PARTNERS for Democratic Change SERBIA

PRAVNI SKENER +

(Law Scanner)

ACTIVE CITIZENS AGAINST CORRUPTION

BEST PRACTICES TO CURE AND PREVENT CORRUPTION IN LOCAL COMMUNITIES

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PARTNERS FOR DEMOCRATIC CHANGE SERBIA

Active Citizens against Corruption

Best Practices to Cure and Prevent Corruption in Local Communities

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All the terms used in the text in the male grammatical gender include the male and female individuals to which they relate.

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Introduction

From December 2012 to June 2014, civil society organizations Partners for Democratic Change Serbia (Partners Serbia) and Law Scanner implemented the project "Active Citizens against Corruption: Best practices to cure and prevent corruption in local communities" (the Project). The Project was supported by the Delegation of the European Union to the Republic of in Serbia and the Office for Cooperation with Civil Society of the Government of the Republic of Serbia.

Prior to the implementation of the Project, in 2011 and 2012, Partners Serbia participated in the training program for anti-corruption practitioners, carried out by the World Bank and Partners Foundation for Local Development (FPDL) Romania. Partners Serbia team was trained in implementation of an innovative anti-corruption methodology developed by Ana Vasilache and Nicole Rata from FPDL, Romania, in collaboration with Ronald McLean Abaroa, former Mayor of La Paz, Bolivia. The methodology is inspired by Ronald McLean Abaroa successful experience in addressing corruption in his city and local government, using Professor Robert Klitgaard's theoretical framework.

After completing the training program, Partners Serbia, together with Law Scanner, developed this Project with the aim of promoting and implementing a comprehensive approach to the problem of corruption. The assumption of the Project is that participation of the relevant stakeholders in sanctioning corrupt behaviour, as well as establishing procedures for the prevention of corruption, and continuous citizens educational campaigns are necessary for a successful fight against corruption.

During the 19 months of the Project implementation, a number of activities have been carried out:

The Law Scanner team conducted an analysis of case law for criminal offences of Soliciting and Accepting Bribes and Bribery. Final decisions of the basic and higher courts on these two criminal offences for the period from January 2010 to March 2014 were analyzed. Report and the results of the analysis are presented in this publication. During the Project a fruitful cooperation has been established with the Municipality of Pantelej from the City of Niš, Municipality of Beočin and General Hospital "Đorđe Joanović" from Zrenjanin. Anti-corruption interventions were implemented in these institutions in order to recognize procedures that are vulnerable to corruption and develop the action plan for their improvement. These anti-corruption

interventions were based on the formula: **Corruption = Monopoly + Discretion – Accountability**. According to Professor Klitgaard, corruption can occur *"if someone has a monopoly over the provision of certain services, has the discretionary power to decide whether people get a certain service or not, and if there is no public control over the process of making such a decision"*. A detailed review of these interventions is also presented in this publication.

Understanding the need for the involvement of numerous stakeholders in the fight against corruption, cooperation with the Anti-Corruption Agency and a number of civil society organizations was developed within the Project. A total of six round tables were organized, where representatives of the Agency and local civil society organizations presented their work in the fight against corruption.

As a part of the Project an interactive web platform www.partners-serbia.org/antikorupcija was designed and launched, where citizens can be informed about the existing mechanisms to fight corruption in Serbia, innovative programs for prevention of corruption implemented in other countries, and illustrative cases of corruption from Serbia and abroad. In addition, citizens can anonymously report corruption at this platform. Electronic newsletters with news on corruption were developed, as well as informative leaflets in Serbian, Albanian, Roma and Hungarian languages, with the aim of informing the general public about the mechanisms for combating corruption.

Taking into account that corruption occurs only if the system is vulnerable to such phenomenon, it is crucial to determine mechanisms within the institutions that enable corrupt behaviour. Implementing the above-mentioned activities, we attempted to improve transparency, accessibility and accountability of public administration through implementation of a comprehensive methodology for fighting corruption at the local level, which includes active civil society and implementation of innovative strategies. Bearing in mind the results of the implemented anti-corruption interventions, interest and participation of citizens, organizations and institutions at the round tables, promotional campaign, as well as visits and reviews at the anti-corruption internet platform, it can be concluded that the Project has improved understanding of the problem of corruption, as well as citizens' awareness on the role and responsibilities of the institutions responsible for the fight against corruption.

