutions to participate in its preparation and enforcement, due to the fact that employees know the best how the institution they work in operates. With their knowledge and experience they can identify and assess the risks for corruption and other irregularities to occur and propose adequate measures and activities for their reduction, or rather removal in the best way.

The Anti-corruption Agency prepared drafts, or rather models of integrity plans, adapted to the different types of institutions. The content of the draft integrity plans were prepared based on data, proposals and suggestions that members of working groups, formed with a goal to prepare a draft based on the analysis of data obtained through research for the verification and amendment of the contents of the draft integrity plan submitted.

During the preparation of the draft integrity plans working groups made up of representatives of different state institutions (a total of 109 members) participated, sorted out into 14 systems, amongst which was the judiciary system[75].

Guidelines

Integrity plans are treated as a project that is enforced in several stages. Prior to the project starting at all, a collection of internal rules should be made, an organogram (a graphic chart of the internal organization) and job descriptions inside the institution of described jobs.

The main stages are the following:

1. Preparation
2. Stage of collecting materials
3. Stage of assessing existing preventive mechanisms
4. Conclusion of giving proposals for enhancement

At the beginning the management approves the development of the plan, informs the employed staff, determines the leader of the team and person for supervising the enforcement of the project. The project team leader, in cooperation with the project supervisor prepares the program for developing an integrity plan, in which the key tasks and persons for performing these tasks are determined, the necessary documentation is collected etc. The management of the organization then adopts a program and informs the entire staff about this.

Within the scope of the second stage certain activities inside the organization are examined,

[75] The systems are: 1) political system, 2) judiciary system, 3) police system, 4) system of state administration and local self-government, 5) defence system, 6) financial system, 7) system of economy and agriculture, 8) system of social policy, 9) health system, 10) system of education and science, 11) system of culture and sports, 12) system of environment and infrastructure, 13) system of data protection, human rights and public interest and 14) system of public enterprises

such as: how information is handled (keeping sensitive data, keeping documentation); the manner of using financial means (monitoring budget processes, monitoring payments); how property is handled (public procurement, using the telephone, automobiles etc., maintenance of office space etc.), collecting bookkeeping documents, debt collection, contracts and other documentation regarding procurements, allocation of subsidies, issuing licences and concessions, manner of performing supervisory duties etc.

Also, the resistance of the system to irregularities, including the manner of applying regulations, manner of employment, training of staff, job description, formal and informal authorities and supervision of its usage, possibility of advice at the work place, knowledge of the integrity problem, work satisfaction, awareness of corruption, question of accepting gifts related to work positions etc. is examined.

In the stage of assessing preventive mechanisms a member of the project team reviews the internal rules of the organization and examines to what extent the employees actually know it, interviews the person in charge of human resources and employment. The team leader invites the other employees to discuss these topics. All employees or their sample fill out an anonymous questionnaire, in which the issue of sensitive duties is treated specifically.

Enhancements are proposed in the conclusion stage. They can refer to the amendment of regulations, amendment of the manner of work in the institution, managing human resources and other issues. Deadlines for enforcing measures are proposed together with these enhancements. After these proposals are finally formulated, the project team dismisses the management of the organization and the person in charge of enforcing the plan takes over the responsibility.

Working on the Plans

Guidelines for preparing and introducing integrity plans lay down a deadline for the development of these plans for 13 months from the date the draft plan is adopted, published on the web-site of the Agency. The preliminary deadline was the 31st of December of 2012, however, at the end of the year, the Agency extended the deadline to the 31st of March of 2013. An explanation was provided that 2012 was an election year due to which work was slowed down in a high number of authorities. In the judiciary work on the plans was being done at a fairly good tempo. According to data from October of 2012 the decision on starting work on the preparation was passed by 119 authorities of the total of 238 in the judiciary system[76].

According to information submitted to the Agency at the end of 2012, four of the highest judiciary authorities prepared integrity plans – the High Judicial Council, the Supreme Court of Cassation, the State Prosecutors' Council and the Republic Public Prosecutor's Office[77]. However, by the end of January 2013, only the RPP and SPC submitted their integrity plans to the Agency.

[76] The system includes courts, prosecutions, line ministry and directorates and administrations, judicial academy, criminal detention centers, prisons and the prison hospital

[77] This concerns the reporting on the enforcement of the national Strategy for Fighting Corruption, within which one question was related to the finalization of the integrity plan

SCC stated that they worked in accordance with the Guidelines the Agency developed and that the process was divided into three stages. In March of 2012 the President of the Court passed a decision on the initiation of the work and appointed the working group, at the end of March the program of development was adopted, all the employees were informed on the preparation of the plan. During the second stage - the assessment of the exposure to corruption – all employees were enabled to fill out a questionnaire on the web-site of the Agency, in accordance with the guidelines provided by the working group. Computers and expert assistance were provided and everyone got codes for accessing the electronic version of the questionnaire. Until the 30th of April more than 80 per cent of the employees filled out the questionnaire. The Agency statistically processed the results and returned them to the working group that then used them as a framework for assessment. In December of 2012 a conclusive report was completed, an integrity plan was adopted and a responsible person was appointed for enforcing the plan.

The High Judiciary Council only briefly reported that the recommendation from the Strategy for adopting an integrity plan was carried out with the strict application of law.

The working group of the SPC prepared a plan on the 3rd of December of 2012 in accordance with the Guidelines and submitted it to the Agency on the 21st of December of 2012. In the report of the SPC it is stated that the working group was formed on the 6th of March, on the 23rd of April a meeting was held and the employees were informed of the start of the preparation and filling out of the questionnaire. Then there were six more meetings, questionnaires were filled out in the foreseen time frame, and during the risk assessment the "results of the questionnaire that were received orally from the Agency" were taken into consideration, it was stated in the report. Employees from various fields of work of the SPC were included in the work.

The SPC noticed in the integrity plan numerous risk points, or rather risks for corruption to occur and develop.

