

STRENGTHENING THE JUDICIARY IN COMBATING CORRUPTION

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CONTENTS

INTRODUCTION	9
CONTEXT	11
Independence	12
Public Distrust	15
Ethics and Conflict of Interests	16
Accountability	17
Efficiency	19
STRATEGIC FRAMEWORKS FOR COMBATING CORRUPTION	21
Serbia	21
Croatia	27
Bosnia and Herzegovina	32
ANALYSIS OF LEGAL FRAMEWORKS	37
Serbia	37
Croatia	47
Bosnia and Herzegovina	52
MONITORING COURT PROCEEDINGS	57
Serbia	59
Croatia	65
Bosnia and Herzegovina	67
GENERAL CONCLUSIONS	71
Recommendations:	71



INTRODUCTION

Through a long-standing practice of providing legal aid assistance and other forms of activities aimed at upgrading human rights in Serbia, the Lawyers' Committee for Human Rights – YUCOM has realized the significance of observing and studying corruptive behaviour and its influence on sustaining fundamental rights and the rule of law within society. After having organised series of discussions with judges, prosecutors and police representatives, independent regulative bodies, media and relevant non-governmental organisations in cities all over Serbia, we have identified several systematic disadvantages affecting criminal proceedings with corruptive elements as well as regulations applying to them.

However, in order to compare the situation in this area of justice in Serbia, Croatia and Bosnia and Herzegovina YUCOM has started the cooperation with partner organisations Youth Initiative for Human Rights BH and Youth Initiative for Human Rights Croatia, and this way has expanded the network for monitoring trials with corruptive elements. Networking and strengthening the capacity of civil society organisations and individuals is an attempt to create tenable and strong “front” which will, through the monitoring of trails, analyses of criminal procedures and objective and professional reports, give a powerful incentive to justice in suppressing corruption and enhancing the rule of law in the region.

We have realized that the monitoring of the work of the judiciary representatives and incitement to close communication and coordinated action of all engaged subjects in combating corruption, is a scope in which civil society can be a corrective factor and a partner to judiciary as well as to other state mechanisms in the fight against corruption. As a result of our efforts we wanted to present to the broader public a different, more professional data base in order to create a legitimate attitude about the responsibility of representatives of the judiciary, which would reduce sensationalistic, popular and politically motivated reporting within the media. Nevertheless, as the main contribution, we also consider the urge to motivate the ones who have the responsibility to detect, prosecute, trail and punish these corruptive deeds. We want to remind them that they are allies in the process of suppressing corruption and that they enjoy a strong support by civil society.

By representing the strategic frameworks which refer to the judiciary and have for a goal strengthening these branches of power in the field of fighting against corruption, as well as the legal frameworks which are of great importance for prosecution of criminal deeds with corruptive elements, we wanted to point out the similarities and differences between those systems being monitored.

In addition, in this publication we have also represented experiences that we acquired during the monitoring of selected cases and the results and conclusions from the monitoring



process. We hope that we have succeeded in our intention to point out not only omissions and disadvantages, but also good examples of practice that can be equally applied in Serbia, Croatia and Bosnia and Herzegovina.

CONTEXT

Regardless of the level of development, wealth or cultural patterns of one society, corruption is a phenomenon which is common in every country or legal system. Corruption demands fast responses and clear action. When we speak about corruption in Serbia, Croatia and Bosnia and Herzegovina we need to pay attention on all areas of public life, especially on things in every branch of power. Judicial, legislative and executive branch have a role to play in the process of combating corruption and they either participate in creating a more efficient system or they can influence the system to become incapable to fight against this phenomenon which may eventually undermine trust in the country. Independent institutions are welcomed to join this mission, which in Serbia, as well as in other regional countries, represent additional mechanisms of control. The role of media is extremely important, giving the fact that they can create expectations of citizens and create a critical mass pushing for change. Citizens and civil society can demand the implementation of the rule of law in order to have strong institutions capable to carry out the fight against corruption.

In combating corruption a strengthened judiciary is of great importance in order to provide an efficient control of all other public institutions. We have focused our research on the judiciary, because the development of independent and efficient judiciary, functioning without any external influences, is the key to successful fight against the corruption at this level. In this process it is also necessary to follow an election on functions, acts and behaviour of judicial organs and their representatives.

It should be mentioned that in some countries, where the monitoring was implemented, the institutions and their representatives undertook measures beyond their responsibilities and this way indirectly influenced the prosecutor's office and courts. We have spoken about this publicly and made some critics, so in the following period we can expect that there will be no need for additional discussion about hazards to which the violation of institutions can lead.

Every year, international organizations specialized in corruption assess the state of all countries in the region and give references aiming at improving strategic and legal frames, and they also give an attitude which is associated to fight against this social issue. In the next chapter there will be a review of the newest international reports which refer to corruption affecting the judiciary in Serbia, Croatia and Bosnia and Herzegovina. It is especially important to compare countries in the region, considering the fact that they are facing similar problems, but they differentiate one from each other by achieved results and position in which they are on international plan. Every state mentioned had developed its own strategy to fight against corruption within the judiciary so they can exchange good practices.

In Serbia and Bosnia and Herzegovina it has been pointed out on a decrease of corruption because of the European integration process, among the other things. Also, the experience of Croatia, a recent member of the European Union, will be extremely helpful to predict challenges that other countries will also face on their way to EU accession.

The most extensive references are addressed to Croatia, which has been a member state of the European Union since 2013, especially in the first report about fighting corruption in the EU and in the report of GRECO from 25 June 2014.¹

New international standards referring to the question of judicial integrity can be clearly spotted. Serbia should carefully monitor these changes and spot them on time. The situation in Bosnia and Herzegovina is somewhat different, because this country has just taken the first steps in the fight against corruption, which does not mean that improvement has not been made in solving some of the problems in this area. As it is highlighted in the report of the European Union, some countries facing a number of problems in the fight against corruption do have a detailed legislative and institutional framework, different strategies and programmes, but their implementation is not satisfactory. In some countries, this systematic problem is significantly reduced by preventive measures, with examples of good practices and high standards of transparency.² The next chapter highlights those focus points that demand special attention so as to reach a higher level of judicial empowerment for confronting this phenomenon.

We hope that this report will complete the data existing in the region and pertaining to difficulties in the implementation of an efficient fight against corruption as well as possible solutions. We wish to open a discussion in the region that may pave the way to responsible jurisdictions and raise public awareness about the necessity of actions being followed from the beginning, more exactly, from the arrest announcement in the media, until final judgment.

INDEPENDENCE

Support to the establishment of an independent jurisdiction is of great value for creating favourable conditions in which courts can lead criminal process for criminal acts with corruptive elements, especially when a high level of corruption is at stake. This way, efficiency and reliance in the justice system are being strengthened, because it is necessary that courts and prosecutor's offices act objectively and independently from external influences when it comes to these cases.³ When it comes to independence of the judiciary, particular attention should be drawn to the independence of the prosecutor's office and court from political interference in

1 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014. Available at: <http://bit.ly/1MnBIQ7>.

2 European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 8.

3 *Ibid*, p. 15

proceedings. From a practical point of view, that influence should refer to non-transparent or discretionary application of procedures for the elections of representatives of the judiciary or prosecutor functions. Constitutional and legal frameworks must be changed to avoid this situation, because they leave an opened space for political influence.⁴ There are no uniform standards which would represent a model for placement or dismissal for these functions, but a credible process is demanded, in accordance to credits.

A similar problem appeared in Serbia in 2012, caused by the appeal cases of unelected judges to the verdicts of the High Judicial Council, which the Constitutional Court adopted and in that way enabled the return of 800 judges on their functions.⁵ This verdict has confirmed what was previously pointed out as problematic in few reports of the European Commission and the Venetian commission: that the process of judge election in 2006, when they were supposed to be chosen on that function by the Parliament on a suggestion of the High Judicial Council (whose purpose is to protect the independence of the judiciary), has shown a high risk of politicisation of elections on judicial functions and violation of the independence of the judiciary. The biggest problem affecting the election procedure was the fact that it was supposed to be conducted not only for the new judges, but also for the ones previously elected, which violates the permanence of judicial function.⁶ In December 2013, the Constitutional Court pointed out that the first legal ground for the election of the High Judicial Council's president in 2009 was unconstitutional in that temporary structure. This system of function placement (which is also used for court's presidents and placement and dismissal of public prosecutors) has to be changed, because it leaves space for political influence.⁷

In Croatia, the president of the High Judicial Court is chosen by the parliament, on the suggestion of the president of Croatia, with a preliminary opinion of the High Judicial Court which is not obligatory and the department for judiciary by Croatian Convocation. Authorities in Croatia consider that this procedure is completely independent, because it is the result of an agreement between all three branches of power, while GRECO warned that this political coloured procedure for elections on the highest positions in the judicial system exposes the whole judiciary to risk.⁸ The process should be transparent enough to avoid suspicions of political influence. The European court for human rights finds that the key factor for the establishment of the fact that judiciary is independent lies in the question: does it actually represent only a simulation of independence? The same remarks can be made on the account of nomination of the

4 Ibid.

5 European Commission, *Serbia 2013 Progress report*, Brussels, 16 October 2013, SWD(2013) 412 final, p. 38.

6 Maria Dicosola, „Judicial independence and impartiality in Serbia: between Law and Culture”, Blog Diritti Comparati, 17 December 2012. Available at: <http://bit.ly/1DJgdAN>.

7 European Commission, *Serbia 2013 Progress report*, 16 October 2013, p. 39.

8 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 21.

public prosecutor. Advantage should be given to the independent and professional body which would pass decisions for all nominations.⁹ The demand for independence does not mean completely excluding other branches of power from the work of judicial institutions: most of the Public Court Council of the Republic of Croatia's members come from the judge orders which have been elected by their colleges, but also from the two members of the Council. The same relation exists in the Public Prosecutor's Office. In Serbia, a person who has been elected for the first time on the judicial function is on a trial period for three years. The European association of judges and prosecutors for democracy and freedom MEDEL¹⁰ has criticised this trial period of three years, pointing out that the judges at that time are extremely exposed to influences. Croatia has invalidated a similar rule according to which public prosecutor's deputies have a trial period of five years before being permanently elected on prosecutors' function, because they have deemed this choice a threat for independent work of prosecutors.¹¹ The example of Bosnia and Herzegovina shows that changes in democracy for the better should be independently observed. In the current system, the High Judicial and Prosecutor's Council of Bosnia and Herzegovina has a jurisdiction to nominate judges and prosecutors and in that way to prevent the election to become an object of political influence. However, in 2013 some political parties have suggested that the role of executive and legislative power, which refers to the election of prosecutors, be increased, but the European Commission reacted to this suggestion, claiming that these demands are alarming.¹²

Finally, the permanence of judicial and other functions in the judiciary is considered as one of clear indices that the judiciary is independent, which protects the judiciary from arbitrary dismissals due to the shift of political sets. In Croatia, the judicial function is permanent until retirement. Placement and dismissal on the function is performed by the Public Judicial Council, under the control of the administrative courts and the Constitutional Court. The system has to be balanced to enable continuity and dynamics of the work. Since the number of mandates for the Constitutional Court's president and the main public prosecutor¹³ is not limited, there is a valid reason to believe that this solution can also be problematic, because there is a risk that representatives of these functions act in the benefit of some political body so as to ensure their own re-elections.

9 Ibid.

10 MEDEL (Magistrats pour la Démocratie et les Libertés), MEDEL CA Motion - Restoration of Confidence Necessary for the Democratic Functioning of the Serbian Judiciary, 24 June 2013. Available at: <http://bit.ly/1PkjsQn>.

11 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 38.

12 European Commission, *Bosnia and Herzegovina 2013 Progress Report*, Brussels, 16 October 2013, SWD(2013) 415 final, p. 12.

13 *Ibid.*, p. 36.

PUBLIC DISTRUST

As it has been especially pointed out in the EU Anti-corruption Report from 2014 and in the GRECO's fourth evaluation report about Croatia, the public perception of corruption has to be taken into account as an important parameter for measuring the level of corruption which countries face. The high percentage of distrust has direct consequences. The result of the research is unambiguous: in Europe 76% of people thinks that corruption is widespread in their country.¹⁴ The same research shows that 94% of Croatian citizens consider that corruption is widespread in Croatia.¹⁵ The percentage of public distrust is also very high in Serbia and Bosnia and Herzegovina: 95% of questioned citizens of Serbia consider that corruption is a problem or serious problem in Serbia, while 85% of questioned in BiH replied in the same way.¹⁶ A fact that in all three countries there is a high percentage of distrust in the judiciary, which is considered as one of the most corrupted institutions, is also a very big problem: in Serbia, 82% of questioned citizens consider that the judiciary is corrupted or extremely corrupted, 67% in Bosnia and 70% in Croatia.¹⁷

Public trust has a key significance in the criminal law system, as the European Council for human rights also pointed out a couple of times in its practice. Therefore, there is a strong need to identify the reasons which have led to public distrust in the judiciary¹⁸, identify the causes of blank in perception and develop measures targeted at lifting up the level of public trust in the judiciary. There are several effects which lead to the creation of a wrong image in the public in terms of work of judges and prosecutors. First of all, the press is unbalanced, sensational and often gives imprecise information. The quantity of real research journalism is reduced in favour of a press that "searches for scandals", observes the association of judges in Croatia. GRECO has underlined that close relations between certain media owners and political and financial centres of power can have an unbalanced influence on pieces of information that come through the media.¹⁹ Besides, judges and prosecutors in all three countries often suffer the consequences of executive government behaviour.

Public political attacks of executive or legislative power's members targeted at certain judges seriously undermine the credibility of judicial power, which can strongly impact on the

14 European Commission, *Special Eurobarometer on Corruption*, February 2014, p. 6.
Available at: <http://bit.ly/1f0f802>.

15 *Ibid.*

16 Transparency International, *Global corruption barometer 2013*,
Available at: <http://bit.ly/1m3fyAq>.

17 *Ibid.*

18 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 4.

19 *Ibid.*, p. 34.

independence of judiciary.²⁰ Partially, a solution can be found in the judiciary itself. Considering the great influence of media reporting on the public opinion, the improvement of communication with reporters started to be more significant. In that sense, Croatia can be a good example, where every court has a judge who is also a spokesman. However, a development of an efficient politics of communication in forms of a judicial system is also recommended, which would include general standards and rules of behaviour in communication with journalists.²¹ General distrust must be seriously approached because its influence is big on the system, but it does not always match the real state of facts. In Croatia, in the last five years, only two members of judicial institutions have been convicted for corruption.²²

ETHICS AND CONFLICT OF INTERESTS

Conflict of interests involves a situation in which public officials act, intend to act or make an image of acting in favour of their own private interest.²³ Cases of conflicts of interests seriously undermine the integrity and transparency of the institutions and represent one of the most important reasons for public distrust, especially in the judiciary. Unfortunately, strategies regulating the judiciary area usually do not succeed to set conflict of interests as a priority, and the lack of action continues to threaten the trust of the public.²⁴ Laws on conflict of interests have been introduced in all three countries, but their legal form remains unsatisfying. Judges and prosecutors are subjects to a strict regime of incompatibility, so they cannot perform a job that may threaten their autonomy, impartiality and independence or reduce their social status. Specifically, they should be banned from membership in political parties and also from engaging in any political activities. The only professional, paid activities which should be enabled to them are the ones on an academic field. Besides that, it is important to forbid or limit certain ancillary activities as employment after retirement.²⁵

The representatives of civil society have shown concern because they cannot perform researches which refer to the integrity of judges, if their access to the public information of financial report is being denied. Limitations should be carefully balanced, because the role of civil

20 European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 15.

21 *Ibid.*

22 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 35.

23 *Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials*, Council of Ministers, Council of Europe, 106th session, 11 May 2000, Available at: <http://bit.ly/1DJgqnD>. According to: European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 12.

24 European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 12.

25 *Ibid.*, pp. 29, 42.

society is strategically important in reaching a higher level of transparency. Thus, public control has its limits, and for this reason the monitoring role of the Public Court Council in preventing and solving conflicts of interest plays a key role. It cannot be only a formal control, but a credible and well led process.²⁶

Mechanisms offering directions and advice should also be strengthened.²⁷ They are rarely used in practice, they are superficial, and advices only describe the principle, without giving an opinion on specific ethical dilemmas. The goal of the system is to make sure that judges and prosecutors are left on their own when they are facing serious ethical questions. The situation can be improved by introducing a proactive approach for an uplift of consciousness and knowledge and also by mobilizing judicial academies and members of civil society who can play an important role in regular training and evaluation of moral principles.