This publication contains an overview of the activities carried out within the Project and presents the achieved results. This includes: Anti-corruption interventions and cooperation with municipalities of Pantelej and Beočin and the hospital in Zrenjanin on recognition and improvement of procedures that are vulnerable to corruption; Analysis of the corruption offences case law in Serbia; Survey on the role of civil society organizations in the fight against corruption, and perception of citizens on the scale of corruption in the health sector, with emphasis on the major challenges in combating corruption in this field.

Partners Serbia wish to thank the Law Scanner team for the cooperation during the Project, in particular on drafting the analysis of the case law and the review of the current mechanisms for combating corruption in the health sector. We thank the staff and management of the Municipality of Pantelej from the City of Niš, Municipality of Beočin and General Hospital "Đorđe Joanović" in Zrenjanin for their participation in the Project, as well as on intensive cooperation and commitment to the process of improving internal procedures to minimize the risk of corruption. We also express gratitude to our colleagues from the Mena Group Ltd. who conducted the anti-corruption interventions in these institutions as facilitators and anti-corruption practitioners. Finally, we wish to thank our mentors, Robert Klitgaard, Ronald MacLean Abaroa, and Ana Vasilache on the opportunity provided to Partners Serbia to specialize in implementation of the innovative anti-corruption methodology.

We express our gratitude to the management and staff of the Anti-corruption Agency, which recognized the importance of this Project, and participated in round table discussions and at the final conference, where the results of the Project were presented. We also wish to thank the members of civil society organizations: Dialogue (Valjevo) Protecta (Niš), Zaječar Initiative, as well as the Independent Association of Journalists of Vojvodina and Local Press (Kragujevac) for participating at the roundtables.

Blažo Nedić
Partners for Democratic Change Serbia

Anti-Corruption Interventions in the Municipality of Pantelej (City of Niš), Municipality of Beočin and General Hospital "Đorđe Joanović" in Zrenjanin

Partners for Democratic Change Serbia

Introduction

The central activity of the project "Active citizens against corruption: Best practices to cure and prevent corruption in local communities", was the anti-corruption interventions performed by Partners Serbia and Law Scanner, with a team of consultants and associates, in the Municipality of Pantelej (Niš), Municipality of Beočin and General Hospital "Đorđe Joanović" in Zrenjanin. The aim of the interventions in these institutions was to increase the transparency of their work and improve the services they provide to the citizens, by strengthening internal mechanisms for preventing and eliminating the risk of corruption.

The interventions were carried out by using an innovative anti-corruption methodology developed by Ana Vasilache and Nicole Rata of the Foundation for Local Development (Partners Foundation for Local Development – FPLD) from Romania, in collaboration with Ronald MacLean Abaroa, former mayor of La Paz, Bolivia. The methodology focuses on prevention, in which the key role is played by the management and staff of a particular institution, through identification of the activities and procedures that are most vulnerable to corruption, and their subsequent revision and improvement. In this way, the employees are becoming "the owners of the process", facilitating the implementation of innovations.

With the aim of improving the existing mechanisms and implement innovative mechanisms for preventing and combating corruption in the public sector in Serbia, in 2013 Partners Serbia and Law Scanner invited local self-governments and health care institutions in Serbia to participate in the project "Active Citizens against Corruption". The participation

entailed a five-month work of the institutions' management team and staff with a team of Project consultants on identification and analysis of the procedures that are vulnerable to corruption, and development of activity plans for their improvement.

Following the open call for participation, cooperation agreements were signed in January 2014 with the Municipality of Pantelej (Niš), Municipality of Beočin and General Hospital "Đorđe Joanović" in Zrenjanin, as the first medical institution in which this methodology would be implemented. Working groups were formed within each institution. Through the structured workshops supported by the consultants – anti-corruption practitioners – their task was to conduct analysis of the internal procedures of the municipality/hospital; recognize the deficiencies that make them vulnerable to corruption, and draft activity plans for their improvement, in order to reduce the opportunities for corruption in the institution. A total of 14 meetings of the working groups were held, namely 5 in the Municipality of Pantelej, 5 in the municipality of Beočin and 4 at the General Hospital in Zrenjanin. Facilitation of the meetings and activities of the working groups in each of the institutions was conducted by a group of trained anti-corruption practitioners: Suzana Živković and Tatjana Obradović-Tošić, of the Mena Group, Niš, who implemented this methodology in Serbia for the first time in cooperation with the Municipality of Boljevac in 2012, as well as Uroš Mišljenović and Ana Toskić from Partners Serbia.