The Republic Public Prosecutor's Office reported in detail on the preparation of the integrity plan. In the first stage – the preparatory stage, the Republic Public Prosecutor, as it was stated, passed a decision on the 17th of January of 2012 on developing an integrity plan and appointed a working group. The working group started preparing a program for developing and enforcing the integrity plan, and informing the employees of decision for preparing an integrity plan. The employees filled out the questionnaire anonymously through the internet in the second stage. After obtaining the results, the employees were informed of the risks of jeopardizing the integrity and the development of the integrity plan itself. In the third stage – October, November and December of 2012 the working group started developing the electronic version of the integrity plan, established the plan of measures for enhancement of integrity and submitted them to the Republic Public Prosecutor for adoption. The Republic Public Prosecutor passed a decision on the 26th of December of 2012 to adopt the integrity plan and dismiss the working group. The person responsible for enforcing the integrity plan was determined.

The RPP, however, in the integrity plan assessed that there are no risks for corruption to occur.

Even with such detailed reports on the course of work on integrity plans, there is still concern whether judicial authorities, as any other authority, during the preparation of integrity plans

were aware that they were working on something that is not an obligation to the Agency, but rather a document that they need that will serve them as an institution to establish quality management and integrity of the institution. From the report of the SCC, SPC and RPP on work on the plans it is apparent that the form was strictly respected, that everyone wanted to complete the work on time. A special indicator was the estimate of the RPP that no risks exist for the occurrence of corruption. Whether this is a realistic assessment or was the integrity plan prepared only to fulfil the form, the control of enforcement will show.

In the Anti-corruption Agency they emphasize that the questionnaires and assistance of the Agency in processing the answers were just a small part, a scope, for preparing the plans, or rather technical assistance in order for working groups not to lose time, and that the interviews with the management and staff inside the authorities that are most competent to recognize "bottlenecks", potential hubs of corruption in their immediate surroundings are crucial for the plans.

Authorities shall not receive positive or negative grades for completing integrity plans on time. After the 31st of March the Agency will assess the systematic problems based on integrity plans of institutions of 14 systems, whilst the individual plans will be analysed on a certain sample[78]. The degree of the application of measures and activities for enhancing integrity of those who noticed risks, but also the objectivity of the plans of authorities who concluded no risks exist will be examined.

[78] The Law on the Anti-corruption Agency provides that the Agency monitors the adoption and enforcement of integrity plans, while the guidelines for preparing the plans lay down that supervision includes checking the quality and objectivity of the adopted plan and checking the application of measures and activities for enhancing integrity.

National Strategy for Fight Against Corruption

Obligations under the Strategy and Action Plan

The judiciary system, together with the police, is one of the seven systems and areas encompassed in the National Strategy for Fighting Corruption.

The Strategy was adopted in the National Assembly of Serbia on the 8th of December of 2005. The decision on the adoption requires the Government to pass an Action Plan for Enforcing the Strategy, to ensure means for its application, ensure adoption of sector action plans for fighting corruption and propose adoption of laws on an autonomous and independent anti-corruption body. Also, with this decision all state authorities foreseen in the Strategy have the duty to directly cooperate in its development, as well as in the preparation and enforcement of the Action Plan and sector action plans for fighting corruption, whilst the autonomous and independent anti-corruption body has the responsibility of informing the National Assembly of Serbia on the enforcement of the decision, at least once a year.

The Action Plan for the application of the Strategy was adopted by a decision of the Government of Serbia at the end of 2006. Measures from the Strategy were enumerated in it, certain activities were developed for measures and the responsible bodies for enforcing the measures and activities, with deadlines that were mostly laid down for 2007 and 2008. The exceptions were measures that were laid down as "permanent tasks"[79]. How unrealistic the deadlines for the Action Plan really were is shown in the fact that 2007 was the deadline for preparing integrity plans, while its application and control of enforcement was laid down by law as a permanent task.

"Independence, impartiality, efficiency and accountability in judiciary institutions and the police are a requirement for establishing a legal state and its strengthening is the primary task. The existing regulations are directed towards the prevention and sanctioning of corruptive behavior, however corruption still exists. This is indicated by public opinion, events that show with probability that this is a case of corruption and a low number of revealed and prosecuted criminal offenses of corruption of the staff working in the judiciary and the police" is stated in the Strategy.

The Strategy (and the Action plan) lay down 48 recommendations for this system, among which are
- Legally defining corruption;
- Introducing accountability of legal entities for criminal offenses;
- Introducing special registers for legal entities convicted of criminal offenses and forbidding them to participate in public procurements;
- Establishing clear and unique criteria for proposing and election of judges and holders of public prosecution duties (hereinafter: "holders of judiciary duties") and their dismissal;
- Establishing special departments of public prosecution for criminal prosecution of serious cases of corruption;
- Introducing disciplinary responsibility for holders of judiciary duties;

[79] In the case of the judiciary these are recommendations such as forbidding holders of judicial duties to be politically active or ensuring adequate salaries and working conditions or specialist training and similar