Further, as it has been noticed in Croatia, the executive authorities have to be aware of the fact that excessive multiplication of rules and constant control increase the level of responsibility and pressure on professionals in the judiciary who may eventually wish to defect and join the private sector.²⁸ This phenomenon should be especially emphasized, because the mobility of manpower between public and private sector is crucial for the functioning of a modern society, but it also indicates a potential risk of appearance of conflict of interests. The absence of distinctive rules in this area has to be remedied.²⁹

ACCOUNTABILITY

In the judiciary, will is a crucial element of success in the fight against corruption. Unfortunately, the lack of court determination for solving complex or delicate cases of corruption is obvious. It is primarily reflected by the inefficient coordination of anti-corruptive and independent organs of administration and by the negligible number of cases which have been closed with a verdict. The number of investigations that were initiated by prosecutors in 2012 in Serbia for corruption and organized crime has increased significantly, in cases of corruption on high level (140 new investigations, in comparison with 115 in 2011), but the number of rendered judgements is still quite small, compared to the number of initiated proceedings.³⁰

Laxism in the judiciary is making the fight against corruption weaker, and it also indirectly affects the whole system. For example, in Serbia, a number of unsolved cases of killed jour-

26 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, pp. 30-31, 43.

27 *Ibid.*, p. 41.

28 *Ibid.*, p. 42.

29 European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 12.

30 European Commission, *Serbia 2013 Progress Report*, 16 October 2013, p. 42.

nalists in 1999 and 2001 still represents a significant factor of self-censorship for investigative journalism and discourages potential whistle-blowers and witnesses from reporting corruption.³¹ Further, limited possibility for sentencing is also indicated. Improvement is possible to achieve by a regular grading of judges, court presidents and prosecutors. It is necessary to introduce clear and objective criteria for qualitative and quantitative estimation of all professionals: the number of rendered judgments, performances by type of case in absolute number of percentage, respect of deadlines, types of cases rendered on appeal, etc.³² The use of modern information technologies is crucial for the increase of transparency of the system. In Croatia, a small number of courts have launched websites on which it is possible to follow their structure and organisation of work, while most of the courts still work without access to modern administrative capacities.³³

Assessment of the effect should be combined with a system of improvement. Croatia established a system of grading and scoring, amended with personal interviews. Decisions about appointments, promotions and transfers are published. Candidates, in case they are unsatisfied with the result, can ask for a review of a court decision. Work experience necessary for a promotion is prescribed by law, and it differs according to different levels of territorial jurisdiction – 2 years at a municipality level, 8 years at a district level and 15 years at a state level.³⁴

Keeping in mind that cautionary measures are necessary in order to maintain independence of interested professionals, decisions about a possible suspension should be made after a reasoned suggestion by an independent entity, like the State Judicial Council, and after the person in question has been heard and given the option of filing a lawsuit through an efficient mechanism of administrative dispute.³⁵ As mentioned earlier, the public nature of court's work is essential for enabling additional control from the public and society. Court hearings should be public, unless the law arranges it differently with justified reasons, or, according to the opinion of the court, the privacy should not be disturbed. Nevertheless, even in those cases, an abridged version of the verdict should be published.³⁶

It is rarely considered that judges and prosecutors can be the object of criminal and civil responsibility. Also, the injured party should be provided the option of filing a lawsuit against judges and prosecutors, whose responsibility is limited due to the immunity of the judicial position. Namely, they cannot be brought to account for their opinions or voting during a decision making process. Regarding judges in Croatia, there is no direct civil responsibility for individual court decisions, but there is a possibility for damages in case of intentional or gross negligence. Criminal procedure against a judge can be started without approval from the State Judicial Co-

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31 European Commission, *Serbia 2013 Progress Report*, 16 October 2013, p. 43.

32 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 25.

33 *Ibid.*, p. 27.

34 *Ibid.*, p. 39.

35 *Ibid.*

36 *Ibid.*, p. 27.

uncil. In reality, most of the requests for lifting immunity come from people dissatisfied with court decisions, so the Council rejects them. Only when demanded by the prosecution, a satisfying result is achieved.³⁷

Disciplinary responsibility for violating ethical or professional duties can also lead to sanctions. Strict discipline is a necessity in case of the prosecutor's office. Since hierarchy is firmly embedded in its structure, transparent jurisdiction is very important in order to ensure efficiency and define responsibility. In that sense, orders given to a single prosecutor from his superior should always be in written form and they should contain an explanation³⁸. Weak discipline can also influence judicial institutions. GRECO states that judges sometimes refuse to collaborate on disciplinary issues and that they are not sanctioned for it.³⁹ This situation undermines all processes and should not be tolerated.

EFFICIENCY

One of the biggest known problems is the lack of efficiency in judicial proceedings in all of the three observed countries. Excessively long procedures violate the right to trial in reasonable time, increase the possibility for bad results and lead to general distrust towards judicial institutions. There is a risk, inter alia, for corruption cases to become obsolete. In certain cases, procedural rules can be applied in a way that leads to significant delays in order to avoid carrying through judicial proceedings⁴⁰. Both parties endure consequences of inefficiency – the claimant, who sometimes has to wait for decades before a verdict is brought in, and the defendant, who is often the object of unusually long detaining.

Data shows that the number of unsolved cases is still significant. In the year 2012, there were over 3 million cases awaiting verdict in Serbia⁴¹ and 2.3 million such cases in Bosnia and Herzegovina.⁴² The last GRECO report about Croatia also emphasizes behindhand cases as the greatest weakness of the Croatian judicial system⁴³.

37 *Ibid.*, pp.31, 43.

38 Point 9 of the *Bordeaux Declaration* jointly drafted by the Working Groups of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) of the Council of Europe, in Bordeaux (France) and has been officially adopted by the CCJE and the CCPE in Brdo (Slovenia) on 18 November 2009. Available at: <http://bit.ly/1HFw0eR>.

39 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 33.

40 European Commission, *EU anti-corruption report*, Brussels, 3 February 2014, p. 16.

41 European Commission, *Serbia 2013 Progress Report*, 16 October 2013, p. 40.

42 European Commission, *Bosnia and Herzegovina 2013 Progress Report*, 16 October 2013, p. 12.

43 GRECO, *Evaluation Report Croatia*, Strasbourg, 25 June 2014, p. 16.

Carrying out unique programs with the goal of solving old cases must be defined as a priority in all three countries. Although those kind of programs are predicted by the recent “action plans” for the period 2013-2018 in all three countries, the results are barely discernible. International organizations emphasize the meaning of smooth and timely enforcement of these strategies.

Rationalisation of the judicial network is not an easy task. In particular, difficulties can arise with geographical distribution. On the one hand, it is necessary to provide an optimal allocation of judges and prosecutors on the entire territory, who will be capable of answering all the needs in a timely manner.⁴⁴

On the other hand, the judges can disagree with the change of their location and have the constitutional right to not be distributed to a different place,⁴⁵ if that is their wish. This right has its limits. In Croatia e.g., a judge can be transferred to a different court of the same jurisdiction without his or her explicit consent, in case a court stops working or is restructured in accordance with the law.⁴⁶ This can have significant consequences because poor geographical distribution may lead to imbalance to the extent of judges’ work (certain judges get a substantial amount of cases each year, while others get only a few), which will disable proper work. Judicial work also requires special attention regarding the distribution of cases. To prevent conflicts of interests, cases must be distributed randomly (e.g. alphabetically).⁴⁷ Attention must be paid to the type and complexity of a certain case, as well as special jurisdiction, specialization and the amount of work of each judge and prosecutor. Distribution of cases is subject to corruption, and the authorities should be very careful. The general rule is that judges and prosecutors should not be removed from the case. However, if that happens, it must be based on a special provision and grounded in written form.⁴⁸

Putting in place a unique electronic and informative system and database that would cover the whole judiciary can bring in effective, more transparent and impartial selection of the cases.⁴⁹ However, different software for data management continue to be used at the same time in appeal, administrative and high courts, while electronic management has still not been established in Magistrate Courts and prosecutor’s offices.⁵⁰ The lack of staff and equipment in judiciary institutions in Serbia, Croatia and Bosnia also highlights the urgency of the situation, which is especially visible when it comes to the main bodies.

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44 European Commission, *Serbia 2013 Progress Report*, 16 October 2013, p. 40.

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*, p. 26.

48 *Ibid.*

49 *Ibid.*, p. 34.

50 European Commission, *Bosnia and Herzegovina 2013 Progress Report*, 16 October 2013, p. 13.

STRATEGIC FRAMEWORKS FOR COMBATING CORRUPTION

Having considered the recommendations provided by the international organizations, within the context of the EU accession, all three countries have adopted strategic documents related to the fight against corruption. Although these documents largely contain all recommendations, the implementation of the provisions is rather slow and only some of the activities envisaged by the action plan have been actually applied. This chapter briefly presents envisaged measures for the improvement of judicial system efficiency as well as other relevant bodies in charge of fighting corruption.

SERBIA

The **National Anti-Corruption Strategy in the Republic of Serbia for the period 2013 - 2018** is the most significant strategic document in terms of planning the fight against corruption. The Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013 – 2018 period has been adopted in accordance with the envisaged goals of the Strategy. However, taking into account the implementation process of the Action Plan, its stagnation is obvious. The general objective of the Strategy is the idea that corruption, as an obstacle to economic, social and democratic development of the Republic of Serbia, must be decreased to the largest possible extent.⁵¹ The Research of the World Economic Forum for the period 2011 – 2012 presented corruption as the second largest problem identified during the adoption of the decision on initiating economic activity in the Republic of Serbia. If we compare these data from the 2013 Report, we may notice that on the same scale, corruption has been recognized as a problem on the first place.⁵² According to this report, the independence of judiciary from the government, citizens and companies is still very low.⁵³

51 *National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018*, adopted by the National Assembly of the Republic of Serbia on 1 July 2013, "Official Gazette of RS" No. 57/13.

52 World Economic Forum, *Global Competitiveness Report 2013-2014*, Geneva, 2013, p. 334. Available at: <http://bit.ly/1bCOHnl>.

53 Rank: 2.6 on a scale 1-7 where 1 stands for strong influence and 7 stands for completely independent. World Economic Forum, *Global Competitiveness Report 2013-2014*, Geneva, 2013.

Regarding the efficiency of the judiciary in the fight against corruption as well as possible improvements in judiciary work, we have been primarily focused on the part of the Strategy related to this branch of power.⁵⁴ The biggest problems in this area are still the non-prescribed criminal offence of illegal enrichment as well as the fact that financial investigation has been mainly conducted following the submission of a criminal charge, so the delay of investigation increases the risk that the property will be brought out of the country. The new Criminal Procedure Code⁵⁵ introduced prosecutorial investigation, by which the state prosecution has been assigned a greater role in gathering evidence and processing it before the court. This idea requires additional knowledge on the part of state prosecutors, but also special knowledge in other fields such as forensic accounting and monitoring of financial flows, so there is a necessity for continuous education and specialization of state prosecutors, as well as the increase of the number of their deputies.⁵⁶ The Strategy itself emphasizes the fact that this law, since January 2012, has been applied in cases under the responsibility of the Prosecution for Organized Crime and the Prosecution for War Crimes, while it has been applied in criminal cases under the general responsibility of courts and state prosecutions since October 2013.⁵⁷

The basic goals of the Strategy in this area are related to the following:

- Full independence, i.e. autonomy and transparency of the judiciary in budgetary authorizations;
- The process of election, promotion and responsibilities of the holders of judiciary function, based on clear, objective, transparent and in advance defined criteria;
- Developed efficient and pro-active practice in disclosure and criminal prosecution of corruptive criminal offences;
- The improvement of substantial criminal laws and harmonization with international standards;
- Establishment of the efficient horizontal and vertical cooperation and exchange of information among police, state prosecution, courts, other public bodies and institutions, regulatory and supervisory bodies, and European and international institutions and organizations;
- The establishment of a unique register (electronic register) for criminal offences with elements of corruption, in compliance with the law regulating the protection of personal data;
- Strengthening mechanisms for the prevention of conflict of interests in judicial occupations;

.....
54 *National Anti-Corruption Strategy*, "Official Gazette of RS" No. 57/13, part 3.4. "Judiciary",

55 Criminal Procedure Code, "Official Gazette of RS" No. 72/11, 101/11, 121/12, 32/13 and 45/13.

56 State Prosecutors Council, *Report to the Council for Fight against Corruption*, 19 February 2014, p. 30.
Available at: <http://bit.ly/1f7a4ma>.

57 More information about Amendments to the Criminal Procedure Code available in the chapter Legal Framework Analysis - Serbia.

- Ensuring adequate resources of state prosecution and courts for dealing with the cases of corruption (strengthening capacities);
- The adoption of a long-term strategy which comprehensively improves financial investigations.⁵⁸

The first extensive results of the implementation of the Action Plan⁵⁹ were presented in March 2014. Further in the paper, we will present some of the most significant completed and non-completed measures, which are of special importance for the judiciary in Serbia, when it comes to strengthening this branch of power, for the sake of a more efficient and more effective fight against corruption. It is useful to point out that the National Judicial Reform Strategy for the 2013 -2018 period was adopted in July 2013 with the goal of empowering the High Court Council and State Prosecutors Council, in a way that they will be assigned greater responsibility and competence prescribed by the Constitution, which would undoubtedly guarantee the independence of judiciary. However, if we return to the measures envisaged by the Action Plan for the Implementation of the Anti-Corruption Strategy, we could see that certain steps towards strengthening these institutions were not undertaken completely or in the right way. With regard to the measure of amending the Law on the Judicial Academy, the Law on High Court Council and the Law on the State Prosecutors' Council⁶⁰, by which mandatory training for holders of judicial function would be introduced within the goal: *The process of election, promotion and responsibilities of holders of judicial function, based on clear, objective, transparent and advance defined criteria*, it can be noticed that only the first out of these three laws was amended. The other two laws have still not been adopted, but the drafts were submitted on 9 June 2014.

On the other hand, the development of the rulebook on objective criteria and procedures for election and promotion of holders of judicial functions, i.e. the functions of deputy state prosecutors and their publishing on the websites of judicial institutions has been envisaged, which would directly contribute to the independence of the election process.⁶¹ Publishing these rulebooks and availability of the document on the websites would enable the stakeholders, organizations and institutions in charge for measuring the transparency of employment and assignment of judge and prosecutor positions, to monitor how it influences the efficiency of the whole judiciary system.

58 *National Anti-Corruption Strategy*, "Official Gazette of RS" No. 57/13, part 3.4. "Judiciary".

59 Anti-Corruption Agency, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its Implementation*, 31 March 2014.

60 Government of the Republic of Serbia, *Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period*, 25 August 2013, Measure 3.4.2.4.

61 *Ibid.*, Measure 3.4.2.5.

One of the measures - *The establishment of efficient and pro-active practice in disclosure and criminal prosecution of corruptive criminal offences*⁶² is particularly important for our analysis. Proactive investigations are those investigations in which the prosecutors apply special techniques and within which the actions are taken based on the initiative of the police and state prosecution. The indicator for the achievement of this goal is the measure of implementing and developing the process of proactive investigations, which envisaged the obligation of the Public State Prosecution and the Ministry of Interior to create statistics on initiated proactive investigations by 6 September 2014. However, there are no information whether the statistics was created or not within the envisaged deadline.

The inexistence of the criminal offence of illegal enrichment is stated in the Strategy as one of the leading problems regarding corruption criminal offences. Illegal enrichment is a criminal offence which has been defined in foreign literature as “considerable increase of the property of public officials which cannot be argumentatively justified, considering their legal incomes.”⁶³ The check of property origin, as well as the introduction of this criminal offence into the Criminal Code, would contribute to the fight of the state against corruption and crime, as it would be clearly defined as criminal offence of corruption, which is frequent in the Republic of Serbia, regarding the number of affairs at the state level. The Action Plan envisaged Amendments to the Criminal Code so as to introduce this offence into the Code, while the deadline for the submission of draft amendments was 6 June 2014. All other activities can be implemented only after these amendments are adopted. However, the draft has not even been submitted to the National Assembly yet.

Within the goal of *Establishing efficient horizontal and vertical cooperation and exchange of information among police, state prosecution, courts, other public bodies and institutions, regulatory and supervisory bodies, and European and international institutions and organizations*, the improvement of cooperation and coordination of activities on combating corruption among relevant institutions has been envisaged, in a way that the Ministry of Justice and Public Administration should organize the signing of a Memorandum of Understanding with the police, state prosecutions, courts, other public administration bodies and institutions, which would determine the manners of cooperation and focal points.⁶⁴ The signing of a Memorandum is aimed at the decrease of average length of investigation for criminal offences with elements of corruption. Meetings with the Republic State Prosecutions have been held, while the High Co-

62 *Ibid.*, Goal 3.