As a result of the work of each working group, the activity plans for improvement of the procedures that are vulnerable to corruptions were drafted. Plans include lists of competencies that need to be improved, the proposed distribution of responsibilities and the timeline of the process of improving these procedures.

The anti-corruption methodology and examples of its implementation in an international context will be further presented in more detail, along with the specific activities of the working groups of the Municipality of Pantelej, Municipality of Beočin, and General Hospital "Đorđe Joanović."

Basic features of the implemented anti-corruption methodology

The initial premise of the methodology is that corruption is treated as a symptom that manifests itself in a dysfunctional system, established on the basis of the procedures vulnerable to corruption.

As a tool to identify procedures that may be vulnerable to corruption, the methodology utilizes the formula of Professor Klitgaard, who states: *"If someone has a monopoly over the provision of certain services, has the discretionary power to decide whether people get the service or not, and if there*

is no public control over the process of making such decisions, the chances for corruption to occur increase, regardless of whether it occurs in a rich or poor country, or in the public or private sector".[1] On this basis, Professor Klitgaard developed the formula:

Corruption (C) = Monopoly (M) + Discretion (D) – Accountability (A)

It is likely that corruption will not occur in places where honourable individuals work, but it is important to bear in mind that their departure or arrival of new people in these positions, in the conditions established on the basis of poor procedures, increases the chance for corruptive practices to appear.

Therefore, the innovative aspect of the methodology is reflected in the fact that Klitgaard's formula is applied within an institution, in a way that the institution's staff participates in the analysis of the weaknesses of the *system* which they are part of. This methodology does not perceive the staff as the enemies, but rather as allies in the process of prevention of corruption. According to Ana Vasilache from the Foundation for Local Development, *"one of our main assumptions is that most people are basically honest and will act with integrity, if the system allows them to progress within the rule of law."*[2] The methodology particularly focuses on the phenomena that enable corruption; the problem of corruption is openly discussed with employees who become key agents in the process of change. Therefore, it is necessary to obtain the support of the management of the municipalities from the start. Also, the management of the municipality must provide support to their staff to commit themselves to the prevention of corruption.

This methodology has been successfully applied in many countries in the world, and was awarded the prestigious United Nations Public Service Award in 2011.[3] In the Eastern and South-Eastern Europe, it is implemented in cooperation with local authorities in Albania, Bulgaria, Croatia, Georgia, Macedonia, Moldova, Poland and Romania.[4] In Serbia, it was implemented for the first time in the municipality of Boljevac, which has developed a strategic plan for improving processes that may be vulnerable to

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1 Robert Klitgaard, Robert MacLean Abaroa, Lindsey Parris, *"Corrupt Cities – A Practical Guide to Cure and Prevention"*. http://www.fpdl.ro/public/training_manuals/CORRUPT%20CITIES/CORRUPT%20CITIES%20EN/EN%20Corrupt%20Cities.pdf

2 http://blog.partnersglobal.org/islands-of-integrity-in-sea-of-corruption/

3 http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan045542.pdf

4 http://einstitute.worldbank.org/ei/webinar/improving-urban-governance-and-anti-corruption-south-east-europe

corruption in the local government. In addition to the development of the Anti-Corruption Strategic Plan, the aim was also to improve performance, transparency and accountability in the provision of services and the activities of local self-government Boljevac, and increase staff motivation to improve the integrity and efficiency of their work.[5]

Anti-corruption practitioners

As mentioned above, the central place in the implementation of the methodology, and a prerequisite for its successful implementation, is the active participation of staff in a particular institution/organization, and the willingness of the leadership to support and encourage the process. However, despite representing a form of organizational introspection, comparative experience has shown that it is best to entrust the management of this process to external consultants – anti-corruption practitioners. These are individuals who possess special skills and knowledge for this kind of intervention: ranging from the institutional knowledge, most often repressive mechanisms for combating corruption in a system, recognizing the causes and forms of corruption, through the understanding of the internal structure and specificity of a particular organizational system, the ability to analyze legal and practical decision-making procedures, mastered principles of change management, participatory planning and advanced facilitation skills. These skills were included in the nine-month training within the "Program for Anti-corruption Practitioners (PAP)"[6] organized by the World Bank Institute and the Foundation for Local Development, which was successfully completed by the representatives of Partners Serbia and Mena Group.