- Introducing preventive measures and control mechanisms for preventing conflict of interest of holders of judiciary duties;
- Forbidding holders of judiciary duties to be politically active;
- Ensuring adequate salaries and work conditions for holders of judiciary duties;
- Adopting integrity plans in courts and prosecutions;
- Monitoring complaints of the work of holders of judiciary duties, especially for corruption cases;
- Passing a codex of behavior for holders of judiciary duties, with mandatory regulation of forbidding corruptive behavior and ensuring its effectiveness
- Specialist training for holders of judiciary duties;
- Introducing periodical mandatory analysis of the authorities that conduct revelation, prosecution and adjudication;
- Establishing the permanence of the positions of holders of judiciary duties;
- Mandatory periodical evaluation of the work of holders of judiciary duties based on previously determined criteria;
- Independence of the judiciary budget;
- Acceleration of trial proceedings;
- Mandatory publishing of final court decisions for criminal offenses with elements of corruption and organized crime;
- Ensuring the efficiency of the execution of court verdicts;
- Suppressing corruption inside the judicial administration;
- Enabling the holders of judiciary duties to conduct pre-trial criminal proceedings;
- Mandatory follow-up control of decisions of the prosecution in cases of not prosecuting or suspending proceedings for criminal offenses with elements of corruption, or in cases of delaying criminal proceedings;
- Eliminating influence of political structures to pre-trials of criminal proceedings;
- Amendments to the Code on Criminal Procedure with an aim of revealing and prosecuting criminal offenses with elements of corruption;
- Introducing more efficient investigations, with amendments to the authority of investigative judges and prosecutors;
- Protection of persons reporting corruption and witnesses;
- Precisely defining by law the application of special investigative measures;
- Broadening the use of special investigative measures to criminal offenses with elements of corruption;
- Amendments to procedural regulations with the aim to prevent their abuse by parties participating in proceedings;
- Strict enforcement of regulations on mandatory seizure of proceeds originating from corruption;
- Transferring the burden of proof to the accused for seizure of material gain;
- Forming a special organizational unit for maintaining the temporarily seized, frozen or confiscated material gains;
- Preparing instructions on handling temporarily seized, frozen or confiscated material gains;
- Introducing limits for persons finally convicted for criminal offenses with elements of corruption;
- Analysis and amendments of regulations on the Republic Public Attorney’s Office;
- Strict enforcement of the codex on professional ethics of lawyers and ensuring its effectiveness;
- Forming independent and specialized institutions for expert witnessing in criminal proceedings;

The rest of the measures concern the police[80].

The Law on the Anti-corruption Agency provides that the Agency monitors the enforcement of the Strategy and Action Plan and sector action plans. Persons responsible for tasks laid down in the Strategy, Action Plan and sector plans have the duty to submit quarterly reports on the enforcement to the Agency.

In the first analysis of the enforcement of the Strategy, that the Agency published with the annual work report for 2010 (in March of 2011) it is indicated that in the area of the judiciary system and police, of 48 recommendations, only 14 were fulfilled, 22 were partially fulfilled, six were not fulfilled, while six are being carried out as permanent tasks. These 48 recommendations are specified through 134 activities of which 40 were realized until the end of 2010, 16 were partially realized, 26 were not realized, 24 are being enforced as permanent tasks, while there was no data on the realization of the remaining 28.

Due to the inability to collect data on the enforcement of activities, as well as the fact that an exceptionally low number of authorities reported on the enforcement of measures[81], in 2011 the Agency amended the methodology of reporting – a list was made with specific questions for persons responsible for these duties. The questions were related to the recommendations in the Strategy which according to the assessment of the previous report had not been fulfilled, to parts partially fulfilled from the recommendations, as well as to topics for which in the scope of the report from the previous year data was not found.

It is expected that this way of reporting will be facilitated for the responsible persons because the uncertainties are removed to a certain extent in regards to the meaning of too generally formulated tasks, while the methodology should facilitate the work of the Agency as well, due to the fact that the answers to these questions are expected to be focused and able to provide a solid basis for analysis of fulfilment of strategic documentation.

The criteria according to which the Agency determines the obligations of the responsible persons to whom these questions are directed, was the assessment that certain public authorities or groups of public authorities, due to their competences, can provide answers of essential importance for analysing the fulfilment.

On the other hand, the quarterly obligation on reporting in the first nine months of 2011 was continued on the basis of old questionnaires only in a few public authorities[82] (the City of Belgrade, City Municipality Vračar, City Municipality Zvezdara, Municipality Surdulica, National Bank of Serbia, the Ministry of Finance and the Mačvanski Administrative County, while the Ministry of Internal Affairs submitted a report on enforcing sector action plans).

Analysis of Enforcement for 2011

[80] The Strategy and Action Plan are available at http://www.acas.rs/sr_cir/zakoni-i-drugi-propisi/strategija-i-akcioni-plan.html

[81] Until February of 2011, 72 authorities reported of a few thousand in total.

[82] Amendments to the Law on the Anti-corruption Agency in July of 2010 the obligation of state authorities was established based on the Strategy, Action Plan and sector action plans to inform the Agency on a quarterly basis of its enforcement.

In the report for enforcing the Strategy published in March of 2012 (with the annual report of the Agency for 2011) in the part dedicated to the judiciary system and police it is stated that of the 24 recommendations examined in the system of the judiciary system and police, seven had been realized continuously (29%), ten were partially realized, however in these areas there is room for additional improvements (42%), four recommendations were not fulfilled (17%), while the Agency did not manage to obtain data for analysis for three recommendations (12%).

The Republic Public Prosecutor's Office reported that in the course of 2011, as well as in the previous year, they did not register any case of influence to the pre-trial criminal proceedings, due to which a system for resolving complaints of pressure has not been established[83].

The process of the judiciary reform has not been finalized yet and some shortcomings still have not been abolished which were indicated in the previous period several times both in domestic and international reports and analysis. In the course of 2011 the analysis of the work of the courts and public prosecutions was conducted, and according to the report of the Ministry of Justice, they show a higher efficiency compared to the previous period. With an aim to enhance efficiency of the work of the judiciary in 2011 new laws were adopted, the Civil Procedure Code, Criminal Procedure Code, Law on Enforcement and Security which introduces a private bailiff and the Law on the Notary which is expected to unburden the work of the courts. In December of 2011 a draft Law on Mediation entered parliamentary procedure.

Serbia still faces a high number of delayed court cases, and many of them are related to the enforcement of civil and criminal decisions. On the other hand, in regards to the rationalization of networks of courts, significant differences in the burden of caseloads still exist in various courts, and there is an especially large caseload in the courts in Belgrade. Partial protection for a certain circle of people who report corruption is ensured in the Regulation on protecting persons who report corruption that the Anti-corruption Agency passed in July of 2011. However, one should bear in mind that with the deficiency of substantive provisions, encompassed in general sources of law, that would lay down the nature, contents and scope of rights that are being protected, the types and ways of revealing in the public interest, as well as the content, character and type of corresponding protection, the Regulation could mostly cover the regulation of the tasks of the Agency in situations when a certain person would file a complaint for suspicion of corruption, and not only the protection itself. In this way the need for ensuring an effective legal regime of protecting persons who report suspicion of corruption still remains equally present. The Ethics Codex for Prosecutors was still not adopted even in 2011, it is stated in the analysis[84].