63 LondaEsadze, *Glossary of terms in the field of conflict of interests and corruption*, Belgrade, 2013, p. 11. Available at: <http://bit.ly/1L5ldCh>.

64 Government of the Republic of Serbia, *Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period*, 25 August 2013, Measure 3.4.5.1.

urt Council and the Supreme Court of Cassation have said that they had not received the document for consideration.⁶⁵

Owing to identified lack of alignment and connection of the existing electronic registers on criminal cases, the Strategy has recognized the need to *establish unique register for criminal offences with elements of corruption, in compliance with law which regulates the protection of personal data*.⁶⁶ The Ministry of Justice and Public Administration, Republic State Prosecution, State Prosecutors Council, Supreme Court of Cassation, High Court Council and Ministry of Interior are obliged to establish the system of monitoring the cases of criminal offences with elements of corruption i.e. a unique electronic register, and it should be available in March 2015. This database would ensure greater proactivity and easier monitoring of the procedures related to criminal offences with elements of corruption, which would provide more clear impression on the number of these cases and enable registering and statistical reporting.⁶⁷

At the moment of the Strategy adoption, with regard to the cases for which there is a suspicion of having criminal offences with elements of corruption, it was noticed that a financial investigation is launched only after the criminal charge has been submitted. Also, the lack of experts from economic-financial profession in public prosecution was noticed.⁶⁸ Overcoming the mentioned problems has been carried out within the goal: *Ensuring adequate resources of state prosecution and courts for acting in the cases of corruption (strengthening capacities)*. As the analysis of the urge for building stronger capacities of public prosecution has been developed and 13 public prosecutor's offices have taken significant steps by introducing the audio-visual equipment needed for new prosecutorial investigations, trainings and capacity building of the working system, it can be said that activities have been carried out within the envisaged deadline.⁶⁹

Within the measure envisaging the introduction of the team of economic forensic science experts in the composition of public prosecutor's offices, the report of the State Prosecutors'

.....
65 Anti-Corruption Agency, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its implementation*, 31 March 2014, p. 161.

66 Government of the Republic of Serbia, *Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period*, 25 August 2013, Goal 3.4.6.

67 *Ibid.*, Measures within Goal 3.4.6.

68 Anti-Corruption Agency, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its implementation*, 31 March 2014, p. 163.

69 Republic State Prosecution, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its implementation*, 2013.

With reference to: Agency for Fight against Corruption, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its implementation*, 31 March 2014, p. 164.

Council indicates that the Prosecution for Organized Crime and high public prosecutions in Belgrade, Kragujevac and Nis have the greatest needs for introducing such team of experts.⁷⁰ In addition to this, it is envisaged to draft a training plan and programme for forensic science experts to be carried out by the Judicial Academy.

The last goal of the Strategy related to the judiciary is the *adoption of a long-term strategy which will comprehensively improve financial investigations*, and the training of holders of judiciary functions, police members and the members of Military Security Agency on new strategic solutions has also been planned within this goal.⁷¹ In August 2014, the Ministry of Justice confirmed that the working group responsible for developing the draft strategy and its accompanying action plan started working, and that the public prosecutor would have an opportunity to be networked with all bodies which may contribute to a much better and more efficient execution of criminal procedure.⁷²

It is important to state what has been envisaged by the National Anti-Corruption Strategy in the part related to police. It is stated that a successful fight against corruption cannot be completely effective only by punishing offenders, but it is essential to establish a special unit within the Minister of Interior, for the sake of strengthening police capacities in this area.⁷³ Also, the development and strengthening of an internal control system has been envisaged through the prevention of illegal practice of police officers, specific investigation on the police work, continuous cooperation with the media and public and establishment of international standards for professional practice of police officers.⁷⁴

The basic goals are to strengthen the capacities of the police for conducting investigations in criminal offences with elements of corruption, as well as empowered integrity and internal control mechanisms aimed at combating corruption in the police sector. The Academy of Criminalistic and Police Studies, in cooperation with the Ministry of Interior, has created a report on conducted training needs analysis related to the fight against corruption.⁷⁵ The establishment of an organizational unit for the fight against corruption within the Criminal Police Directorate by November 2014 has been envisaged within the first goal. In addition to this,

70 *Ibid.*, State Prosecutors Council, *Report*.

71 Government of the Republic of Serbia, *Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period*, 25 August 2013, Measure 3.4.9.

72 Tanjug, *New Financial Investigations and Unique Criminal Register*, 5 August 2014.
Available at: <http://bit.ly/1IYkiNm>.

73 *National Anti-Corruption Strategy*, "Official Gazette of RS" No. 57/2013, Part 3.5: "Police".

74 *Ibid.*

75 Ministry of Interior, *Report on the implementation of the Strategy and the Action Plan*. With reference to: Agency for Fight against Corruption, *Report on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period and the Action Plan for its implementation*, 31 March 2014, p. 166.

amendments to the Police Law have also been envisaged for the sake of establishing efficient mechanisms of those who fight against corruption on strategic, tactic and operational levels.⁷⁶ The draft amendments were supposed to be submitted to the Government by May 2014, and their adoption is anticipated by the end of 2014. Another important measure envisaged by the Action Plan is the creation of a data base of offenders in the field of corruption, which is anticipated to be carried out by March 2015.

Therefore, it is evident that numerous measures and activities, envisaged by the Strategy and its Action Plan, are either not completed or partially completed. Moreover, data in this regard are not easily accessible to wider public. The new report on the implementation of measures is expected in the forthcoming months in 2014 which would provide for better monitoring of the implementation of these significant strategic documents.

CROATIA

The Anti-Corruption Strategy is the most significant document for combating corruption in Croatia. It has been adopted by the Croatian Parliament in 2008.⁷⁷ This document has been created as a revision of the National Programme for Combating Corruption 2006-2008. The Strategy envisages an Action Plan with clearly defined measures, deadlines, responsible institutions and required funds aimed at the improvement of all forms of fight against corruption. The Strategy is being implemented through the Action Plan, which should be revised each year in order to monitor the implementation of the Strategy. However, the Action Plan was not revised in 2009, 2011 and 2013. During the drafting of this Strategy, the findings from the EU Screening Report for Chapter 23 “Judiciary and Fundamental Rights” were taken into account, as well as the recommendations of the 2007 Annual Progress Report of Croatia in the EU Accession Process published by the European Commission, the recommendations of the Accession Partnership and the recommendations of the Second Round Evaluation of GRECO of the Council of Europe.

The Strategy offers principles, which all activities of the Republic of Croatia related to combating corruption, will rely on:

- The rule of law principle – observing legal procedure, principles and limitations, observing and implementing the Constitution, national legislation and international treaties and agreements;

76 Government of the Republic of Serbia, *Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the 2013-2018 period*, 25 August 2013, Measure 3.5.1.2.

77 *National Anti-Corruption Strategy*, “Official Gazette of Croatia” No. 75/08 of 1 July 2008.

- Good practice principle – all national bodies have to harmonize their practice with the best practice for effective corruption combating;
- Responsibility principle – all state bodies have to take over the responsibility in policy creation as well as in the implementation of the Strategy and the Action Plan;
- Prevention principle – all state bodies have to work on removing the causes of corruption and all drawbacks which favour corruption;
- Effectiveness principle - all state bodies have to work on further proposals and development of measures leading to visible progress in combating corruption;
- Cooperation principle – all state bodies have to cooperate when carrying out activities for the implementation of the Strategy and the Action Plan;
- Transparency principle – all state bodies have to act transparently and ensure citizens to exercise the right to access to information;
- The principle of cooperation with civil society – all state bodies have to improve cooperation with civil society organizations; and
- “Self-assessment” principle – all state bodies have to monitor the implementation of the Action Plan consistently.⁷⁸

With regard to the goals, the Strategy prescribes the following: the improvement of the legal and institutional framework for effective and systemic corruption combating; affirmation of the “zero tolerance to corruption” principle; the increase of the level of effectiveness of disclosure and criminal prosecution of corruption criminal offences; the increase of public awareness on adversity of corruption and the necessity of its combating; the improvement of international cooperation in the fight against corruption; as well as other goals that are directly stated through aforementioned principles.⁷⁹ The National Council for Monitoring the Implementation of the National Programme for Combating Corruption (hereinafter: “National Council”) has been prescribed as a central body which has a proactive role in monitoring the implementation of the Strategy. The head of the National Council is a representative of the Croatian Parliament from the opposition and this body communicates with the bodies in charge for direct implementation of the measures provided by the Strategy. Besides this, the Committee for Monitoring the Measures for Combating Corruption is established (hereinafter: “Committee”) and its members are representatives of the bodies in charge for implementing certain measures prescribed by the Action Plan. The Committee is chaired by the Minister of Justice as the national Government coordinator for the fight against corruption. The coordination of institutions responsible for some activities defined by the Action Plan has been institutionally supported by the Independent Sector for Combating Corruption within the Ministry of Justice.

78 *Ibid.*, Item 2, Principles and goals of the Strategy, Principles.

79 *Anti-Corruption Strategy*, “Official Gazette of Croatia” No. 75/08 of 1 July 2008, Item 2, Principles and goals of the Strategy, General goals.

The Strategy also mentions the Commission for the Prevention of Conflicts of Interest of Public Officials which is in charge of issuing property cards of public officials and sanctioning them in case it determines the existence of a conflict of interests; and the Judicial Academy which implements the training of judicial bodies dealing with corruption. The Strategy prescribes several priority areas related to preventing corruption: the prevention of conflict of interests in holding public functions, the implementation of the regulation on financing political parties, exercising the right to access to information, strengthening integrity of public administration, the regulation of public procurement, the protection of victims and those persons who notify the corruption in good faith.⁸⁰

The area of *preventing the conflict of interests in holding public functions*⁸¹ is interesting for our research. This part of the Strategy in its assessment of the situation contains analyses of the organization of the Commission for the Prevention of Conflicts of Interest, as the central body. The Committee has 11 members, 6 representatives of the Croatian Parliament and 5 representatives of distinguished civil servants. Systematic trainings on prevention of conflict of interests are aimed at contributing to the prevention of corruption, informing public officials on how to avoid conflict of interests situation and instruct them in case of a doubt, whether their action is in compliance with the principles of public duties. In situations like this they are advised to ask for the opinion of the Committee in order to prevent possible conflict of interests.⁸² As necessary empowerment of this Committee in terms of administration and professionalism, the Strategy sets forth further ethical training for civil servants and informing about the imposed prohibitions for civil servants. The right to the access to information has the special place in this Strategy, and it is particularly interesting due to certain problems in terms of access to information in Croatia.⁸³ At the time of the Strategy adoption, the right of access to information in Croatia exclusively relied on the Act on the Right of Access to Information adopted in 2003. At that moment, the institution of the Information Commissioner had not been formed and it was only introduced with the latest Amendment to the Law in 2013.⁸⁴ The Strategy does not specify in detail the goals to be achieved in terms of greater observance of the Act on the Right of Access to Information and it is only stated how to improve the access of the general public to information and how to precisely define those information labelled as ‘classified’ and which are not subject to this law.

80 *Ibid.*, Item 5, The prevention of corruption.

81 *Ibid.*, Item 5.1, The prevention of conflict of interests in holding public functions.

82 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2014.

83 *National Anti-Corruption Strategy*, "Official Gazette of Croatia" No. 75/08 of 1 July 2008, Item 5.3, Right to access to information.

84 *Act on the Right of Access to Information*, "Official Gazette of Croatia" No. 25/13, Art. 35.

Besides priority goals, the Strategy sets *the analysis and assessment of the situation in terms of criminal prosecution and the implementation of criminal law*.⁸⁵ At the moment of Strategy development, there were no many cases for criminal offences with elements of corruption, as it is still the case. The role of the Bureau for Combating Corruption and Organized Crime (USKOK) within the State Attorney's Office of the Republic of Croatia has been clearly defined. The goals of the Strategy for further progress of criminal prosecution and the implementation of criminal law in case of the criminal offence with elements of corruption are the following: *the improvement of disclosure and prosecution of high level corruption, strengthening capacities of USKOK and the police, the acceleration of court procedures in cases of corruption*,⁸⁶ *deprivation of property benefit acquired by corruption*,⁸⁷ *as well as the needs for cooperation among different public bodies*.

An essential goal intended to be achieved by the Strategy is of educational nature, i.e. the intent to stress the adversity of the corruption to the public – *raising public awareness on the adversity of corruption*.⁸⁸ The tendency of this chapter of the Strategy is to define the methodology and channels through which the general public can be informed and educated on the adversity of corruption. Besides media, very important attention is dedicated to civil society organizations and it is stated that it is necessary to encourage active cooperation and partnership

85 *National Anti-Corruption Strategy*, "Official Gazette of Croatia" No. 75/08, Item 6, Criminal prosecution and implementation of criminal law.

86 Unfortunately, some cases still last relatively long. For example, the indictment for the trial to Damir Polancec and others related to business malversation in the public company Podravka (which was monitored during the project) was issued in September 2010. Over four years after the trial, neither evidence provision nor the first-instance judgement are to be seen. This opens the debate of whether the rights of suspects in this procedure are violated considering its long duration.

87 Deprivation of property benefit achieved by a criminal offence (including those offences with elements of corruption) and misdemeanour was also earlier defined by some laws: Law on Criminal Procedure, Law on the Agency for Combating Corruption and Organized Crime, Misdemeanour Law and Law on Responsibilities of Legal Persons for Criminal Offences. However, during the development of the Strategy, the law which thoroughly, simply and clearly, at one place and completely, defines the area of deprivation of illegally acquired property benefit did not exist, which would ensure the balance between criminal and property law, especially distraint law. In this regard, in December 2010, the Croatian Parliament adopted the *Law on the Procedure of Deprivation of Property Benefit Achieved by a Criminal Offence and Misdemeanour* ("Official Gazette" No. 145/10) which came into force on 1 January 2011.

88 *National Anti-Corruption Strategy*, "Official Gazette of Croatia" No. 75/08 of 1 July 2008, Item 8, Raising of the Public Awareness on Adversity of Corruption.

of all implementers of the measures with civil society organizations,⁸⁹ as well as to educate and additionally increase the sensibility of journalists for the corruption problem, in order to limit sensationalist reporting on corruption cases.⁹⁰

The latest revised version of the **Action Plan from 2012** elaborates on all goals defined by the Anti-Corruption Strategy.⁹¹ The Action Plan ensures systemic monitoring of the Strategy implementation and it represents a control mechanism by which it becomes possible to see whether certain measure was implemented completely or needs redefinition in accordance with new necessities. The Action Plan prescribes activities of the institutions of public governance and it protects public interest and the interest of the Republic of Croatia as it keeps public institutions from the devastating outcomes of corruption. The Action Plan states measures related to: the action of local self-government and trade companies where the state is a major owner; more active international cooperation and exchange of data; emphasizing more effective disclosure and processing of cases of corruption; strengthening capacities of the bodies responsible for processing corruption, and the interaction of competent bodies.

The Action Plan relies on thematic areas emphasized in the Strategy: legal and institutional framework, the prevention of corruption, criminal investigation and sanctioning of corruption, international cooperation and raising awareness on adversity of corruption. The objective of the Action Plan is to establish a “society with no corruption” within the 2011 - 2015 period. Relying upon the Strategy, the Action Plan emphasizes the significance of preventing the conflict of interests, especially by the holders of public functions.⁹² The Commission for the Prevention of Conflicts of Interest is a central, permanent, independent and autonomous body which tackles the identification of the corruption within public bodies. Also, the Action Plan prescribes the implementation of continuous presentation of the Commission’s work to the public with the aim to strengthen integrity, objectiveness, impartiality and transparency in holding public functions, and empowering the trust of citizens in public administration bodies.

89 This has not been greatly achieved, considering the fact that there are almost no local organizations which are focused on combating corruption and which have high-quality cooperation with public institutions, besides Transparency International as an international organization focused on transparency of public administration and fight against corruption and association of citizens who conduct organized monitoring of elections (GONG) dealing with transparency and corruption in election process and political life of political parties.

90 This goal has not been achieved even today, although many cases for criminal offences with elements of corruption have been lodged against previous high officials. Frequently, the most important cases are reported in a sensational way, without true knowledge of the criminal procedure and criminal offence of the accused.

91 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2012.

92 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2012, Item III, Preventing corruption 1, Preventing conflict of interests in holding public functions.