Adequate skills of anti-corruption practitioners have proved to be a necessary element of the quality and success of these processes. The anti-corruption practitioner encourages group discussion and creates an atmosphere in which staff can openly discuss the strengths and weaknesses of their organization, and suggest ways to improve the work, without fear of superiors' reactions. Directing the work of the group, the anti-corruption practitioner assists the staff in to defining a common vision of their institutions, the objectives for its development and the obstacles that hinder goal achievement. Finally, the anti-corruption practitioner helps the staff to understand the extent to which the development of their systems and improvement of their work can affect citizens and the community as a whole.

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5 http://www.nalas.eu/CMS/Content_Data/Dokumenti/2014-02-10/Anti%20Corruption%20-%20online.pdf

6 http://www.fpdl.ro/services.php?do=pap

The process flow of the implemented anti-corruption interventions

In the preparation phase of the project "Active Citizens against Corruption", based on the experiences from the region, it seemed that ensuring the interest and participation of local self-governments (as well as health-care institutions) will be the major challenge in the implementation of anti-corruption interventions. Considering that the problem of corruption of public institutions in our country represents a contemporary and sensitive issue, it was difficult to anticipate willingness of a number of institutions (both by the management and staff) to openly discuss the problems and deficiencies of a particular system. Therefore, it was rather surprising that, after announcing the public call in June 2013, five local self-governments and two health care institutions expressed their interest to participate in the Project. Meetings were organized with the management of each of the respective institutions, where the Project and proposed methodology were presented in more detail. It was also indicated what type of staff engagement and management support are essential for the success of anti-corruption intervention. In addition to the results of these meetings, the following criteria were taken into account in the selection of institutions that will participate in the Project: the size of local self-government (data indicate that the most visible effects are achieved when the methodology is implemented in municipalities with smaller populations, where the effects of the work may be recognized by citizens in short or medium term); previous experience with similar processes (such as developing integrity plans), and the fact whether the institution is or will be in the process of leadership change (elections in the local self-government, the termination of the mandate of the directors of health care institutions), as institutional stability and continuity of the work of the participants are necessary prerequisites for the successful implementation of the process and exploitation of the results.

Based on these criteria, cooperation with the Municipality of Pantelej from Niš, the Municipality of Beočin, and the General Hospital "Đorđe Joanović" in Zrenjanin was established. Working groups were formed in each of the institutions, composed of the staff managing certain operational units, who are in daily contact with the citizens, recognize the rules and procedures of the institution, and hold sufficiently high positions within their sector, which enables that recommendations of the group are easily applied in practice. The working group of the Municipality of Pantelej consisted of eight members (head of the municipal administration, head of the department of economy and local development, head of legal department, head of cabinet of the president, head of communal services, head of finance, member of the council, and a secretary of the assembly);

the working group of the Municipality of Beočin had seven members (head of the municipal administration, head of the local economic development sector, and two employees in this sector, representative of the sector for general administration and common services, representative of the inspection and planning sector, and a trainee at the municipality). At the hospital, based on the proposal of the director and considering that it has more than 1,200 employees, a working group of 17 members was formed, including 11 heads of medical departments and six managers within the non-medical sector.

The processes were implemented in the period from January to June 2014. Facilitation of the working group meetings was conducted by the anti-corruption practitioners and facilitators Suzana Živković and Tatjana Obradović-Tošić with the participation of Uroš Mišljenović and Ana Toskić from Partners Serbia, who assisted the working group in developing a plan of activities for improvement of procedures that are vulnerable to corruption. The proposed activities are consistent with the competencies of the institutions and are related to the improvement of procedures, practices and daily routines of work which may be affected by the institution, including the specified deadlines for the implementation of each activity.