[83] The Report of the European Commission was published that same year according to which the constitutional and legal framework still leaves room for unjustifiable political influence on the judiciary, and the prosecution is sensitive to political influence due to its hierarchical organization and existing practice of issuing oral instructions, regardless of the legal obligation to issue written instructions.

[84] http://www.acas.rs/images/stories/Izvestaj_o_sprovodjenju_Strategije_i_Akcionog_plana.pdf

Reports for 2012

The practice of not reporting, or rather not fulfilling obligations of submitting quarterly reports, was continued in 2012 also[85]. The authorities of the judiciary system fit into the overall picture and data on the enforcement of recommendations obtained based on the questionnaire the Agency provided to certain courts, prosecutions, HJC, SPC, Ministry of Justice.

Therefore, the High Judicial Council informed the Agency on the 27th of December of 2012 that, regarding the issue of participating in the work of international institutions and initiatives in the area of fighting corruption, it advocated the swift ratification of international instruments, that it followed the measures that international institutions applied and sent judges to international seminars on fighting corruption (without indicating the number of judges and additional data), however the problem for the realization of this recommendation was the lack of money for training.

The HJC reported that it had answered all the requests of the anti-corruption body on time, also not indicating data on the requests and answers. Even though the HJC (as well as all other authorities in Serbia) did not respect the obligation on quarterly reporting on the enforcement of the Strategy, in the answer to the question whether it respected the obligation to periodically submit reports on the enforcement of anti-corruption measures it is stated that "the HJC answered all the requests that were submitted to it".

The HJC reported that the Ethics Codex was adopted in December of 2010, and that four proceedings were held for disciplinary misdemeanors judges had committed, of which three were for violating the Ethics Codex, in 2012.

The HJC stated, answering the question on enforcing recommendations on accelerating court proceedings, that it conducts strict control of the courts and their efficiency, and that old cases are set as a priority, that verdicts are being passed within the deadlines, and that this recommendation has been fulfilled. As the only problem regarding this measure, the HJC stated insufficient money for holding seminars and professional training and inadequate equipment in the courts.

The acceleration of court proceedings, as a recommendation within which measures are foreseen in the competence of the HJC "prepare instruction deadlines for resolving less demanding cases" and "strict enforcement of the control of the courts and their efficiency" and it is foreseen as a permanent task of the HJC. Such an answer on the fulfilment of the recommendation is proof of the HJC not recognizing its own role in enforcing the Strategy.

The Supreme Court of Cassation replied to the Agency on the 25th of December of 2012 that it had not participated in 2012 in the work of international institutions or initiatives in the area of fighting corruption, however it permanently follows their work and representatives of the SCC were included in the working group of the Ministry of Justice for the amendments of the CC regarding the report from the third evaluation of GRECO[86].

[85] The Strategy and Action Plan contain numerous recommendations or rather measures that all courts must fulfil – i.e. suppression of corruption inside the court administration

[86] The third round of evaluation concerned the incrimination of corruption and financing parties

Answering the question on enforcing the recommendation on the "analysis of the authorities for revealing, prosecuting and adjudicating" the SCC said that this court does not conduct the analysis of the work of the authorities for revealing and prosecuting, however it does prepare an annual report on the work of the SCC and all lower courts, analyzes the number of cases in progress and the resolved cases, particularly the old cases and the detention cases. The analysis shows, it is stated in the answer, that the program of resolving old cases, of emergency cases being handled urgently, is in progress, however there is room for enhancing efficiency.

Such an answer of the SCC seems contradictory to the conclusion of the HJC that the recommendation has been fulfilled on the enhancement of court proceedings.

The SCC did, otherwise, in its answer on the enforcement of the Strategy state that the most significant contribution was the updated and efficient performance of competences in handling cases of ancillary legal means, among which verdicts for corruption offenses can be found. The HJC, as it has been stated, does not have proposals for amending the recommendations, however it will actively participate in adopting a new Strategy and Action Plan.

The SPC, in answering the question what it is doing in order to fulfil the obligations from the Action Plan, whether meetings are being held with the aim of planning to fulfil the obligations from the Action Plan and in which way the employees are familiarized with the obligations of the institution foreseen in the Action Plan, on the 28th of December of 2012 it reported to the Agency that it "undertook and is undertaking regular activities for fulfilling the obligations from the Strategy", that at the "sessions of the SPC and collegium of the Administrative office of the SPC took into consideration and processed and enforced the obligations from the competence of the SPC" and that "each employee received a copy of the Strategy and Action Plan".

The claim of each employee receiving the document from 2005 and 2006 is proof that the questions of the Agency are only answered formally and to what extent the authorities do not recognize their role, but also to what extent they also do not know their obligations.

The SPC, namely, answered the question whether it has problems in the process of fulfilling obligations for regular reporting on the application of the Strategy and Action Plan by stating that it had not, up to now, encountered problems in this area. The SPC did not, nevertheless, encounter the obligation of regular quarterly reporting, laid down by law, so it did not have any problems.

Further, from the answers to the question on fulfilling obligations from the Strategy it can be concluded that the enforcement of the obligations was mostly a regular topic at the sessions of the SPC and the Administrative office of the SPC, and then further from a series of responses regarding concrete tasks, that were put before the SPC, it is apparent that nothing has been realized:

The criteria for electing and dismissing the holders of judiciary duties, have not been adopted – SPC reported that at the session on the 9th of July it was decided to form a working group for rating the work of the PP and DPP, that seven meetings were held in cooperation with the OSCE, that the final draft of the Regulation was passed and that there will be a public debate in January of 2013.