With regard to the improvement of the right of access to information,⁹³ there is a great interest within the general public for further facilitation of the access to information. The Action Plan provides measures for certain ministries and other public bodies to undertake with the purpose of facilitating the access to information. As for the criminal prosecution and sanctioning of corruption⁹⁴, the Action Plan envisages the development of comparative analysis for the inclusion of the criminal offence of illegal enrichment into national criminal laws in compliance with Article 20 of the UN Convention for Combating Corruption. The Action Plan prescribes necessary capacity building of USKOK and the police, in order to improve the prosecution of corruption.

The Action Plan addresses the need for raising public awareness on the adversity of corruption, indicated in the Strategy.⁹⁵ In addition, it prescribes the preparation of promotional materials which could provide information about the adversity of corruption, the urge for further cooperation with civil society organizations, as well as the consultations with them in cases of legal amendments in the field of combating corruption. However, the Action Plan states that there is no systemic and efficient control of the use of public funds by civil society organizations for projects related to combating corruption. It is also stated that due to the nature of financing, civil society organizations are at potential risk of facing corruption.

Transparency International's office in the Republic of Croatia presented the *Index of the Perception of Corruption (IPK) in 2013*, on 3 December 2013.⁹⁶ The IPK is the most widespread indicator of the perception of corruption in the world and it indicates the level of perception of corruption in the public sector on the scale from 0 to 100, where 0 signifies the country perceived as highly corrupted, while a country marked with 100 is perceived as free from corruption. In 2012, Croatia was marked with 46 points and it ranked 62nd, while in 2013 it was on the 57th position, marked with 48 points, which can be interpreted as a progress.

BOSNIA AND HERZEGOVINA

The **Anti-Corruption Strategy in Bosnia and Herzegovina 2009 – 2014** was designed as a framework document specifying the guidelines for action of each level of governance. This document is of special significance, taking into account the numerous obstructions in Bosnia

93 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2012, Item III, Preventing corruption 3, Right to access to information.

94 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2012, Item IV, Criminal prosecution and sanctioning of corruption.

95 Ministry of Justice, *Action Plan to the Anti-Corruption Strategy*, 2012, Item VI, Raising Public Awareness on the Adversity of Corruption.

96 Transparency International, *Index of the Perception of Corruption in 2013*, Zagreb, 2013. Available at: <http://bit.ly/1IK3ISi>.

and Herzegovina in creating joint strategic documents to be implemented by state and entity institutions.⁹⁷

The essence of a comprehensive fight against corruption in Bosnia and Herzegovina lies in the European integration perspective, as well as in models of good governance, integrity, responsibility and transparency. The Action Plan for the Implementation of the Anti-Corruption Strategy (2009–2014)⁹⁸ is complementary to the Strategy and defines specific measures, responsible institutions and sets deadlines for the implementation of certain activities.

The establishment of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption of BiH is of great importance. It was founded in compliance with the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption adopted in December 2009,⁹⁹ which underwent several amendments¹⁰⁰ in 2013. The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption regularly reports to the Parliament of Bosnia and Herzegovina. The latest available report relates to the period 1 January 2013 – 30 September 2013, and was submitted in October 2013.¹⁰¹

The latest Transparency International report for Bosnia and Herzegovina, published in June 2014,¹⁰² has been welcomed as a relevant, independent source in terms of evaluation of the achieved and identification of perspectives of further work of civil society organizations in the system of education and involvement of youth in different activities for ensuring the rule of law and fight against corruption. Besides this document, the communication with institutions has also been taken into account, as well as the experience of Youth Initiative for Human Rights in Bosnia and Herzegovina, and the needs and recommendations of activists involved in monitoring of trials have been pointed out. Access to information is a special issue with different competing interpretations of the obligations of institutions to disclose data and information of public interest.

The greatest flaws of this strategic document are the problems related to its adoption. Firstly, the articulated vision and strategic goals are unclear. Secondly, the text reveals a lack of plan for allocating necessary funds from the budget as well as an insufficient knowledge of local

97 *Anti-Corruption Strategy BiH*, <http://bit.ly/1WhYUR0>.

98 *Action Plan for the Implementation of the BiH Anti-Corruption Strategy (2009-2014)*. Available at: <http://bit.ly/1Mjz7iS>.

99 *Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption*, adopted on 30 December 2009, "Official Gazette of Bosnia and Herzegovina" No.103/09.

100 *Law on Amendments to the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption*, "Official Gazette of Bosnia and Herzegovina" No. 58/13.

101 Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, *Work Report*, October 2013, Available at: <http://bit.ly/1TsHqJM>.

102 Transparency International BiH, *Report on Evaluation of the Strategy of Fight against Corruption 2009-2014 - final findings and recommendations*, June 2014. Available at: <http://bit.ly/1TsHwB4>.

context.¹⁰³ Similar problems have been identified during the implementation of the Strategy, and the last monitoring report of Transparency International for Bosnia and Herzegovina as of January 2014 shows that out of the total number of planned measures (81), only 8 (9.8%) had then been completely implemented, 57 (70.4%) had been partially implemented, while 16 measures (19.8%) had not been yet implemented at all. This clearly reflects the insufficient level of implementation of the Strategy.¹⁰⁴ This has been perceived as a clear indicator of not setting the foundations of the Strategy properly and that expected results were not realistic. In an attempt to distinguish clearly defined recommendations for strengthening the judicial system in the fight against corruption, it was identified that there were no such recommendations.

After conducting several analyses, relevant organizations had pointed out that there has been a slight progress in the development of institutional mechanisms. Whereas the form was completed and budgetary positions were filled, the question remains to what extent they will be efficient in the future and what will the relevance of agencies at the national level be in the current political context of general blockades, preparation and implementation of new strategies which have been frequently drafted at entity level. “This is the area where the best results were achieved,” concluded Transparency International with regard to this issue.

The issue of the functioning of established bodies has been highlighted by the fact that the Agency itself has been facing blockades in appointing and nominating certain persons in the systematization of working positions, and it has also encountered obstructions in terms of financing. Additionally, an important segment is the work of the Court of Bosnia and Herzegovina. It can be seen that the number of judgements in the last five years is minimal and that only recently, with opening more complicated cases and more significant investigations in terms of determining responsibilities for criminal offences of misconduct in office, there has been a space for more severe corruption tackling. It should be taken into account that the flow of investigation has been frequently influenced by certain political structure in the intelligence-security structure and consequently efficient investigation and the collection of evidence frequently depends on the willingness of the government institutions to participate and provide their contribution. Therefore, the necessity for intensifying investigations and court proceedings related to corruption cases has been emphasized.¹⁰⁵ With regard to this, it is clear that the very election process or general elections in 2014 and the establishment of governance structures on every level in Bosnia and Herzegovina considerably influence the expectations in the following four years.

According to the findings in the aforementioned report of Transparency International BiH, there were no changes in the proceedings and other procedures related to investigation in corruption cases, in the last four years, that could possibly be a direct result of the implementation of the Strategy. Due to these reasons, it is necessary for institutions to improve their acts

103 *Ibid.*, p. 15.

104 *Ibid.*

105 *Ibid.*, p. 17.

and procedures (not only for the selection of candidates for the judicial functions important for identifying corruption cases) and to introduce mandatory specialized trainings in the field of prevention and fight against corruption.¹⁰⁶

The existing analyses indicate that judicial institutions have been facing poor capacities for investigations of committing criminal offences, especially in the segment of public procurements. Along with formally fulfilled criteria, there is a neglected deficit of professionals within judicial institutions who would particularly specialize for investigations. Still, amendments of existing legal solutions represent a great problem in the process of fight against corruption, e.g. amendments related to determining conflict of interests in the financing of political parties, where in some cases impartial investigation and identification of responsibility can be prevented.

106 *Ibid.*, p. 36.



ANALYSIS OF LEGAL FRAMEWORKS

SERBIA

The law governing criminal proceedings is one of the most important legislative acts of a state. The principles and standards it contains directly affect the level of performance and speed of detection of crimes and their perpetrators. Successful implementation of substantive provisions to a large extent depends on the efficiency and applicability of the solutions prescribed for procedural legislation, while harmonizing and successful functioning of the entire criminal legislation constitute important factors deterrent from committing criminal offenses in general. On the other hand, the solutions represented in these laws directly indicate the extent to which human rights and freedoms are respected.

The Criminal Code

To fight corruption efficiently, it is expedient to determine which offenses fall under the so-called corruption offences¹⁰⁷ and to clearly define them, which is the task of substantive law. Also, it is important to improve the efficiency of the judiciary, which is a direct consequence of the procedural regulation and its implementation¹⁰⁸. The time frame established regarding criminal legislation is the same as for other laws in Serbia. Thus, the laws come into force eight days after their publication in the official gazette, and for justified reasons this time frame may be shortened. However, because of the nature of the matter regulated by criminal legislation, it would not be reasonable to apply such shortening to this kind of legislation.¹⁰⁹

The principle according to which an offender's criminal act is regulated by the criminal law in force at the time of its commission, as an expression of the principle of legality, relates to material law. However, it is important and mandatory to provide for the retroactive application of the law that is more lenient towards the offender, which has to be determined

107 Or criminal cases with an element of corruption.

108 One of the conclusions of the panel discussion with judges, prosecutors, police representatives and other interested parties during 2012 and 2013, see Lawyers' Committee for Human Rights, *For a more efficient Justice against corruption* (Serbian: *Za efikasnije pravosuđe protiv korupcije*), Belgrade, 2013 (available in Serbian only), p. 38.

109 Zoran Stojanovic, *Criminal Judiciary – General Part*, Belgrade, 2013, p. 78.

in case by case and represents a complicated criminal issue.¹¹⁰ In the field of criminal justice a reform has been made in 2005 and the new Code, by which Serbia after years of effort, somewhat modernized its criminal law, was adopted. It was amended and supplemented twice in 2009 and then in late 2012, with a tendency to lead to developments in the field of combating corruption. The fourth amendment to the Code was conducted in 2013, but did not lead to changes in this area. In the existing Criminal Code the term corruption is not mentioned at all, unlike the Criminal Code that was in effect during the period from 2001 to 2006. However, in the previous Code there was no general definition of corruption, but this term was contained in the title of the chapter containing criminal provisions against corruption and in the name of certain offenses.

The sharpest criticism of the Criminal Code was connected to the crime of the offense of Abuse in an Office position under Article 359 of the CC RS (Chapter XXXIII CC), whose object of protection is its official duty or service. According to the wording of Article 359 of the CC before the last change, the perpetrator of this crime may be a public official, indicating the public sector, but the responsible person under the legal definition belongs to the private sector. However, with amendments to the Criminal Code of 2012, the responsible persons are omitted from Article 359 and “transferred” in the chapter of crimes against the economy, with the introduction of a new criminal offense of abuse of office responsible person in Article 234. The perpetrator of this crime can be a responsible person as defined in the following way (Article 112, paragraph 5): responsible person in the legal entity shall be a person who by law, regulation or authority performs certain tasks of management, supervision or other activities from the activity of a legal person, and the person to whom is actually entrusted to carry out these tasks. Responsible persons shall also be considered official when it comes to crimes in which the perpetrator as indicated by a responsible person, and in this Code are provided in the section on crimes against official duties i.e. as criminal offenses of an official.

The most important difference compared to the previous solution is that the owner of a business entity is only considered as a responsible person if he performs specific functions and tasks pertaining to the capacity of person responsible. In addition to the clearer and more precise way of determination, it is also very important to delete the responsible person as the perpetrator of the offense of abuse of office. The previous solution was confusing, contradictory and did not make a difference between corruption in public and private sectors. With these changes, progress should also be achieved in fulfilling obligations undertaken by Serbia in ratified regional and international agreements in this field, in accordance with international cooperation.

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110 *Ibid.*

Corruptive offenses include primarily the following:

1. Receiving Bribes (Article 367)
2. Giving Bribes (Article 368)
3. Abuse of Office (Article 359)
4. Violation of the Law by a Judge, Public Prosecutor and his Deputy (Article 360)
5. Influence peddling (Article 366)

In other sections of the Criminal Code, there are still some parts that have elements of corruption. First of all, this includes the offense of bribery in connection with a vote under Article 156 of the CC RS, which belongs to the group of offenses against electoral rights in Chapter XV of CC. The essence of this crime can be consisted in granting or promising certain awards, gifts or other benefits to the election or referendum to vote or not to vote or to vote in favor of or against a particular person, or suggestions. On the other hand, it is punishable by any requesting or accepting gifts or other benefits with a view to an election or referendum to vote or not to vote or to vote in favor of or against a particular person, or suggestions. The crimes that can be committed in connection with corruption, as referred to in Chapter XXXIII Criminal Code, including: Dereliction of Duty - Art. 361; Unlawful Collection and Disbursement - Art. 362; Undesignated Use of Budget Funds - Art. 362a; Fraud in the Service - Art. 363; Embezzlement - Art. 364; Service - art. 365; Disclosing Official Secrets of art. 369.

Also, as an example of criminal offenses related to corruption, we can mention some of the crimes against labour rights (Chapter XVI CC), as well as violations of the rights in employment and during unemployment. It is clear that one of the biggest problems in our society is corruption during employment hidden behind the discretion of the employer who fills vacancies on the basis of the benefits expected for himself or another, not by the quality of candidates. An equal risk lies in the execution of the offense of construction without a building permit under Article 219a, paragraph 4 of CC chapter XXI CC, according to which the person who is as responsible, or technical control, contrary to the regulations authorize final report on the inspection noting that the major project has no objections, or contrary to the regulations put the seal on a major project to project acceptance, or contrary to the regulations given a statement confirming that the major project was done in accordance with the building permit, be punished with imprisonment of three months to three years and fined. Of course, this listing is not exhaustive by criminal offenses that may be related to the corruption because corruption is like giving money or other assets with the intention of the recipient to work on request of the person who gives, or use their social position to gain appropriated material benefits for himself or someone else, a very broad term. In addition, there is a wide range of areas that pervades this phenomenon, from politics, administration, judiciary, police, customs, to health and education¹¹¹.

111
Lawyers' Committee for Human Rights, *For a more efficient Justice against corruption* (Serbian: *Za efikasnije pravosuđe protiv korupcije*), Belgrade, 2013 (available in Serbian only), p. 14.

Cases of Soliciting and Accepting Bribes

It is common that the concept of bribery includes cases of passive and active bribes, namely the criminal offence of accepting bribes and the criminal offence of giving bribes. The criminal act of receiving a bribe is regulated by Article 367 of the Criminal Code, according to which the case of accepting bribery exists if a public official, directly or indirectly, solicits or accepts a gift or other benefit, or accepts a promise of gift or other benefit for himself or another, leading him within his official powers to perform an official act that he should not perform or not to perform an official act that should be made, and for which a sentence of two to twelve years in prison is prescribed and / or to perform an act that should be performed or not to perform an act that should not be performed, what is punishable by two to eight years in prison.¹¹²

Particularly sanctioned is the situation in which an official person performs one of the actions described above, in the context of detecting a criminal offence, initiating or conducting criminal proceedings, determining or enforcing criminal sanctions. This is punished by the heaviest sentence of three to fifteen years in prison. On the other hand, the easiest form of this crime exists when an official after the commission of, or failure to perform official acts in connection with it, demands or accepts a gift or other benefit. The perpetrator shall be, in this case, sentenced to imprisonment of three months up to three years. The perpetrator of all forms can be an official, domestic and foreign person, but also the responsible person in the company, institution or other entity.

The offence of giving a bribe is regulated in Article 368 of the CC RS: “Who offers or promises a gift or other benefit to an official or another person, so that that official, within the framework of his official powers, commits an official act which he should not perform or in order not to performed an act he should perform, or whoever mediates in such bribing of a public official, shall be punished with imprisonment from six months up to five years.

Any person who offers or promises a gift or other benefit to an official or any other person, so that this official or any other person, within the framework of his official powers, perform or do not perform an official act that should not be performed, or any person who mediates in such bribing of a public official shall be punished by imprisonment of up to three years.”

It is interesting to point out the differences between Articles 367 and 368 of the CC RS. Firstly, subsequent active bribery is not incriminated, unlike subsequent passive bribery. In other words, if the official act is performed first (or if its performance was missed) and then followed by gift or other benefit, there would be no criminal offence of accepting bribes, unless the gift or benefit were promised in advance. Secondly, paragraph 4 of Article 368 provides for a facultative basis of exemption from punishment in case the perpetrator of the offence of giving a bribe reports it before he comes to the knowledge that the offence has been discovered. The reasons for providing such grounds of release from punishment are of criminal-political nature and

112 Zoran Stojanovic, *Commentary on the Criminal Code* (Serbian: *Komentar krivičnog zakonika*), official gazette edition, Belgrade, 2006 (in Serbian only), p. 766.

relate to the issue of proving the criminal offence of accepting bribes¹¹³. The changes brought in 2012 extend the provisions of Art. 367 and 368 so that this criminal offence not only covers acts performed within the perpetrators official powers but also acts performed in relation to these powers. Besides, paragraph 6 of Article 368 CC, providing for the possibility of returning the bribe to the person who provided it, has been abolished.