The workshops design and work methodology were developed to encourage participation of the working group members. At the first workshop, the basics of the anti-corruption methodology were presented, the concept and definition of corruption were harmonized, and the participants subsequently completed the "IQ test of Corruption" – an informal questionnaire containing a series of statements commonly used as excuses for corruption (the test is given in the annex No. 1).

In order to recognize the procedures that are vulnerable to corruption, members of the working group drafted a list of all the municipal/hospital jurisdictions. The list was used to develop tailored questionnaires for assessing vulnerability to corruption of each jurisdiction, according to the formula of Professor Robert Klitgaard (examples of questionnaires are given in annex No. 2 and 3). In order to obtain a more detailed understanding of employees' attitudes, the questionnaires were completed by municipal staff (including those who are not members of the working group) and the group members at the hospital (taking into account the number of employees in the hospital), assessing the degree of existence of a monopoly, discretion and accountability in the jurisdictions of the municipality/hospital.

At the second workshop the participants were divided into two groups. One group developed a "negative vision of the institution," which refers to the outcome of a hypothetical decision that the institution does not address the problem of corruption. Another group formulated a "positive vision" which contained the desired outcome of the decision to adequately address the problem of corruption. Subsequently, the group members jointly defined the desired future of the institution.

The working group of the City Municipality of Pantelej defined the vision of the Municipality for the fight against corruption in the following manner:

"The Municipality of Pantelej is efficient, cost-effective and professional local self-government, with introduced control mechanisms and transparency that prevent corruption at all levels of the organization and enable the participation of citizens in the decision-making process."

The working group of the Municipality of Beočin defined the vision of the municipality for the fight against corruption in the following manner:

"The Municipality of Beočin, as a citizens' service, transparently carries out activities within its jurisdiction in a clearly defined and previously known manner. Equal treatment in equal situations."

The working group of the General Hospital "Đorđe Joanović" developed the following definition of the vision of the hospital for the fight against corruption:

"The General Hospital 'Đorđe Joanović', through the provision of information, standardization of work and a positive attitude towards elimination of the risk for corruption, became a leading institution in which patients want to be treated!"

After developing the vision, the working group members in the two municipalities were presented the results of the questionnaire. In both municipalities, more than 60% of staff completed the questionnaires. This was followed by a discussion with the members on the joint results of the questionnaire and the ways how some departments assessed the potential vulnerability of municipal activities to corruption. After that, the facilitators guided the group through the process of selection of three activities potentially most vulnerable to corruption, which will be addressed by the working group in the future. This selection was based on the results of the questionnaire and the working group members' standpoints at the hospital, bearing in mind the following questions:

- To what extent this field/activity has (negative) impact to citizens?
- To what extent it is easy to change/affect the change of this field/activity?

Working in groups, the participants identified actions that are potentially most vulnerable to corruption, and focused on improvement of the procedures in the following areas:

- The Municipality of Pantelej:
    1. Donations and support to the individuals and associations,
    2. Human resource management in local self-government,
    3. Financial management.

- The Municipality of Beočin:
    1. External control and inspection,
    2. Human resource management in local self-government,
    3. Management of public property.

- The General Hospital "Đorđe Joanović"
    1. Control of the work of the administrative, supervisory and ethics committee,
    2. Appointment lists,
    3. Public Procurement.

Afterwards, the workshop participants conducted an in-depth analysis of each of the previously selected competencies of the institution. The process of in-depth analysis was carried out without considering the behaviour of individuals who are employed at the institution, but rather focusing on identification of weaknesses in the procedures to be followed by the employees. Members of the working group discussed the following questions:

- What kind of corrupt behaviour could happen because this activity/service is vulnerable to corruption?
- Where the corrupt actions/behaviour might happen in the municipality/hospital (referring to the section or department)?
- Bearing in mind the division of responsibilities in the institutions, which employees might benefit from such activities?
- Who may be affected by these corrupt activities?
- Why such corrupt action/behaviour can take place? Which causes could generate corrupt activities?