It was only in July of 2012 that the Regulation on the disciplinary procedure and disciplinary responsibility was adopted, and the procedure of selecting the disciplinary authorities is still in progress.

The system of periodic control of the fulfilment of obligations of written reporting of competent authorities on the activities that can be incompatible with the positions of the holders of judiciary duties has not been established because "by law the PP is a duty incompatible with other duties", and the "SPC has not been informed up to now of any conflicts of interests".

The Ethics Codex for Prosecutors has not been adopted, however a draft has been prepared and sent to the Association of Public Prosecutors, and it is expected to be adopted in the first quarter of 2013.

The RPP reported in 2011 to the Agency's request within the deadline laid down by law, and indicating that eight of the requests that were answered (received the request on the 1st of February, replied of the 4th of February in the case related to the inspection services of the Municipality of Rakovica, 7th of February/14th of February regarding the corruption in the process of allocating disability pensions, the request was received on the 11th of February was delivered to the competent prosecution, the following request was received on the 6th of April, replied on the 13th of April and 4th of May, they acted on the request for taking investigative action from the 27th of July, replied to the request from the 22nd of September for checking inquiries from a petition on the 6th of October and 1st of November, and replied on the 5th of October to the request for checking the inquiries from the 22nd of September). Seven requests were sent to the other prosecutions.

The RPP conducted two analyses of the prosecuting authorities in 2011 – the annual analysis based on the work program of the RPP of the work of PP on suppressing crime, and the second analysis from 15.9.2011 on the actions of the RPP and Prosecution for Organized Crime in cases with elements of corruption. It was concluded in the analyses that the number of investigations and indictments had increased, and the number of sentences had decreased.

To the question of the system of resolving the reporting of pressure in the pre-trial criminal proceedings, the RPP reported that based on the Action Plan, on the 16th of January of 2007 the Republic Public Prosecutor issued mandatory instructions which created an obligation for all prosecutions to report to the RPP on the received criminal allegations with elements of corruption and also received a list of criminal offenses with elements of corruption that will be monitored. Also, it was requested that the decisions on abandonment and rejection be passed in assembly composition, with the mandatory participation of the PP. Following the start of application of the new Law on PP on the 1st of January of 2010, new instructions were passed on the 26.3.2010. These instructions lay down the duty for all prosecutors to establish special departments for fighting corruption and appoint a deputy that will follow the situation of fighting corruption. It was requested that superior and primary prosecutions keep special registers and inform the RPP on the received criminal allegations for offenses with elements of corruption and that these decisions on abandoning and rejecting prosecution be passed in an assembly composition.

The RPP replied to the question of mapping discretionary powers that are based on the mandatory instructions of the RPP, a control of opportunity has been established.

In the report for 2012 the RPP reported in detail about the participation in the work of international institutions and initiatives in the area of fighting corruption and reported on the procedure of adopting an integrity plan.

A detailed report was provided also on the enforcement of the recommendation on the analysis of the work of prosecution and adjudication authorities.

"An analysis was conducted for the period from 1.4. to 15.8.2012 and it was determined that in this period the prosecution acted in 1,141 cases (in comparison to the same period in 2011 the prosecution acted in 930 new cases), as well as in cases from previous years – 578 during 2007, 760 in 2008, 908 in 2009 and 1,001 in 2010. From this analysis the number of cases in which the prosecution is acting is increasing, as well as the number of cases for criminal offenses with elements of corruption.

In the course of 2012 an analysis of trends was conducted and a report was prepared for the period from 2009 to 2011, for criminal offenses of corruption particularly abuse of authority, criminal offense of judges and public prosecutors violating the law, criminal offense of embezzlement, criminal offense of accepting a bribe and criminal offense of bribery. The conclusion of this analysis is that the number of reported persons is significantly increasing for the analyzed criminal offenses (above mentioned criminal offenses of corruption) in the course of 2010 in comparison to 2008 and 2009, except for criminal offenses of bribery for which reporting and prosecuting has decreased in comparison to 2010, however significantly increased in comparison to 2008 and 2009.

It was also concluded that the trend of the number for indicted persons is increasing for 2011 in comparison to the observed period for criminal offenses of abuse of authority from Article 359, violating the law by a judge from Article 360 and bribery from Article 368, increase in the number of convicted persons for criminal offenses from Article 359 in the course of 2011 in comparison to 2010 with a trend of an increasing percentage of prison sentences in comparison to probation sentences, which shows that serious criminal offenses of corruption are being prosecuted and stricter penal policy.

It has been noticed that the highest number of reports and prosecuted persons has been for the criminal offense from Article 359 of the CC, which is a result of the manner of stipulating the elements for the existence of criminal offenses of accepting bribes and bribery and tax evasion in the Criminal Code, as well as criminal offenses that have the status of lex specialis in regards to the criminal offense from Article 359 as legi generali.

A trend has been noticed of significant increase of reported and prosecuted persons for the criminal offense of unlawful mediation from Article 366 of the CC which is a result of the amendments of the Criminal Code in 2009 and precisely defining the act of this criminal offense.

An analytical report has been prepared with statistical indicators for criminal offenses of corruption of the Prosecution for Organized Crime for the period from 2009 to the 1st of June 2012, for criminal offenses of abusing authority – Article 359 of the CC, accepting bribes – Article 367 of the CC and bribery from Article 368 of the CC.

The conclusion of this analysis is, if regarded from the point of view of the total number of criminal offenses and requests for conducting investigations that have been filed for all three criminal offenses in the period from 2009 to the 1st of June of 2012, that an increasing trend can be noticed. The number of indictments differs from year to year, however, from 2010 there has been an increasing trend.

The analysis of the number of complaints of the work and its essence will be carried out during January with the annual work report.