Abuse of Office

Article 359 of the CC provides that an official who, by abuse of office or authority, by exceeding the limits of his official authority or by dereliction of duty, acquires for himself or another any benefit, or causes damages to a third party or seriously violates the rights of another, shall be punished by imprisonment of six months to five years. More serious forms of this crime, provided in paragraphs 2 and 3, depend on the value of the material gain. As already mentioned, the Law on Changes and Amendments of 2012, abolishing as outdated the offence of negligent labour in business operations, introduced the abuse of office by a responsible person. Also, the responsible person is deleted from the Article 359 of the Criminal Code, and is unable to be a responsible person as a perpetrator of abuse of official duties. Officially, the responsible person and the official person are two different legal subjects who have different powers in different areas, so the 2012 changes achieved a separation of great importance. Official persons (i.e. civil servants) act within public administrative bodies where they perform official functions, while responsible persons perform specific tasks in the management and operation of a business entity. In addition, in order to constitute a criminal offence under Article 234, there should be an unlawful material benefit as opposed to a mere benefit (as in the case of an official).

As for criminal proceedings initiated against persons who abused their position as responsible officers and not as public officials, Article 359 of the Criminal Code provides for a continuity principle between the new offences and abuse of official position under the previous regime. Hence no one who is under investigation or charges may be released because of the modifications in the Code. For all accused whose proceedings did not reach a final judgment yet, the law which is more favorable for them shall be applied. Although these changes are positive, recent problems, primarily concerning jurisdiction of the courts, should have been addressed. Specifically, the subject matter jurisdiction of the court is the right and duty of the court of first instance to give a verdict on a criminal offence, given its weight, which is expressed in the sentence, or with respect to other characteristics of the offence or the offender characteristics. The basic rule is that municipal courts have jurisdiction in first instance over all criminal offences punishable by imprisonment up to 10 years. With the switching from Article 359 to Article 234 of the Criminal Code, namely that the responsible persons are prescribed less severe punishments (penalties are provided for up to 10 instead of up to 12 years), the general rule is that

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113 *Ibid.*, p. 771.

the competent courts are basic courts instead of higher courts. Therefore, in accordance with the Law on Courts, for all cases of economic crime, except those with elements of organized crime, the competent organs are basic courts. We believe that the basic courts and basic prosecution are under-prepared to deal with these cases, given that even higher courts and prosecutors faced serious problems. Economic crime is extremely difficult to prosecute because there are a number of documents, many legal entities and complicated facts involved in such cases, therefore requiring a high level of expertise in the field of business activity¹¹⁴.

Violation of Law by a Judge, Public Prosecutor or his Deputy

A judge or lay judge, public prosecutor or his deputy who issues an unlawful act or otherwise violates the law in the course of court proceedings with an intent to acquire a benefit or to cause damages to another, shall be punished by imprisonment from six months up to five years¹¹⁵. This criminal offence provided by Article 360 CC belongs to special criminal offences, because of its characteristic that it can be performed only by judge or lay judge, public prosecutor or his deputy. On the subjective plan there must exist premeditation and intent to obtain a benefit for another or inflict a damage. It is important to emphasize that this criminal act is in the subject matter jurisdiction of higher courts, no matter with the height of the punishment, and for criminally political reasons it represents an exception to the general rule about subject matter jurisdiction.

Influence peddling

The crime of influence peddling was introduced only with amendments to the Criminal Code in 2009. It represents a special form of corruption involving people who have adequate social prestige or have developed connections in high social circles, especially within the political elite. This criminal act is supposed to refer to corruption cases which concerned malfeasance in big business, and they occurred most frequently among politicians, but also to other persons in positions that cannot be punished for committing an abuse of office.

Article 366 of the current Criminal Code provides: “Whoever accepts a reward or other advantage to use his official or social position or influence to intercede for performance or failure to perform an official act, shall be punished by imprisonment from three months up to three years.

114 Lawyers’ Committee for Human Rights, *For a more efficient Justice against corruption* (Serbian: *Za efikasnije pravosude protiv korupcije*), Belgrade, 2013 (available in Serbian only), pp. 17-18.

115 *Criminal Code*, “Official Gazette of RS” No. 85/2005, 88/2005-corr 72/2009, 111/2009, 121/2012 and 104/2013, Art. 360.

Whoever promises offers or gives a reward or other benefit to another to intercede through use of his official or social position or influence in order to perform or fail to perform an official act, shall be punished by imprisonment from six months up to five years.

Whoever by abusing his official or social position or influence intercedes for performance of an official act that should not be performed or not to perform an official act that should have been performed, shall be punished by imprisonment of six months to five years.”

The most severe form of unlawful mediation (i.e. influence peddling) referred to in paragraph 3 of the Article occurs when a reward or any other benefit is requested or received by the offender, which is punishable by imprisonment from two up to ten years.

Criminal Procedure Code

The criminal procedure is enforced by the law that is in force. Procedural law may exceptionally be retroactive if required by the general interest which was determined in his adoption. Thus, for example, at the time of the adoption of a new code, persons who have acquired the status of cooperating witness before the entry into force of the new Code, are judged by the law in force at the time of acquisition of that status. The legality of actions taken before the implementation of the new Code will be evaluated under the provisions of the previous applicable law. The investigation that is ongoing at the date of entry into force of the Code shall be completed under the provisions of prior law, and further proceedings will be conducted under the new Code¹¹⁶. Calculation of time limits shall be done under the current, actually the new Code, except if the deadline was more extended under the provisions of the preceding Code.

With the amendments brought to the Criminal Procedure Code of the Republic of Serbia in 2009, the specificity of those criminal offences of “corruption, organized crimes and other very serious criminal offenses” was given an expression through specific provisions, regrouped in Chapter XXIX¹¹⁷. Specifically, these provisions define special competences applying to official actors of criminal proceedings, i.e. a series of special procedural rules which apply when such offences are the subject of the proceedings. An important peculiarity of the application of these special rules of procedure is the possibility of using certain special evidentiary actions. This peculiarity is manifested in cases testing the cooperating witness in the preliminary proceedings and examination of the undercover investigator as a witness in criminal proceedings. The procedure for these criminal offences was supposed to provide greater speed and efficiency compared to the procedure of other crimes.¹¹⁸

116 *Code of Criminal Procedure*, “Official Gazette of RS” No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, Chapter XXVII.

117 “Official Gazette of RS” No. 72/2009.

118 Milan Škulić, “Criminal Procedural Law – General Part”, Belgrade, 2013.

Starting from the fact that in comparative law separate criminal proceedings for these offences are not created, and larger deviations from the classic rules of criminal procedure are not allowed, the legislator acknowledged the specificity of these works in the current Code through the special evidentiary actions. In fact, when it comes to offenses hardly proven by the classical evidence procedures or offenses for which, due to the severity and seriousness of the consequences that they cause, there is increased interest in creating opportunities for the use of special evidentiary actions. When valid evidence are collected, criminal proceedings shall be conducted according to the usual rules.¹¹⁹ The actual CPC that applies as of 1 October 2013 in all courts in Serbia¹²⁰, Article 162, paragraph 2 lists, without defining previously shown offenses as crimes of corruption (as in the previous law), a wider range of offenses that apply to special exhibits actions, including new criminal offences with elements of corruption:¹²¹ the abuse of office (Article 234 CC) and the abuse of public procurement (Article 234a CC).¹²²

The new CPC provides for special evidentiary actions that can be applied if it is otherwise not possible to collect evidence or if their collection would be rendered very difficult, i.e. leading to use secret surveillance of communication, surveillance and monitoring, simulated jobs, computer monitoring data, controlled delivery and undercover agent. The “cooperating witness” was renamed “defendant associate” and is now regulated in the part of the text relating to the investigation, and it contains provisions on the agreement of the prosecutor and the defendant. The Code contains three possible types of agreements between the public prosecutor and the defendant. The *Agreement on admission of the offence* may be concluded in respect of any offence and must be approved by the court.¹²³ The *Agreement on testimony of the defendant* may be concluded only in proceedings for certain offenses, but with the defendant who is char-

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119 The rules laid out in a positive criminal legislation of a particular country.

120 Except in proceedings for offenses for which a special law to act in the public prosecutor’s office of special jurisdiction, in which case it began to be applied from 15 January 2012 (Article 608 of the CPC).

121 A theoretical concept, there is no definition of corruption or acts of corruption in criminal material law nor in procedural law.

122 Introduced into the criminal legislation amending the CPC in December 2009, “Official Gazette of RS”, 111/2009.

123 The provisions of the new Criminal Procedure Code (Article 161, paragraph 1, item 1) broadened the number of criminal offences where the category of agreement on the testimony of the defendant (formerly cooperative witness) can apply, and this in relation with those offences which are in the jurisdiction of Prosecutor for Organized Crime (which includes offences of the “high” corruption) and Prosecutor for War Crimes. In the old CPC, this was only possible in cases of organized crime (Article 504a paragraph 3 of the old CPC). These techniques still do not apply to proceedings for criminal offenses with elements of corruption pending before the regular (departments) courts and prosecutors’ offices, which can lead to the conclusion that the currently much better technological equipment of specialized organs largely relies on the legislator’s commitment.

ged with either those or for other crimes. The *Agreement on testimony of a convicted person* is a new concept in CPC which is dictated by the needs of specialized prosecution. The last two agreements should serve as a proof of charges against the other defendants. Although the circle of action to which those agreements apply is enlarged, it appears that attitudes of judges and prosecutors handling cases of criminal acts with elements of corruption support the thesis that both law and practice should allow the use of special evidentiary mechanisms in all procedures for acts of corruption.¹²⁴

Applicable CPC introduced major changes in terms of procedural role of the court and the prosecutor with a view to efficiency and speed of the process to a higher level, which is of particular importance for criminal acts of corruption. The burden of proof lies on the prosecutor and evidence is presented by way of motions from the parties. The amendments as to who has the probative initiative lead to a party process based on the *principle of equality*¹²⁵. With the new rules, the *principle of free judicial conviction* particularly came to light at the main trial stage with the introduction of the so-called cross-examination allowing for suggestive and “trap” questions in order to verify the reliability of the witness, observe his gestures, spontaneous movements and psychological reactions to questions. However, the role of the court is of lower level when it comes to presenting the evidence and it has been reduced to proposing additional evidence or ordering to the party to propose them himself/herself, if this is necessary for a comprehensive consideration of the matter in dispute or if contradictory evidence has been introduced already.¹²⁶

The most significant change in CPC is the introduction of prosecutorial investigation. The procedure consists of the pre-investigation proceedings (which replace the former pre-trial proceedings) and the investigation which, according to the “investigative” role of the prosecutor, represents the prosecution part of the proceeding and the accusation where the trial part begins. Although the pre-investigation process is led by the Public Prosecutor, specific actions, in order to prosecute the perpetrator, can be entrusted to the police that is required to follow the orders of the prosecution and duly inform the office about the taken measures. There is a

124 Part of the YUCOM's publication containing opinions of judges, prosecutors and police representatives about the obstacles to effective procedures for offences of corruption: see Lawyers' Committee for Human Rights, *For a More Effective Judiciary Against Corruption*, Belgrade, 2013, pp. 35-45.

125 The principle of oral proceedings constitutes criminal procedural law of the parties to the proceedings amount to their own views on issues related to criminal matters and to declare their positions opposite side, or an obligation of the court to allow each side to express their views on any evidence. The scope and manner of application of the principles differ in different stages of the procedure.

126 Stanko Bejatović, “The New Code of Criminal Procedure – The End of the Reform Process or Just Another Step?” (original Serbian: “Novi Zakonik o krivičnom postupku – Kraj reforme ili samo jedan korak u procesu reforme?”), *Pravni Informator*, vol. XVI, No. 9/2013, September 2013 (in Serbian only).

slight difference between the interrogation of the suspect as the most important evidentiary action in this part of the procedure, which can be handled by the prosecutor or the police, and the interrogation of the arrested, which can be handled only by the public prosecutor. An investigation can be launched according to the order of the public prosecutor and against the person for whom there is a ground for suspicion of committing a criminal offense, but also can be run against an unknown perpetrator of the crime, if there are grounds for suspicion that a criminal offense has been committed.¹²⁷

Raising the indictment generally comes after the investigation stage, when there is reasonable suspicion that a person has committed a crime. However, the indictment can be raised even without the investigation if the public prosecutor believes that it has sufficient evidence for the accusation. “The novelty” is the obligation of the court to examine the indictment *ex officio* (instead of being based on objection by the defence or upon a judge’s request), and any charge will have to pass the verification process before being handed to the chamber of judges. If the indictment meets the statutory criteria the off-trial judges’ bench will adopt a decision confirming the indictment. After the confirmation of the indictment, the presiding judge begins the preparations for the trial, which includes the organization of the preliminary hearing, the scheduling of the main hearing and other decisions within the criminal proceeding. At the preliminary hearing a decision is made about the subjects of the trial phase, which is also a novelty in the CPC. The preliminary hearing is held before the President of the Council and it is compulsory for the criminal offences where the accused is facing imprisonment of more than twelve years. The parties have to give the statement on the subject of the indictment, the allegations, proposals and statements of the opposing party, the factual and legal issues in dispute are determined and the proposed evidence are being argued.

The main trial stage has the characteristics of the party proceeding where the order of the interrogation and questioning are in accordance. The defendant will be asked questions firstly by the defence counsel, then the prosecutor and at the end the court, which is different from the previous practice prescribed by the former CPC. Cross-examination has been introduced, as another feature of adversarial criminal justice system. *It should be particularly noted that the main hearing is public for all persons over sixteen years, and the public may exceptionally be excluded if the protection of legitimate interests in a democratic society requires it, i.e. for the sake of protecting the interests of national security, public order and moral, the interests of minors and protection privacy of the participants in the process.*

There is an aspiration of the legislator to broaden the use of modern information and communication technologies in criminal proceedings, in order to have faster and more successful solving of the crimes and catching their perpetrators. Also, modern scientific and technical

127 This requirement has reduced the condition related to the level of doubt in relation to previous legal decisions, with the intention that this phase cover as much as possible the informal police conduct that takes place in the pre-investigation procedure.

methods and knowledge are being used, i.e. the assistance of the professional forensic, taking biometric samples, sampling for forensic genetic analysis, checking accounts and suspicious transactions, use of the mapping devices for remote monitoring of movements of the defendant, the introduction of electronic submission etc. Costs have increased due to the procurement of the equipment and training of the officials in the criminal proceedings, but the use of this equipment increases the probability of correct determination of the facts relevant to decision making in the criminal proceedings. This way, the entire criminal procedure speeds up and this contributes to the realization of the principles of fair trial and trial within a reasonable time. In addition, their use provides for better transparency of the judicial system, because the information systems provide citizens with public access to information in criminal cases.

CROATIA

Criminal Code

The Croatian Criminal Code (CC) is the central law within the Croatian legal framework defining the offences with elements of corruption and providing for sanctions in cases of committing these offences.¹²⁸ The latest updates of the CC entered into force on 1 January 2013. In this amended version of the law, certain new offenses were introduced and others were précised, but there was also a change in within the offences with elements of corruption. This law defines a new offence with elements of corruption: bribing MPs qualifies as a criminal offence.¹²⁹ It is described as an attempt to “buy votes” for the adoption of legal acts in the Croatian Parliament, or bribing an official of the legislative body of the Republic of Croatia, as well as a member of the European Parliament and local and regional (regional) advocacy bodies in the Republic of Croatia.¹³⁰ The law prescribes the penalty ranging from 6 months to 5 years in prison.¹³¹ According to member of the working group for amending the law and Supreme Court judge Mladen Mrčela, this criminal offence has been introduced because voting is not included among official actions listed as offences of receiving or giving bribe.¹³²

Criminal offences with elements of corruption have been also prescribed by the earlier version of the Criminal Code of 2011, and they are in the Chapter twenty-four (XXIV) “Criminal offenses against the economy”, and the Chapter twenty eight (XXVIII) “Criminal offenses against official duties”.

128 Croatian Criminal Code, “Official Gazette” No. 125/11, 144/12.

129 *Ibid.*, Article 339.

130 *Ibid.*

131 *Ibid.*

132 *Večernji list*, „New Criminal Offences”, 1 September 2012, Available at: <http://bit.ly/1JcbNoq>.

Misuse of Trust in Economic Transactions

One of the criminal offences against the economy is the crime of misuse of trust in economic transactions. It refers to someone's act aimed at disrespecting other people's property interests through misuse of trust, in order to acquire his/her own material gain and cause damage.¹³³ The prescribed sentence for this offence ranges from six months up to five years in prison, and 1-10 years of imprisonment in case of significant material gain and damage caused.¹³⁴

Active and Passive Bribery in Bankruptcy Procedure

The offence of active and passive bribery in bankruptcy proceedings also falls within criminal offences against the economy.¹³⁵ This criminal act regulates the prohibition of bribery in bankruptcy procedure for the creditors, trustees and people who give bribes.¹³⁶ The prescribed punishment depends on whether the bankruptcy relates to creditors (sentence of 6 months to 5 years in prison) or trustees (punishable by 1-8 years) who received a bribe, or the bribe-giver (punishable by up to 3 years in prison).

Criminal offences of passive bribery in economic transactions¹³⁷ and bribery in economic transactions¹³⁸ define the accountability of the natural or legal person who during economic activities receives or offers bribes in order to harm those they represent, they work for or who mediate this activity. The prescribed punishment depends on whether a bribe is received when the work was being performed or after the completion of the work and provision of the service so as to cause damage to another (punishable by 1-8 years imprisonment), or if the bribe was received when the work was arranged or after the completion of the work as provision of the service as preferential treatment (6 months to 5 years in prison).

As for offering bribes the difference also lies in whether the bribe has been offered, promised or given while the work was arranged or services provided so as to cause damage to another (sentence of 6 months to 5 years in prison) or it is offered, promised or day myth when making or execution of work as preferential treatment (punishable by up to 3 years in prison).

Abuse in Public Procurement Process

The following criminal offence with elements of corruption is a crime of abuse in the public procurement process.¹³⁹ It is a criminal offence which describes a situation in which the

133 Croatian Criminal Code, "Official Gazette" No. 125/11, 144/12, Article 246.

134 *Ibid.*, Article 246.

135 *Ibid.*, Article 251.

136 *Ibid.*

137 *Ibid.*, Article 252.

138 *Ibid.*, Article 253.

139 *Ibid.*, Article 254.

offer is published in the course of the public procurement process which was agreed in advance with certain economic operator.¹⁴⁰ The prison sentence for that crime depends on whether the substantial financial gain was obtained or has caused substantial damage (sentence of 1-8 years in prison) or the substantial financial gain was not obtained or damage caused (sentence of 6 months to 5 years in prison).

Abuse of Office and Official Authority

Chapter twenty eight (XXVIII) includes offences against official duty, of which 6 are criminal offences with elements of corruption. The first such offence is the abuse of office and official authority which describes a situation in which the official or responsible person exceeds his authority or does not perform his duty in order to obtain a benefit for himself or another, or causes damage to another.¹⁴¹ The prison sentence depends on whether the substantial financial gain was obtained or considerable damage was done (the penalty of 1-12 years of imprisonment), or if substantial financial gain has not been obtained or considerable damage has not been done (sentence of 6 months to 5 years imprisonment).

Illegal Intercession

The crime of illegal intercession involves a situation when an official or responsible person favours one of economic entities so that he/she adapts the requirements for public procurement or concludes the contract with a bidder whose bid does not meet the tender conditions.¹⁴² The prison sentence for this crime is from 6 months to 5 years in prison.

Offering and Accepting Bribes

The offence of accepting bribes¹⁴³ relates to the accountability of an official or responsible person who accepts or demands a bribe for himself/herself or another in order to fulfill an official act which he/she should not perform or not to perform an official act that should be performed, within or outside his/hers authority, as well as the accountability of the official or responsible person who accepts or demands a bribe for himself/herself or another in order to conduct an official action that should be performed anyway or not to perform an official act that is banned to perform, within or outside his/her authority. In the first case the sentence can be 1-10 years in prison and in the other 1-8 years in prison. In case that an official or responsible

140 *Ibid.*

141 Croatian Criminal Code, "Official Gazzete" No. 125/11, 144/12, Article 291.

142 *Ibid.*, Article 292, Item 1.

143 *Ibid.*, Article 293.

person receives or demands a bribe for himself or another after the action has been done, it will be punishable by a sentence of up to 1 year in prison.

The offence of giving bribe¹⁴⁴ describes the situation in which the other person offers, gives or promises a bribe to an official or responsible person or to another one so that the official within or outside the limits of his authority performs an official act which he should not perform or not to perform an official act which he should perform, as well as the situation when it comes to performing actions which should be performed anyway or not to perform an official act which should not be done anyway. In the first case the sentence stretches from 1 to 8 years in prison, while in the other case it is from 6 months to 5 years in prison. In either case, the person who mediates in the process of taking bribes shall be sanctioned as well.

Influence Trading

The crime of influence trading¹⁴⁵ describes the situation of demanding or accepting a bribe or the offer or promise of a bribe (or intermediating in those actions) in order to use the official or social status or influence for not performing or performing an action which should or should not be performed. The same rule applies to situations where a person with official or social position or influence intervenes so as to perform an official act that should be performed, or the opposite. In the first case the predicted sentence is from 6 months to 5 years in prison; in the second case it is 1-10 years in prison, and in the third 1-8 years in prison.

Giving a Bribe for Influence Trading

The criminal offence of giving a bribe for influence trading¹⁴⁶ relies to the criminal offence of influence trading. It includes the offering, promising or giving a bribe in order for someone to use his official or social status or influence for performing or not performing an act which should or should not be performed. The prescribed sanction ranges from 1-8 years of imprisonment. If the same has been done with intermediating in those actions, the punishment should be from 6 months to 5 years of prison.

The Criminal Procedure Code

In the context of the criminal procedural legislation, the Criminal Procedure Code (CPC) is the central law which regulates the process of criminal proceedings, including the

144 *Ibid.*, Article 294.

145 *Ibid.*, Article 295.

146 *Ibid.*, Article 296.

prosecution of criminal cases with elements of corruption.¹⁴⁷ The latest update of the CPC came into force on 15 December 2013. Although the latest amendments of the CPC followed the constitutional suspension of certain articles of the Code in July 2012, the most important and basic guidelines of the Code have not been changed. The CPC is used for the implementation of the Criminal Code in such a way that no innocent person can be convicted and that the culprit should be imposed a prison sentence prescribed by the CC.¹⁴⁸ This Code regulates the criminal prosecution and proceedings. In this regard, the novelties in the last version of the CPC is the fact that criminal proceedings cannot begin with the filing of criminal charges as in earlier versions of the Code, but the legally valid decision for conducting the investigation and the confirmation of the indictment if the investigation was not carried out, determining the discussion on the basis of a private complaint and adjudication of warrant issuing.¹⁴⁹

This Code, like most similar laws, provides for the presumption of innocence, until the final verdict proves to the contrary,¹⁵⁰ and that in case of doubt the verdict will be in favour of the defendant (in dubio pro reo).¹⁵¹ In case of detention, the judicial authority must justify this request.¹⁵² CPC also determines the rights to defence of the accused, so that he can defend himself, or be defended by a defence counsel of his own choice or awarded by the court, at the expense of budget funds.¹⁵³ Also, article 5 of the new Code stipulates that the defendant must be aware of his right to a counsel and be allowed sufficient time to prepare his/her defence.

This Code prohibits discrimination on any grounds,¹⁵⁴ and precludes the defendants, witnesses or other persons from giving statements under the influence of medical intervention, or anything that may affect their will while giving statements, as well as under coercion or threat.¹⁵⁵ The detainees and defendants should be treated in a humane and dignified way. Also, they must be informed about the offences they have been charged for and of their rights under this Code, in a way they understand, at the moment of being arrested and delivered the indictment.

This Code stipulates that an independent and impartial tribunal must decide upon the indictment in a fair, public way ad in a reasonable time, in accordance with the law, acting particularly urgently in proceedings where the defendant is temporarily deprived of freedom.¹⁵⁶ It also determines that no one can be prosecuted for an offence for which a judgment has been delivered already (non bis in idem) and it opens the possibility for the reopening of an adju-

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147 Criminal Procedure Code, „Official Gazette” No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13.

148 *Ibid.*, Article 1, Item 1.

149 *Ibid.*, Article 17, Item 1.

150 *Ibid.*, Article 3, Item 1.

151 *Ibid.*, Article 3, Item 2.

152 *Ibid.*, Article 4.

153 *Ibid.*, Article 5, Items 1 and 2.

154 *Ibid.*, Article 6, Item 1.

155 *Ibid.*, Article 6, Item 2.

156 *Ibid.*, Article 11.

icated case in case the person is declared guilty. In the case where the initiation of criminal proceedings entails the restriction of certain rights, they can be restricted upon the issuance of the indictment, and for criminal offences which face a fine or up to 5 years of imprisonment, the restriction starts from the moment of conviction.¹⁵⁷

If the implementation of the Criminal Code depends on a preliminary decision on the legal issue where another court or state body has jurisdiction, the criminal court can make the ruling under the provisions applicable to presenting the evidence in criminal proceedings. The court's decision on this legal issue only applies in the criminal case on which this court is adjudicating.¹⁵⁸

BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina differs from the other countries in the region because of its complex state system and shared competence in the area of criminal law. In this regard, four separate criminal systems coexist on the territory of Bosnia and Herzegovina (the criminal codes and criminal procedure code). The Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina apply to proceedings before the Court of Bosnia and Herzegovina, and the Parliamentary Assembly of Bosnia and Herzegovina is in charge of the amendments. The Criminal Code and the Criminal Procedure Code of the Federation of Bosnia and Herzegovina implements before the municipal courts in the Federation of BiH, then cantonal courts, and finally - the Supreme Court of the Federation of Bosnia and Herzegovina. Amendments to these laws are adopted by the Parliament of the Federation of Bosnia and Herzegovina. The Criminal Code and the Criminal Procedure Code of the Republika Srpska (RS) apply before the basic courts in RS, then the district courts, and the Supreme Court of RS. Amendments to these laws are made by the National Assembly of the Republika Srpska. The Criminal Code and Criminal Procedure Code of the Brčko District of BiH is implemented before the Basic and Appellate Court of the Brčko District of Bosnia and Herzegovina. Amendments to these laws are passed by the Brčko District Assembly.

Criminal Offences with Elements of Corruption

According to the aforementioned, crimes have to be monitored from four different criminal code perspectives (CC BiH, CC FBiH, CC RS, CC BD). Taking into account the availability and adequate preparation of the judicial institutions of Bosnia and Herzegovina (Court of BiH), most of the pilot phase of monitoring in Bosnia and Herzegovina is dedicated to the cases before the Court of BiH.

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157 *Ibid.*, Article 17, Item 2.

158 *Ibid.*, Article 18, Item 1.

The Criminal Code of Bosnia and Herzegovina

The Criminal Code was adopted in 2003. It was amended several times since then, the last time to date being in 2010.¹⁵⁹

Accepting Gifts and Other Forms of Benefits

“An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought not to be performed by him, or for the omission of an act, which ought to be performed by him, shall be punished by imprisonment for a term between one and ten years.

An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought to be performed by him, or for the omission of an act, which ought not to be performed by him, shall be punished by imprisonment for a term between six months and five years.

The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit following the performance or omission of an official act referred to in paragraphs 1 and 2 of this Article and in relation to it. The gifts or any other benefits shall be forfeited.”¹⁶⁰

Giving Gifts and Other Forms of Benefits

“Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, in order that he performs within the scope of his official powers of an act, which ought not to be performed by him, or abstains from performing of an act which ought to be performed by him, or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

Whoever gives or promises a gift or any other benefit to an official or responsible person in the institution of Bosnia and Herzegovina including also a foreign official person, in order that he performs within the scope of his official powers an act, which ought to be performed

159 Criminal Code of Bosnia and Herzegovina, „Official Gazette BiH” No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

160 *Ibid.*, Article 217.

by him, or abstains from performing of an act, which ought not be performed by him, shall be punished by a fine or imprisonment for a term not exceeding three years.

The perpetrator of the criminal offence referred to in paragraph 1 and 2 of this Article who had given a bribe on request of the official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.”¹⁶¹

Illegal Interceding

“Whoever accepts a reward or any other benefit for interceding that an official act be or not be performed, taking advantage of his official or influential position in the institutions of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a term not exceeding three years.

Whoever by taking advantage of his official or influential position in the institutions of Bosnia and Herzegovina, intercedes that an official act be performed, which ought not to be performed, or that an official act be not performed, which ought to be performed, shall be punished by imprisonment for a term between six months and five years.

If a reward or any other benefit has been received in return for the criminal offence referred to in paragraph 2 of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.”

Abuse of Office or Official Authority

“An official or responsible person in the Bosnia and Herzegovina institutions who, by taking advantage of his office or official authority, exceeds the limits of his official authority or fails to execute his official duty, and thereby acquires a benefit to himself or to another person, or causes damage to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years. If a property gain acquired by the perpetration of the criminal offence referred to in paragraph 1 of this Article exceeds the amount of 10.000 KM, the perpetrator shall be punished by imprisonment for a term between one and ten years. If a property gain acquired by the perpetration of the criminal offence referred to in paragraph 1 of this Article exceeds the amount of 50.000 KM the perpetrator shall be punished by imprisonment for a term of not less than three years. The obtained financial gain should be taken away.”¹⁶²

161 *Ibid.*, Article 218.

162 *Ibid.*, Article 220.

Violation of Law by a Judge

A judge of the Constitutional Court of Bosnia and Herzegovina or the Court of Bosnia and Herzegovina or the Human Rights Chamber, who, with the aim of benefiting another, or harming another, passes an illegal act or otherwise violates the law in the performing of his official duties, shall be punished by imprisonment for a term between six months and five years.

The Criminal Procedure Code of Bosnia and Herzegovina

The Criminal Procedure Code of Bosnia and Herzegovina was adopted in 2003, and has undergone many amendments, available in the Official Gazette of Bosnia and Herzegovina (3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93 / 09, 72/13).¹⁶³ The rules set forth by this Code provide for an innocent person to be acquitted and that the perpetrator be imposed a criminal sanction under the conditions stipulated in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina which define criminal offences, and due to the prescribed procedure.

CPC provides the presumption of innocence (*in dubio pro reo*) and the *non bis in idem* principle - that no one can be tried again for an offence that has already been adjudicated by a final court decision. A person deprived of liberty must be immediately informed in their native language or a language they understand about the reasons for his arrest, and instructed that he is not obliged to provide statements or answer questions and about his right to a defence counsel of his own choice. He has also the right that his family, a consular officer of his state of citizenship or any other person designated by him, be informed about his detention.

During the first questioning the suspect must receive the information about the offence he is being charged with. His statement can be used as evidence in further proceedings. One can defend himself/herself in person or with professional legal assistance. It is necessary to pay attention to the legality of evidence as the court cannot base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution of BiH.

A person who has been unjustifiably convicted for a criminal offence or unlawfully deprived of liberty shall have the right to rehabilitation, compensation of damages from the state budget, as well as other rights established by law. According to the CPC the is bound to treat the parties and defence counsel in the same manner, and to provide each with equal opportunities to access evidence and present evidence at the trial. Of course, in terms of evidence, the principle of free evaluation of evidence is applied. Criminal proceedings may be initiated and conducted upon the request of the Prosecutor. The Prosecutor is obligated to initiate a prosecution if there is evidence that a criminal offence has been committed, unless the law provides otherwise.

Where it is prescribed that the initiation of the criminal proceeding will have the consequence of right limitation, those rights will be restricted after the indictment has been confir-

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163 Available at: <http://bit.ly/1P63R6c>.



med. In the case of the offences with a prison sentence up to five years or a fine, consequences shall be implemented from the date the conviction is rendered. If the application of the Criminal Code depends on a prior ruling on a point of law that falls under the jurisdiction of a Court in other proceedings, or under the jurisdiction of another body, the Court trying the criminal case may itself rule on that point of law in accordance with the applicable provisions of this Code concerning the presentation of evidence in criminal proceedings. The Court's ruling on that point of law takes effect only with respect to the particular criminal case that the Court is trying.