In the course of 2012 a report was prepared for 2011 and according to the data from the Republic Public Prosecutor's Office a total of 398 petitions and complaints were filed, which is a decrease in comparison to the previous year when there were 535. Of the indicated number, 22 cases (as opposed to 2010 when there were 36) referred to the work of the Republic Public Prosecutor's Office.

All petitions that referred to the actions taken by the Republic Public Prosecutor's Office were assessed as ungrounded, and this prosecution monitored and acted on petitions for other public prosecutions, which is in accordance with provisions of the Regulation on the management in public prosecutions, ceding the jurisdiction to regional public prosecutions, it is stated in the report of the RPP.

When comparing this answer with the next, it is apparent that the RPP performs its regular work and that in areas where this work overlaps with obligations laid down by the Strategy, the Strategy is (spontaneously) enforced. In areas where additional engagement is needed, there are no results.

So, in fact, methodological manuals have not been prepared for revealing the investigation of criminal offenses with elements of corruption intended for holders of judiciary duties.

Instead of that, it was reported that "training was delivered through the project for seizing proceeds obtained by criminal offenses on the financial investigation for prosecutors of the Department for Fighting Corruption, and part of the training was delivering material to all prosecutors in which there were guidelines for proactive detection of criminal offenses of corruption".

As in the answer for 2011, activities were indicated which should have prevented pressure on the prosecuting authorities, or rather it was stated that the "control of the decisions of the prosecutors in cases of not initiating and terminating proceedings for criminal offenses of corruption or in cases of delaying criminal proceedings, a permanent and constant task of the Department for Fighting Corruption and the 4 Appellate Public Prosecutor's Offices (Belgrade, Kragujevac, Novi Sad i Niš)".

Such an organization of work and implementation of obligations from the instructions achieved preventive activity. In cases of not initiating or termination of proceedings for criminal offenses with elements of corruption, special attention was put on the justification of decisions, which had as a consequence the activating of certain cases after the criminal allegations had been rejected, or rather more proper and thorough justification, of otherwise, in essence valid decisions.

The goal of such activities is also prevention, as well as protection of the professional integrity of prosecutors.

The recommendation, according to the opinion of the RPP, entirely fulfilled in regards of multidisciplinary work on all significant investigations. This is a permanent task and was continued during 2012 through forming temporary work teams for processing certain cases, which consisted of representatives of state authorities for which it was evaluated they would provide the best contribution in that case.

Main Findings and Recommendations Regarding Integrity Plans and Enforcing the Anti-corruption Strategy

Integrity Plans

- **In judiciary authorities that still have not carried this out (in October 2012, 119 of a total of 238 bodies in the judiciary system passed a decision on preparing an integrity plan) it is necessary by the deadline (that was extended in accordance with a decision of the Anti-corruption Agency until March 31st of 2013) to finalize integrity plans**, where it is necessary for integrity plans to be acknowledged and accepted as a tool for introducing a better system of quality management and not an externally imposed obligation. Following the adoption of integrity plans, the authorities shall perform on their own the evaluation of the enforcement of the plan on a regular basis and implement enhancements achieved with the application of the plan. The Agency shall not assess the quality of the plans, nor will it give estimates for them. Integrity plans should serve the authorities themselves and they are to prepare them for their own institution and not the Agency.

Strategy

- Judiciary authorities should accept the obligation from the National Strategy for Fighting Corruption and the Action Plan and **in accordance with law report on a quarterly basis** on the enforcement of measures. The established practice is that the reports are being submitted only **upon request from the Agency**.

- Even though **the valid Strategy does not have an established system for accountability for not meeting the required obligations from the Strategy** (but rather only for not reporting on the enforcement of measures) the **establishment of a system of internal accountability** would represent a big step forward in judiciary (as well as in all other systems) for the realization of the measures from the Strategy.

Comparative research on anticorruption practices and role and status of judges in fight against corruption

The reform of judiciary in Serbia is conducted mostly through the process of reorganization of court and prosecutor's network and general elections of judges and prosecutors in 2009. The reform continues with adoption of new process legislation. Some aspects were controversial and disputes are still ongoing. Lack of transparency in re-election harmed perspectives of obtaining of greater confidence in Judiciary by the citizens, which was one of reform goals.

We chose 4 representative EU countries on which to conduct comparative research in order to get basic overview of systematic legal anticorruption solutions. Each country was chosen for the specific characteristics:

- **GERMANY** as one of the economically and industrially most advanced countries of Europe, but also as one of the countries with distinguished successes in combating corruption.
- **ITALY** as a developed country, although with great difference in development between north and south, has known issues with corruption and constantly struggle in dealing with it, especially in less developed regions.
- **POLAND** as model of a successful transition from socialist state to a free market economy state/model for EU integration and development for Eastern Europe.
- **ROMANIA** as a country which is being constantly criticized for failure in dealing with corruption which is suspected to be infiltrated in all levels of government. Romania and Poland are also comparable to Serbia from a point of view of transitional economy from socialist states.

The questionnaires were sent to Professional legal associations of the abovementioned states which guaranties that the answers come from the practitioners (judges and prosecutors) in these states and not merely government officials. This was especially significant in the questions of their perception of the duration of the process since there are usually no indicators or measurement of exact average time of the duration of the proceedings. The legal professional associations that answered the questions are members of Magistrats européens pour la démocratie et les libertés – MEDEL (European Association of Judges and Prosecutors for Democracy).

From the gathered answers we could conclude among others that the:

- variety of definitions of corruption exists in various legal systems,
- national strategies for fight against corruption are common among European countries,

- there are different legislative solutions, both in procedural codes and criminal codes in order to address the needs of different legal systems,
- in more developed countries the difference of corruption in private and public sector are more accentuated,
- although there are specialised units for fight against corruption there are no specialised treatment or benefits for those individuals.