MONITORING COURT PROCEEDINGS

The process of trial monitoring is one of the elements of control of the judiciary. It involves giving an opinion, with all the necessary reservations, on the presence at the trial, as well as reviewing the indictment, the evidence adduced or judgment, in order to preserve the independence of the judiciary. In order for the process of monitoring court proceedings with an element of corruption to be as clear as possible, it is necessary to mention their relevance and legal basis for monitoring trials. It is important for judicial authorities to pass the test to the public, but media, professional civil society organizations and citizens are in a special position to measure the efforts. “For the respect of the rights of the perpetrators of these crimes and the applicable legal procedures it is necessary that those who perform monitoring possess have a certain level of expertise and professionalism.”¹⁶⁴ The right to monitor trials is guaranteed by the principle of public access with many international instruments, primarily the UN Universal Declaration of Human Rights,¹⁶⁵ the European Convention for the Protection of Human Rights and Freedoms,¹⁶⁶ the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.¹⁶⁷ The right to a fair trial, which is an important segment of the public principle, is guaranteed by Article 32 of the Constitution of the Republic of Serbia. Also, even when the public is excluded, the Criminal Procedure Code provides, the Council to allow the presence of certain officials, scientific, professional and public workers and that at the request of the accused can be allowed to the spouse, the person with whom cohabiting or close relatives to be present.¹⁶⁸

164 Attention should be paid to the presumption of innocence, right to adequate legal defence, measures for respecting the right to privacy and the use of the principle of public proceedings. According to: Lawyers’ Committee for Human Rights, *For a More Efficient Judiciary in Combating Corruption*, Belgrade, 2013. (in Serbian).

165 *Universal Declaration on Human Rights*, United Nations General Assembly, resolution 217 (III) of 10 December 1948, art. 10.

166 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe, Rome, 4 November 1950, art. 6.

167 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly, 8 March 1999, A/RES/53/144.

168 Law on Civil Procedure, art.364, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

The same provisions are in the legal systems of the other countries which were the subject of the research presented in this publication. Article 120 of the Constitution of the Republic of Croatia states that “Court hearings shall be open and judgments shall be passed publicly in the name of the Republic of Croatia”, and that “The public may be banned from a whole hearing or of one part of it for the reasons of protecting moral in democratic society, or public order and the country security, or if minors are being tried, or for the purposes of protection of the private lives of the parties, or in marital disputes and proceedings in connection with guardianship and adoption, or for the purposes of protection of military, official or business secrets, and for the protection of security of the Republic’s defence, but only in the scope which is by the opinion of the court necessary in special circumstances in which the public could be detrimental for the interest of justice.”

The Criminal Procedure Code states that “legitimate reasons for exclusion are 1) protection of the security and defence of the Republic of Croatia; 2) keeping the confidentiality of information which would be jeopardized by a public hearing; 3) keeping public order and peace; 4) protection of personal or family life of the defendant, the injured person or of the another procedural participant; 5) protection of the interests of a minor” and that certain persons can be permitted to enter a hearing where the public is excluded, i. e. “certain officials, scholars or public figures, and upon the defendant’s request, his spouse or common-law spouse or close relatives, be present at a trial closed to the public.”¹⁶⁹

Civil society organizations, that are equipped in this area, that act strictly professionally in the field of monitoring trials for war crimes and organized crime and corruption, in Bosnia and Herzegovina, have the leading role in monitoring the work of the courts. The Criminal Procedure Code of Bosnia and Herzegovina in article 234 emphasizes that the hearing is public, and the reasons for the exclusion of the public are similar to those in adjoining states.¹⁷⁰ In that sense, the most important cases for the monitoring process are those before the Court of Bosnia and Herzegovina, a special institution in the judiciary system of Bosnia and Herzegovina, where a great part of high profile cases of organized crime and corruption are processed.¹⁷¹

Criminal proceedings with elements of corruption are specific because of their social importance, the complexity of the cases, large number of participants, broad scope of evidence, the length of the proceedings and numerous other problems which the court, prosecution and defence face. For this reason, this area has been recognized as one of the most suitable for widespread monitoring, in order to identify the basic problems which the judiciary faces for a more efficient, just and faster proceedings.¹⁷² By following the previously developed methodology, partner organiza-

169 Criminal Procedure Code, Official Gazette of Croatia, No. 76/09. and 80/11, art. 310. and 311.

170 Criminal Procedure Code, “Official Gazette of BiH” No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

171 Criminal Procedure Code, “Official Gazette of BiH” No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

172 Lawyers’ Committee for Human Rights, *For a more efficient judiciary against corruption*, Belgrade, 2013, p. 26.

tions monitored proceedings in 3 countries (Serbia, Bosnia and Herzegovina and Croatia) in the course of which they faces different issues, depending on the monitored system.¹⁷³

Some of the basic goals defined by YUCOM, YIHR Croatia and YIHR BH from the very start of the process are: monitoring the implementation of new laws and legal mechanisms; increase the transparency of the proceedings by monitoring hearings; promoting objective and professional reporting on court proceedings rather than sensationalizing such media content; efficacy of judges, prosecutors and the police; professionalism and possible violations of the code of ethics by lawyers; impartiality in proceedings, independence and professionalism; as well as respect for human rights of the accused and the rights of the injured party. Monitoring experiences were different.

SERBIA

As the basic goal of monitoring criminal proceedings for corruption we emphasized systematic fallacies in the work of the judiciary, in order to improve the efficiency of the courts in solving cases with an element of corruption. Independent monitors, lawyers, jurists and activists have previously been trained in the applicable legal framework and the amendments to the Criminal Procedure Code. They are trained to report on the subject, and also on possible human rights violations. Of course, apart from following proceedings, those who monitored the proceedings were instructed as to which part of the proceedings they should pay close attention to.

From 1 January 2014 the judiciary reform started to be implemented. The reform broadened the court network in Serbia, which directly influenced the change in jurisdictions with respect to some of the cases. On the other hand, the new Criminal Procedure Code introduced the model of prosecutorial investigation, which put additional strain on prosecutors. The aforementioned changes have slowed down the work of courts and prosecutors, and because of the technical changes, hearings were not scheduled. The Lawyers' Committee for Human rights sent requests for access to information of public importance to courts and prosecutors at the beginning of April 2014. The courts were asked to identify all criminal proceedings for crimes prescribed in arts. 234, 234a, 359, 360, 366 and 368,¹⁷⁴ that were brought before the First, Second and Third Basic Court, the High Court in Belgrade and the Special Department for Criminal Acts of Organized Crime of the High Court in Belgrade as well as the indictments for these cases. The answers arrived within the legal time frame, but they were either partial, with only court numbers of the cases, but with no indictments, with the explanation that the request was

173 Methodology explained in detail in the Lawyers' Committee for Human Rights publication *For a More Efficient Judiciary Against Corruption*, Belgrade, 2013. p. 28-31.

174 Information upon the criminal offences were set in line with the jurisdiction of the courts.

too extensive, or they requested an additional 40 days to provide the requested information. In order to fasten the process of getting information, YUCOM's team scheduled meetings with the deputies of prosecutors and the presidents of the aforementioned courts. At the meetings with the deputy prosecutors from the First, Second and Third basic public prosecutor's office, we learned that the prosecution are overloaded, not only because of their new role, but also due to a lack of administration (particularly officers and clerks), technical problems (inadequate, small offices for interrogation) and disincentives in income (due to the solidarity tax) in face of a significantly increased workload. Despite these issues, they have quite effectively done reassignment items.

As agreed, the researchers were invited to the clerk's office to examine all cases involving criminal offences with corruptive element(s). According to the type of offences and the area of work of the defendants, keeping in mind the relevance and media coverage, researchers selected a number of cases to be considered. Prosecutors' offices subsequently aligned copies of the selected indictments according to the Law on the Protection of Personal Data and communicated the required documents. After receiving the indictments, the items were thoroughly inspected and a larger number of cases were selected, so that in the course of the procedure the choice gets narrowed down. The first part of the case analysis was to record the status of the accused, the facts, the media coverage of the case and material law, as well as procedure related to the case.

YUCOM's team sent notices to the presidents of courts in order to inform them of the fact that researchers will be attending trials for selected cases, with the explanation that with objective reporting we want to contribute to greater transparency of judicial proceedings, effectiveness, legality and impartiality in the conduct of the competent authorities. This way we wanted to support the judiciary in the implementation of the new laws and legal principles in the fields of human rights and criminal law protection.

Researchers who were chosen to monitor the trials were previously trained on how to conduct extensive monitoring. They got familiar with the purpose of conducting it as well as which procedures and norms they had to know about when monitoring cases with corruptive elements. Each researcher had to be delivered a special authorization by the organization, which they carried with them at the hearings. The authorizations were issued in order to facilitate the recording of the presence of the observers, when the judge was informed about it. Observers were present in the courtroom as representatives of the general public. However, it often happened that the judge asked observers what was the cause of their presence and what organization they represented, which was sometimes more useful than not recording the presence of monitors at all. It should be noted that, according to the law, legitimization of the audience should be irrelevant prior to the commencement of the trial.

The monitors were informed about the scheduled hearing in three ways. The easiest way was to use the database "The Portal of the Courts of Serbia". However, the Commissioner for Information of Public Importance and Personal Data Protection issued a decision to ban further processing or disclosure of the personal data of the participating parties in court proceedings by

the Ministry of Justice and Public Administration. The decision stated that previous practice was contrary to the Law on Personal Data Protection and it was implemented without any legal basis.¹⁷⁵ Meanwhile, the court network has been changed and a Third Basic Court has been introduced in Belgrade. The Portal has no information available for cases pending before the Second and the Third Court in Belgrade, as well as before the Special Department for Organized Crime of the High Court in Belgrade, so this information were collected in another way. We received the required information directly at the clerk's office, accompanied by the aforementioned authorization, or by sending additional freedom of information requests. All collected information were posted on the "Anti-Corruption" web page.¹⁷⁶

At the hearing, the observer recorded the facts and as much information about the procedure as possible - presentation of evidence, the method of obtaining evidence, decisions, regulations to which the parties refer, procedural norms, objections, as well as any violation of the procedure.¹⁷⁷ After completion of the hearing (usually we are speaking of the trial phase), the monitors drafted detailed a daily report with observations and additional comments, if they expressed some disagreement within the procedure. Reports were regularly uploaded on the website in order to be available to the broader public. This way, citizens are getting a closer insight into the judicial branch of power activities and its efficiency.

After the period of regular trial monitoring, 24 cases were picked for analysis. Detailed analysis of these cases was planned, as an initial measure of the efficiency of the courts during the period of monitoring. Featured cases included 3 cases under the jurisdiction of the First Basic Court in Belgrade, 3 under the jurisdiction of the Second Basic Court in Belgrade, 2 in the under the jurisdiction of the Third Basic Court in Belgrade, 7 cases pending before the High Court in Belgrade, 8 in the Special Department for Organized Crime of the High Court in Belgrade and 1 in the jurisdiction High Court in Zrenjanin.

Based on previous data collected from the courts and prosecutor's offices in April and May 2014, in the beginning, the researchers tried to follow through as many trials and offenses with elements of corruption. Case selection was carried out primarily under the jurisdiction of the courts. Cases of various criminal offences with corruptive elements, related to corruption in various fields were also included. In these cases the defendants performed different functions. The aim was to emphasize how corruption has become a systemic problem that affects all fields of public life. In early August of this year the additional freedom of information requests for

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175 Previously, the process of getting the information about cases was much easier by using the Portal, because of poor communication with the courts. It was difficult to get the court numbers of the items when the requester was not a party to the proceedings, so the only way was to search cases by the names of the parties in the proceedings.

176 Internet portal "Anti-corruption". Available at: <http://bit.ly/1T-sHZDw>.

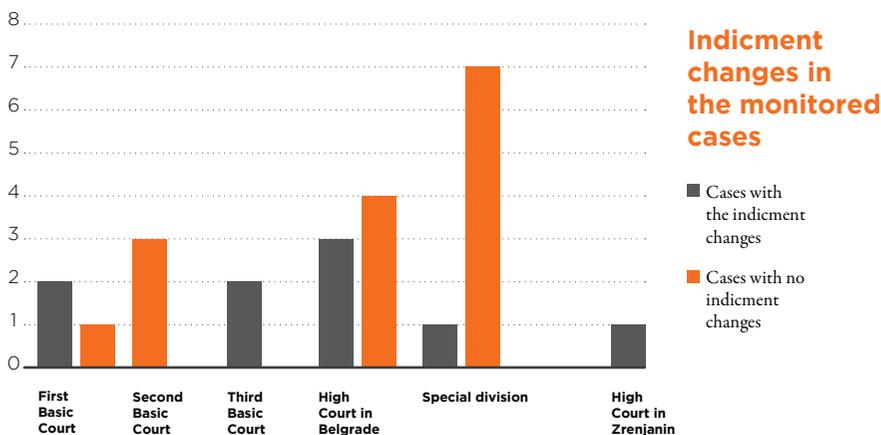
177 Lawyers' Committee for Human Rights, *For a More Efficient Judiciary Against Corruption*, Belgrade, 2013, p. 32-34.

collecting the information unavailable from the indictment or during the monitoring process. The team has developed an analysis of the key points that could give a clear insight into the efficiency of solving criminal proceedings with corruptive elements.

Based on the data obtained from responses to the requests, but also collected during the monitoring process, we managed to get more detailed information on monitored cases. A total of 24 cases was observed, of which 12 cases of crime of abuse of office, five for abuse of office responsible person, 2 cases of bribery, 2 cases of soliciting and accepting bribes, one that includes the offence of bribery and soliciting and accepting bribe sand one case of violation of law by a judge, public prosecutor and his deputy. The new Criminal Procedure Code has been applied in 8 monitored cases, while in all other monitored cases an earlier version of the law was applied.¹⁷⁸

As for the areas in which corruption occurs, 8 monitored cases were related to the economy, three to education, 2 on health, 3 on sports societies, 2on the police, 4on state institutions and 2 within the judiciary. These areas are highlighted as ones in which corruption most frequently occurs, except that in the economy most of the cases are characterized as organized crime. From the daily reports of the trials it can be concluded that bribery in health care and the police is understood by the defendants as something completely justified and normal. It is observed the injured party are usually commercial entities or private parties. There was also the fact that the media had covered 14 cases, while 10 were not covered at all. The media were poorly interested in the smaller “everyday” corruption cases.

In 8 cases the detention was not determined and these are the most common cases pending before primary courts.¹⁷⁹ In most cases there was no observed altering of the indictment.



178 All the observed cases in which the new Code of Criminal Procedure applies shall be kept before the Special Department for Organised Crime of the Higher Court in Belgrade.

179 Data on the cases before the First Basic Court in Belgrade are missing, as the First Basic Prosecutor’s Office response was received within the legally stipulated time.

They are usually changed due to refinements of the indictment, especially if it is a criminal offense of abuse of office.