The more detailed answers to the questions were summarised in the following table:

QUESTION	COUNTRY

	Germany	Italy	Poland	Romania
What is the legal framework for the fight against corruption? What laws do you apply for crimes of corruption?	- EU law and Penal Code (Strafgesetzbuch, StGB), - Art 299-302 for private economy - Art 331-335 StGB for public service members	Corruption is a crime punished by Italian criminal law. Italy's anti-corruption laws are codified in the Criminal Code ('CC').	1. Criminal Code 2. Criminal Procedure Code 3. Law on the Central Anti-Corruption Bureau	LAW No. 78 of 8 May 2000 on preventing, discovering and sanctioning of corruption acts published in: the Official gazette of romania no. 219 of 18 may 2000 (with subsequent changes)

	Germany	Italy	Poland	Romania
Does your country have National strategy for fight against corruption? Does the law or strategy define corruption and if so what is the definition?	Yes, Germany has anticorruption agencies in several Ländern (regions). Definition : Misuse of entrusted power for illegitime private advantage	Italy doesn't have yet a National strategy for the fight against corruption. The law (CC) defines corruption as follows: Articles 318-320 criminalise passive bribery of public officials and of persons in charge of a public service, and Articles 321-322 criminalise active bribery of public officials or of persons in charge of a public service and instigation to corruption. Article 322-bis extends the offences under the articles above to include bribery of officials of EU institutions and	Poland has the National Strategy for Fight against Corruption. Now the second stage of it is being realized for period 2012 - 2016. The definition of corruption is included in the Law on the Central Anti – corruption Bureau (is very long and quite complicated) that describes it as an act: -of promising, offering or handling by anyone , directly or indirectly, any undue advantages to a person serving as a public officer for him/herself or for another person in return of acting or failure to act as a public,	Romania has National Strategy. http://www.just.ro/LinkClick.aspx?fileticket=O2wgayyzCXs%3D&tabid=2079 LAW No. 78 of 8 May 2000 defines: Art. 5 - (1) In the meaning of the present law, corruption offences are those offences provided in art. 254 - 257 from the Criminal Code, in art. 61 and 82 from the present law, as well as offences stipulated in special laws, as specific modalities of the offences provided in art. 254 - 257 of the Criminal Code, and in art. 61and 82

		public officials of foreign countries or members of international organizations. Italian law makes a distinction between so-called improper bribery (or bribery relating to lawful acts) and proper bribery (which relates to unlawful acts, i.e. the omission or delaying of acts relating to office, or acts in breach of official duties). Article 319-ter criminalizes corruption in judicial activities. Article 317 also provides for the offence of *"concussione"*. Such provision criminalizes the conduct of a public official abusing his or her functions or power to oblige or induce an individual to unduly give, or promise to give money or other assets to that official or a third party. The individual induced to provide the bribe is treated as a victim (Article 317, CC).	-of requiring or accepting by a person serving as a public officer , directly or indirectly, any undue advantages for him/herself or for another person, accepting offers or proposals of such advantages in return of acting or failure to act as a public, -committed while acting as an entrepreneur, connected with performance of obligations towards public (authorities, institutions) involving promising, offering or handling, directly or indirectly, any undue advantages to a person being a head of a public office for him/herself or for another person in return of acting or failure to act as a public, if his/her act or failure to act breaches his duties and is socially detrimental; committed while acting as an entrepreneur, connected with performance of obligations towards public (authorities, institutions) involving promising, offering or handling, directly or	from the present law. ..... Categories of offences: • Corruption offences • Offences assimilated to corruption offences • Offences directly connected to corruption offences • Offences against the financial interests of the European Communities

			indirectly, any undue advantages to a person being a head of an institution that does not belong to a sector of public finances for him/herself or for another person in return of acting or failure to act, if his/her act or failure to act breaches his duties and is socially detrimental.	

	Germany	Italy	Poland	Romania
Does your Criminal Procedural Code provide with any specific provisions for criminal proceedings that deal with corruption cases?	No, there are no specific provisions for criminal proceedings that deal with corruption cases.	The Italian Criminal Procedure Code (CPC) doesn't envisage specific provisions for criminal proceedings related with corruption cases. As for other serious crimes, according to the sanctions provided for by the law, arrest, coercive measures, special investigative means may be applied to such proceedings.	Specific provisions for criminal proceedings that deal corruption cases are included in the Law on the Central Anti-Corruption Bureau as the officers of it have wider rights to act. They are f.e. allowed to use provocation against the person if there is justified suspicion that he/she is engaged in corruption	No, there are no specific provisions for criminal proceedings that deal with corruption cases.

	Germany	Italy	Poland	Romania
Are there different provisions for the crimes of corruption coming out of private or public sector?	Yes - 299-302 of Penal Code for private economy - 331-335 StGB for public service members But not in the procedure	Some provisions related to criminalisation of corruption within the private sector are provided for by Article 2635 of the civil code	Generally corruption under Polish law refers to public sector.	There are different provisions in law for private and public sector. For private sector: Art. 11 - (1) The deed of a person who, by virtue of his position, of the duty or of the task

	code.			received, has the obligation to supervise, to control or to liquidate a private economic agent, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic agent or to participate with capital to such economic agent, if the deed is of such nature as to bring him directly or indirectly undue advantages, shall be punished by imprisonment from 2 to 7 years.

	Germany	Italy	Poland	Romania
What are the sanctions for the crimes of corruption?	in private economy up to 3 years prison or pecuniary penalties (if not qualified facts defined by law) for public servants min. 6 months up to 5 years (aside the disciplinary action) for judges and arbiters min. 1 year to 10 years (i.e. severe crime, loss of profession is consequence)	Proper bribery (active and passive): imprisonment from 2 to 5 years. Improper bribery (active and passive): imprisonment from 6 months to 3 years. Corruption in judicial activities: imprisonment from 3 to 8 years (may raise to 20 years maximum if an unlawful sentence to long imprisonment is the result of such bribery) Concussione: imprisonment from 4 to 12 years.	Sanctions start from 6 months to 10 years imprisonment. Next to it a fine may be imposed (in daily rates min. 10, max. 540, the value of a rate: min. 10 PLN, max. 2000 PLN) In minor cases it is a financial penalty (the method of calculating it mentioned above), or limitation of freedom (f.e duty to work for a society) or max. 2 years imprisonment. Besides in all cases the court should decide on	Sanctions differ in different provisions: For corruption offences Art. 6 (1) Promising, offering or giving money, gifts and other benefits, directly or indirectly, to a person who has influence or induces the believe that has influence over an official, in order to determine that specific official to do or not to do an activity that is in its competences is punished with imprisonment from 2 to 10 years., For Offences assimilated to corruption offences

		In addition, confiscation of profit or price of the bribe applies Criminal liability also applies to legal persons, i.e. companies and associations, pursuant to Legislative Decree 231/2001. I	confiscation of a value of undue advantage that had been obtained.	Art. 10 - The following deeds shall be punished by imprisonment from 5 to 15 years and the interdiction of certain rights, if committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages;.... For offences against the financial interests of the European Communities Art. 18(1) Using of presenting of false, inexact or incomplete documents or declarations, which has as result the illegitimate obtaining funds from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be punished with imprisonment from 3 to 15 years and retaining certain rights.

	Germany	Italy	Poland	Romania
Is there a specialized prosecutor or unit within prosecutors' office for corruption cases?	Yes in private economy (Wirtschaftsstaatsanwälte, Wirtschaftsstrafkammer) No in public service (it is the same office inquiring as in the private economy sector, they have often not enough specialists)	Prosecutors' offices in main towns include specialised units for so-called crimes against public administration, which include corruption cases.	the Central Anti-Corruption Bureau (CBA) is a special service, created as a government administration office in order to combat corruption in public and economic life,	DNA carries out criminal investigation activities in cases of offences assimilated to corruption and in direct connection with corruption. Successive legislative amendments were

			particularly in public and local government institutions as well as to fight against activities detrimental to the State's economic interests.It was established by the Act of 9 June 2006 on the Central Anti-Corruption Bureau, which entered into force on 24 July 2006. There are no special prosecutors to deal with corruption cases.	adopted in order for this specialized structure to investigate only high and medium level corruption offences. Moreover, DNA investigates offences committed against the financial interests of the European Communities as well as certain categories of serious offences of economical-financial criminality.

	Germany	Italy	Poland	Romania
What type of courts have jurisdiction over the corruption cases (general courts, specialized courts, special chambers...)?	General courts	General courts Judges which deal with criminal law proceedings in general courts may also deal with cases of corruption. In main courts there are sections specialised for such kind of cases.	The common courts, criminal divisions, have jurisdiction over the corruption cases. It depends on the value of the undue advantage which court (district or regional one) will recognize the case.	General courts

	Germany	Italy	Poland	Romania

If possible, could you provide the information on the number of finalized corruption cases in previous year(s)?	2010 wurden 6.141 cases of competition-, corruptions- und public servants crimes were registered, this is an increase of 4,4 Prozent compared to 2009.(amongst them two very big that influence on the statistics) Statistics 2011 show 5.241 cases of competition-, corruptions- und public servants crimes. This is a decrease of 14,7 % compared to 2010 (but be aware that the two very big cases in 2010 influence on the numbers). The unknown cases are estimated to be much more (dark field, Dunkelfeld).	In 2011 the Italian Supreme Court defined 2092 criminal proceedings on so-called crimes against public administration, which include corruption. Other data are available for single Tribunals or Courts of Appeal	About 2000 acts of indictments a year are filed by the prosecutors to courts. I am not able to answer precisely the question how many of them are finalized. I think it may be about 70 % as most of them finish with a kind of a *plea bargaining*.	In 2011 the number of cases dealt increased by 13.52% (6615 to 5827 in 2010), with 12.03% of the settled (3313 to 2957 in 2010) and resolved on 12.71 % (2.270 to 2.014 in 2010). In the 1043 case was ordered to the jurisdiction or to join cases (943 in 2010). Remained unsolved 3302 case, in which 10 of unknown author (2870 cases, of which 5 with unknown author in 2010), the increase being objectively justified by a significant proportion of cases new entrants, representing 56.61% of the total to be solved (3745 new 6615 to settle).

	Germany	Italy	Poland	Romania
What is the status of the judges dealing with corruption cases? Do they have any special treatment?	Normal, no specialities	No special status nor special treatment	No, they do not as they are judges sitting at common courts.	No, this kind of special treatment was considered unconstitutional.

	Germany	Italy	Poland	Romania
Is there a special training program for judges dealing	Yes, there is. At the national judges academy and training measures on the job.	Special training is provided for by the Italian High Council for Judiciary, which is so far	No, there is no special course. The National School for Judiciary and Prosecutors sometimes	There is, according to National Institute for Training Magistrates (NIM) curricula and programme budgeted from

with corruption cases (within a body in charge for training of judges)?		responsible for in-service training of judges and prosecutors.	organizes seminars on this topic, but it happens rarely and is limited to a small number of judges.	EU/private Funds

	Germany	Italy	Poland	Romania
If possible, could you provide the information on the average duration of the proceedings before criminal court in cases dealing with corruption?	Duration is long (3-5 years can be). Further materials (in german language) see www.stgb or www.korruptionsrichtlinien, www.polizeilichekriminalstatistik 2010, 2011	Average duration of criminal proceedings (in general, not only related to corruption) in Italy in 2011 was approx. 1 year in Prosecutors' offices, approx. 1 year before Tribunals, approx. 2 and ½ years before Courts of Appeal, approx. 7 months before the Supreme Court.	It is difficult to answer to this question as there are no special statistics referring just to them. Generally it can be said that if the person accused of corruption denies committing the crime the proceedings last about 2 years (1st and 2nd instance). Often it lasts even longer as in this kind of cases there is a visible tendency to return it many times to the 1st instance court. If there is a plea bargaining a court proceeding takes about 3 months.	There are no specific indicators of average duration.