In additional requests to the courts and prosecutors before which the monitored criminal proceedings are taking place, information was requested upon the dates of filing of the criminal complaint, the date of the decision on conducting the investigation, the date of entry into force of the indictment and the date of beginning of the trial. In this way, we were able to gain an insight to duration of the entire process, in order to get the whole perspective of the time passed from perpetrating acts until the perpetrators were being charged. It was noted that precisely this period is the longest, in the cases of high corruption. In addition, the maximum efficiency in terms of the length of the investigation process was spotted in the cases before the Third Basic Court in Belgrade and the Special Department for Organized Crime of the High Court in Belgrade. Since the proceedings before this department are guided by the new Criminal Procedure Code, it can be concluded that the institute of prosecutorial investigation achieves good results, despite the aforementioned lack of administrative staff.¹⁸⁰

Second Basic Court in Belgrade	Time from when the crime was committed to initiation of proceedings. ¹⁸¹	Time from initiation of proceedings to start of investigation	Time from start of investigation to indictment	Time from indictment to start of hearings	Time from indictment to processing
K - 4298/13 (1 accused)	3 years and 8 months	17 days	2 years and 5 months	14 days	1 year and 3 months
K-4734/12 (1 accused)	4 years and 5 months	7 days	1 year and 7 months	9 months and 10 days	2 years and 6 months
K-5749/12 (2 accused)	2 months	1 month and 12 days	2 years and 9 months	2 months	1 year and 10 months

180 *Ibid.*

181 The time when the crime was committed is the time when the illegal action started.

Third Basic Court in Belgrade	Time from when the crime was committed to initiation of proceedings. ¹⁸²	Time from initiation of proceedings to start of investigation	Time from start of investigation to indictment	Time from indictment to start of hearings	Time from indictment to processing
K - 10335/10 (1 accused)	18 days	17 days	3 months	10 months	5 years and 6 months
K-8016/12 (3 accused)	24 days	24 days	3 months	6 years and 8 months	7 years and 2 months

High Court in Zrenjanin	Time from when the crime was committed to initiation of proceedings ¹⁸³	Time from initiation of proceedings to start of investigation	Time from start of investigation to indictment	Time from indictment to start of hearings	Time from indictment to processing
K - 6/14 (1 accused)	10 months	10 days	9 months	8 months	4 years and 10 months

High Court in Belgrade	Time from when the crime was committed to initiation of procee- dings ¹⁸⁴	Time from initiation of proceedings to start of investigation	Time from start of in- vestigation to indi- ctment	Time from indictment to start of hearings	Time from indictment to processing
K - 3508/10 (9 accused)	5 months	/	2 months	3 years and 3 months	4 years and 2 months
K - 328/11 (1 accused)	3 months	/	25 days	1 month and 3 days	3 years and 5 months
K - 1366/10 (1 accused)	4 years and 5 months	3 months	8 months	1 year and 6 months	5 years and 3 months
K - 120/11 (2 accused)	4 years and 1 month	/	3 months	5 months	3 years and 6 months
K - 272/12 (2 accused)	3 months	/	25 days	2 months	3 years and 5 months
K - 89/10 (1 accused)	1 month	/	1 month and 13 days	2 years and 4 months	6 years
K - 510/12 (1 accused)	3 months	2 months	1 year and 10 months	3 years and 1 month	3 years and 3 months

Special Division for Organized Crime of the High Court in Belgrade	Time from when the crime was committed to initiation of proceedings ¹⁸⁵	Time from initiation of proceedings to start of investigation	Time from start of investigation to indictment	Time from indictment to start of hearings	Time from indictment to processing
Kpo1-10/14 (9 accused)	10 years and 4 months	1 month	7 months	6 years and 1 month	6 years and 7 months
Kpo1-125/13 (8 accused)	7 years and 9 months	/	10 months	3 months	4 months
Kpo1-89/11 (6 accused)	10 years	/	2 months	3 months	2 years and 5 months
Kpo1-57/13 (11 accused)	7 years	/	6 months	5 months	1 year and 2 months
Kpo1-55/13 (4 accused)	10 years	/	7 months	4 months	1 year and 2 months
Kpo1-61/13 (30 accused)	2 years and 5 months	/	8 months	7 months	1 year and 1 month
Kpo1-91/12 (24 accused)	2 years and 8 months	/	7 months	9 months	1 year and 8 months
Kpo1-121/13 (8 accused)	4 years and 5 months	2 days	11 months	5 months	5 months

CROATIA

With the beginning of the process of monitoring cases with criminal offences with elements of corruption, the team had extracted cases of special social significance. In one part, this is a case of high-ranking politicians and state-owned enterprises, in which taxpayers' money was overspent in an unlawful manner. Before starting the monitoring process, in early April 2014, the Zagreb County Court (where the monitoring took place) and the Bureau for Combating Corruption and Organized Crime (USKOK) were sent freedom of information requests in accordance to the Act on the Right of Access to Information. We have asked for the court numbers of the cases for criminal offences with elements of corruption under the Criminal Code, indictments, as well as information about scheduled hearings for those following cases. This was

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183 *Ibid.*

necessary in order to determine the priority cases to monitor and to prepare the monitors for the scheduled hearings.

On the same day the Secretariat of USKOK responded that the list of items and scheduled hearings must be referred to the Zagreb County Court, which publishes all the dates of hearings on its timetable. Also, upon requested indictments, USKOK stated that pursuant to the Criminal Procedure Code (CPC) this request needs to be submitted to the competent court, in this case, the Zagreb County Court. Information officer of the Zagreb County Court subsequently directed the researchers to the website of the court regarding the list of cases and their schedule. On the court timetable there is a list of cases and their court numbers (designation), the first and last names of the accused, the name of the judge and the provision of the Criminal Code (CC) on the basis of which they are accused. As for the indictments, researchers received the information that the indictments, according to the CPC are to be delivered only to the defendant and his/her defence attorney.

Since the relevant organs failed to disclose documents without which it becomes impossible to conduct exhaustive monitoring, the team discussed the possibility of appeal. After consultations with the lawyers who conducted the monitoring of cases of war crimes, it was clarified that pursuant to the Act on the Right of Access to Information (ARAI), the authorities shall provide only the information, not the indictment document. Consequently, lawyers-monitors suggested a meeting with the president of the court in order to inform him about the project causes and purpose. It was important to show that the data in the indictments can be provided with anonymization, so that personal data of the defendants (date of birth, personal identification number, employment, property, marital status) can be covered up and that they will not be published during the project. Although the actual goal of the project was stated in the letter addressed to the President of the Court, with the beginning of May we have sent the request for an appointment with the President of the Court and the Chairman of the Investigating Judges Department in charge of cases filed by USKOK. It was asked for the meeting to be held during May 2014 or a later date, if it suits both sides.

Subsequently, through a telephone conversation, we asked the Court whether it had received the request, which was confirmed by the Secretary of the Office of the President of the Court. The meeting was never held, despite the consistent request for organizing one. In mid-August 2014 USKOK and the Zagreb County Court again received the requests for indictment documents with specific court numbers of the cases, in order to get texts of indictments with protected data. Also, these inquiries have requested the following information: date of filing of the criminal complaint and who filed the criminal complaint, the date of the decision on conducting the investigation, the date of entry into force of the indictment, possible amendments to the indictment and requests for seeking custody and approval of the same.

The Secretariat of USKOK responded to the request with regard to the additional questions relating to cases under specified court numbers, that it is not clear whether those cases are

within the jurisdiction USKOK or the other departments within the State Attorney's Office of the Republic of Croatia. Due to this, they could not answer any questions related to the subjects. Also, upon the requested indictments, the Secretariat of USKOK has called upon provision of Article 1, paragraph 3 of the ARAI, which provides for the non-application of the right of access to information to pending court cases. Once again, USKOK stressed that in accordance with the CPC the indictment is submitted to the competent court, in this case the Zagreb County Court. The County Court did not respond within the period prescribed by the law and a complaint has been sent to the Information.

Eight cases were shortlisted for monitoring, of which some are against high-ranking politicians. During the monitoring process a problem occurred with the court timetable which included the list of the exact dates of the hearings. In fact, there were several situations where the court timetable did not indicate that it was a preliminary hearing or a meeting of the Prosecution Council, which, in accordance with the CPC, is closed to the public. Also, the timetable has not been updated, so there were numerous cancelling of hearings or new instructions, which prevented monitoring. Researchers were often informed of these changes when entering the courtroom. Similarly, in the pending case against the former Prime Minister, nowhere stood the indication that the monitoring had to be announced earlier, which led to the situation that the researchers were banned for entering the courtroom. The next time researchers announced the monitoring, nevertheless they were not included in the list of people who could attend the hearings.

These situations and the fact that hearings in different cases were held at the same time, led to missing some of the hearings. Therefore, comprehensive monitoring requires more people who can go to several hearings during the same day, in order to optimize the number of obtained hearings. Reactions in the court were various - from the fact that some members of the judicial police were not sure whether the observer may attend the hearing if he is not a member of the media or a friend, a family member of the defendant, to the situation where monitor's role is praised by the judge and the defence counsel of the defendant.

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina there is a noticeable participation by international monitoring missions, especially the Organization for Security and Cooperation in Europe (OSCE), as well as monitors from other missions. Within the framework of formal education at law faculties, individual and group visits to the court are organized, without program participation or permanent tasks of monitoring specific cases.¹⁸⁴ At the beginning of the cases analysis, the biggest problem was to obtain the indictments and additional information about the cases. Although there is a

184 Transparency International in Bosnia and Herzegovina, Centre for Investigative Reporting, Centre for Media Development and analysis (which runs a web portal zurnal.info) and others.

joint web portal which provides the possibility of any of the courts/prosecutors' offices at all levels to start their own subpage if they are not able to maintain the special website, the availability of information depends upon the efficiency of courts/prosecutors' offices, and it depends from case to case. Some of the prosecutor's offices have indicated the confirmed indictments and provided the access to a brief description of the cases to general public. Indictments are often arranged as the part of individual case description, and without thorough analysis and search it is not possible to access this data. Information on the majority of the cases has not been updated.

Generally, the schedule of the hearings is not updated, with the exception of the functional web-site of the Court of Bosnia and Herzegovina, which together with the Prosecution of Bosnia and Herzegovina, and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, has the best service for access to information. Reports of public hearings on these cases only offer basic information and those who are interested in cases have to be present to these hearings to gain detailed information. Also, based on the researchers' experience, the Municipal Court in Sarajevo is recognized for its effectiveness and updated.

Referring to the freedom of information requests, it should be noted that Bosnia and Herzegovina applies four laws: Freedom Of Access To Information Act For Bosnia and Herzegovina (Court of BiH), the Freedom Of Access To Information Act For The Republika Srpska (Courts and Prosecution RS), the Law on Free Access to Information of the Brčko District of BiH (Prosecution and Court BD) and the Law on Free Access to Information of the Federation of BiH (courts and prosecutors' offices in Federation of BiH).

Every state institution is obligated to respond to freedom of information requests, but there are generally different efforts to be put in answering the requests, providing information, and finally, delivering documents. In communication with other organizations, especially those engaged in investigative journalism, we have come to the conclusion that obtaining information through communication with the institutions of Bosnia and Herzegovina is generally expensive, so additional donor funds are needed in order to conduct serious research. Prosecutor's offices haven't developed the practice of delivering indictments, although several offices do provide the insight to the indictments. In specific monitored cases, the indictments were not delivered.

The Freedom of Access to Information Act for Bosnia and Herzegovina reaffirms the right of all persons to access information in possession of public authorities, including those from the Court of BiH. This right is not absolute and may be restricted in accordance with the public interest, and if there are conditions predicted by the law. The right of access to information is limited in relation to the personal data on which the information can be provided only to those participating parties, their legal representatives or authorized person (in written form).

The pilot trials, held at the Court of Bosnia and Herzegovina in Sarajevo, were monitored by YIHR activists. At the court entrance monitors were searched, and they had to leave their mobile phones at the counter. In the court room one can only bring notes, which can be used during the trial monitoring.

The trial stage and sentencing in the criminal proceedings before the Court of BiH are held publicly. Trials in civil proceedings before this court are also public. So, in these stages of the proceeding any adult person can attend and monitor, without having to prove his personal interest. Exceptionally, in order to protect the specific interests provided by law, the Court may decide to exclude the public. During the monitoring activities such circumstances never occurred.

Although there are different accreditations for visitors and the press, in practice treatment of the monitors is not different. The officers at the reception did not ask researcher additional questions, after informing them that “general public has the right to monitor trials”. There you can also get the information about the number of the courtroom where the trial takes place and the schedule. Audio recording, video recording or photographing in the building of the Court is strictly prohibited. Security staff is authorized to take away, or, delete recordings that were not previously approved.

Courtrooms have glass partitioned space for monitors of the trial. The trial may also be monitored in the hall directly or via provided monitors. Courtrooms in the Court of BiH have the capacity of 6-80 visitors, depending on the courtroom. Usually the monitors enter the room to observe the trial 15 minutes before the beginning of the trial. Also, the practice is that the observers do not leave until the conclusion of the hearing, or until the break decided by a judge.

In the monitoring experience before the Court of BiH, communication with the parties is limited. However, the parties to the proceeding are aware of the presence of the monitors, and in some cases the accused/suspect try to draw attention of the monitors to the points what he/she considers to be the violation of the rules of procedure. The monitors leave the courtroom on different exit from the defence and the prosecution, and it is difficult to get in direct contact, especially for younger monitors in Bosnia and Herzegovina.

The Court of BiH adequately informs the accused of the right to an attorney, fair trial, equality of arms; ensures appropriate time and place for the preparation of the defence, the right to be presumed innocent until the final verdict, right for the defence to examine all witnesses.

Continuous monitoring of the cases before the Court of Bosnia and Herzegovina can be realized due to the good preparedness of the court. High standards are set by the international missions since the establishment of this institution and above all, with the goal to meet the adequate conditions for prosecuting war crimes, organized crime and corruption.

Before the Court of Bosnia and Herzegovina, at the time of the report preparation, 24 indictments had been confirmed, of which six for the abuse of office, 11 for bribery, and 7 for receiving the gift or other forms of benefits. Currently, the Prosecutor’s Office of Bosnia and Herzegovina is dealing with more cases of high profile suspects. With the last case we have started to monitor, everything pointed to the fact that the attention of the Court and Prosecution is moving from cases of less value and importance to larger cases, due to the structure changes in the government as well as international pressure for a stronger fight against corruption.

According to this, as future steps meaningful communication with the Prosecutor's Office should be achieved, in order to provide more data about every indictment, with personal data protected, and to focus on those cases where reports may be of the bigger interest for the media. More focused monitoring of 5 of six high profile cases, with constant consultation with YUCOM, and other attorney and legal experts, was the key activity, and in the future it may involve law students and journalists. Together with better media reporting, we want to achieve greater visibility of the participation of young activists of YIHR BiH in trial monitoring.



GENERAL CONCLUSIONS

With a review of international recommendations and the strategic and legal framework in Serbia, Croatia and Bosnia and Herzegovina, one can get a clearer picture of how the implementation of proposals for strengthening the judiciary as the most important instance, directly dealing with the problem of corruption is updated. However, even when the recommended institutes are implemented, it is difficult to adapt to the habits of societies where corruption is widespread and certain peculiarities inherent to the countries where monitoring was conducted. It turns out that, in EU countries and in the region, public involvement in the monitoring of these proceedings is an important element for the efficient resolution of cases with corruptive elements. The goal is to simultaneously achieve respect for the rights of the accused and make more efficient rulings, and introduce a certain standard in resolving these cases.

We want to emphasize that the knowledge about the specifics of the prosecution for corruption offences and finding the ways to bring criminal matter closer to the general public are necessary for conducting adequate monitoring. In this way bias reporting that usually accompanies these cases can be avoided, especially if the accused is someone from the state leadership. Based on an analysis of the legal and strategic framework, we have singled out a few general recommendations that could be the starting points in all three countries in order to achieve uniform results and to enable them to joint efforts to solve the cross-border cases with corruptive elements. Of course, these recommendations do not represent a final solution to the current situation, but it forms a clear starting point for creating a system that will be efficient, fast and of a high quality as a way to oppose the deeper problem of corruption affecting the region of the Western Balkans.

RECOMMENDATIONS:

- Ensure greater independence of the judicial institutions, especially through clearer and more precise procedures for the election of the holders of judicial or prosecutorial functions.
- The system of being elected to the judicial function and the function of public prosecutors, as well as the resolution from it, have to be changed in direction in which there is no political influence. This primarily relates to the eventual elimination of the probationary period for judges election, since it is confirmed that this is the most influent period when it comes to the likeliness of corruption.

- Establish a system to determine the accountability of judges and prosecutors for the quality of their work, because if there are no such mechanisms, the interest of judicial officials for efficient resolution of cases with corruptive elements is minored.
- It is necessary to improve the knowledge of prosecutors in connection with bankruptcy proceedings, stock exchange and the company's operations, as well as the tax policies of the country in which system they operate.
- The early detection of committing offences with corruption elements should be improved. For this reason, it is necessary to reduce the administrative apparatus, ensure stricter selection criteria and reinforce control of the public corporation and registration of companies, or to focus on the prevention of the problem.
- Regarding the legislative framework it is clear that the grouping of offenses with corruptive elements into a specific group in the law and the definition of clear protective structures affected could make the prosecution more effective.
- It is necessary to improve the requirements for the implementation of prosecutorial investigation and specify the commands for experts in economics.
- Educate specialized experts in the areas that are specifically marked as vulnerable. Also, in cases that require knowledge from several areas, which require a more detailed expert analysis, a council of experts should be formed, as often their opinion is the key evidence in proceedings with corruptive elements.
- Take into account the new institute of prosecutorial investigation, the relationship prosecution – police should be straightened. The first step is to make changes to the Police Act, which is often openly in conflict with the Criminal Procedure Code and to identify clearly the superiority of the prosecutor during the investigation. Introduce a register of persons convicted for corruption and ban them from certain economic activities. It would also be useful to provide for the forfeiture of property acquired through crime, in all three countries.
- Introduce a register of persons convicted for corruption and ban them from certain economic activities. It would also be useful to apply the forfeiture of property acquired through crime, in all three countries.
- Avoid actions that constitute retaliation against those who report corruption or indicate its dangers through participation in research projects by forming a framework that provides for the sanctioning of state bodies and officials who obstruct or unreasonably impede the process of corruption monitoring.
- Raise the level of confidence in judicial institutions through transparent procedures and improve the communication of judicial institutions with journalists and other monitors.
- Introduce as obligatory internet presentations of courts with electronic database, which would facilitate obtaining data on the proceedings and trial schedule.



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