Upon determining the causes of potentially corrupt behaviour, the participants developed their hierarchy. This in-depth analysis served to determine the basic and derivative causes of corrupt behaviour. The recognized causes are classified below:

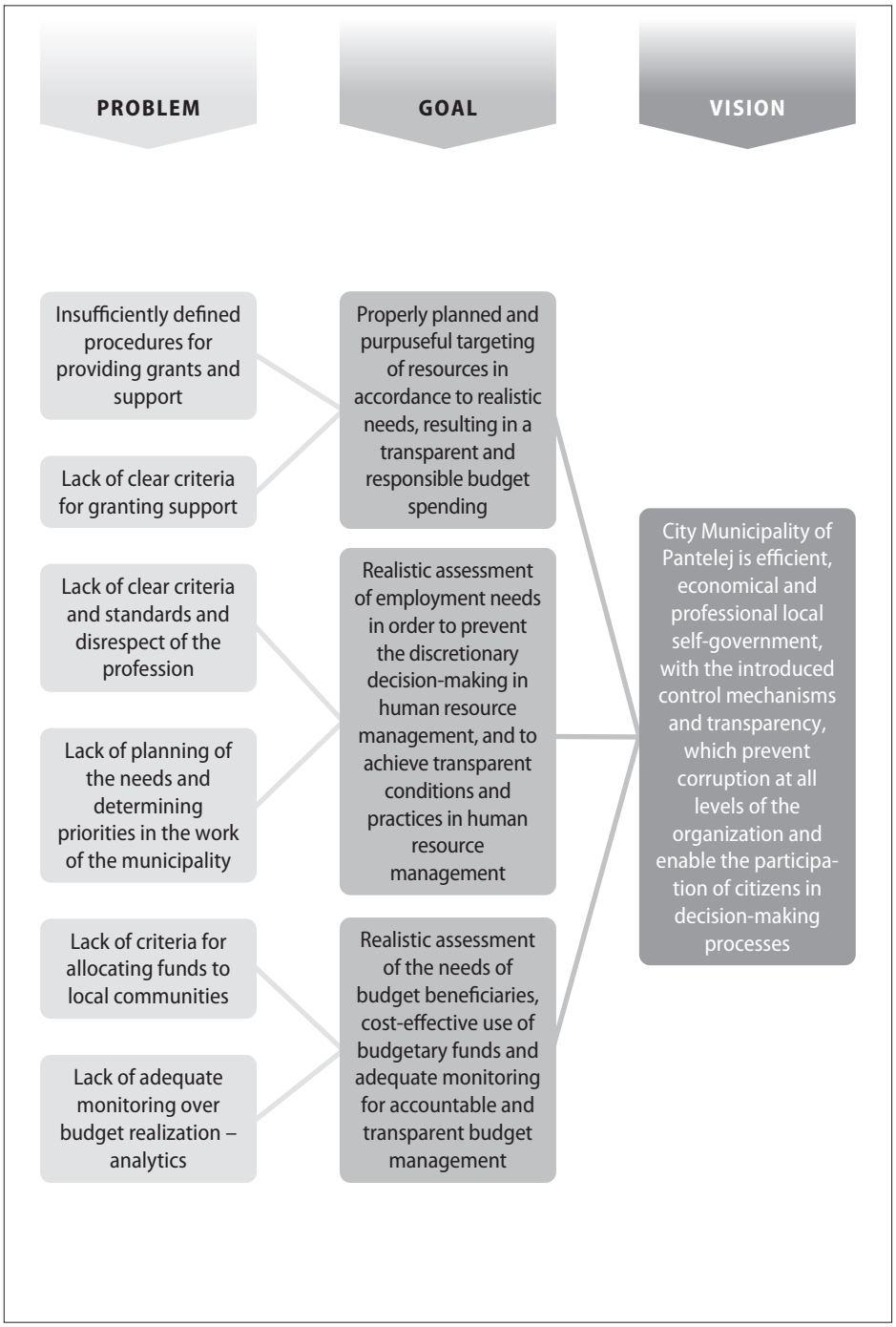
1. The causes that cannot be affected by the institutions, or which are outside of the institutions' jurisdiction;
2. The causes which can be remedied with the external support to the institution;
3. The causes that are within the jurisdiction of the institution and can be remedied by the institution.

Following this classification, the working groups focused on the analysis of the third group of causes, taking into account the following questions:

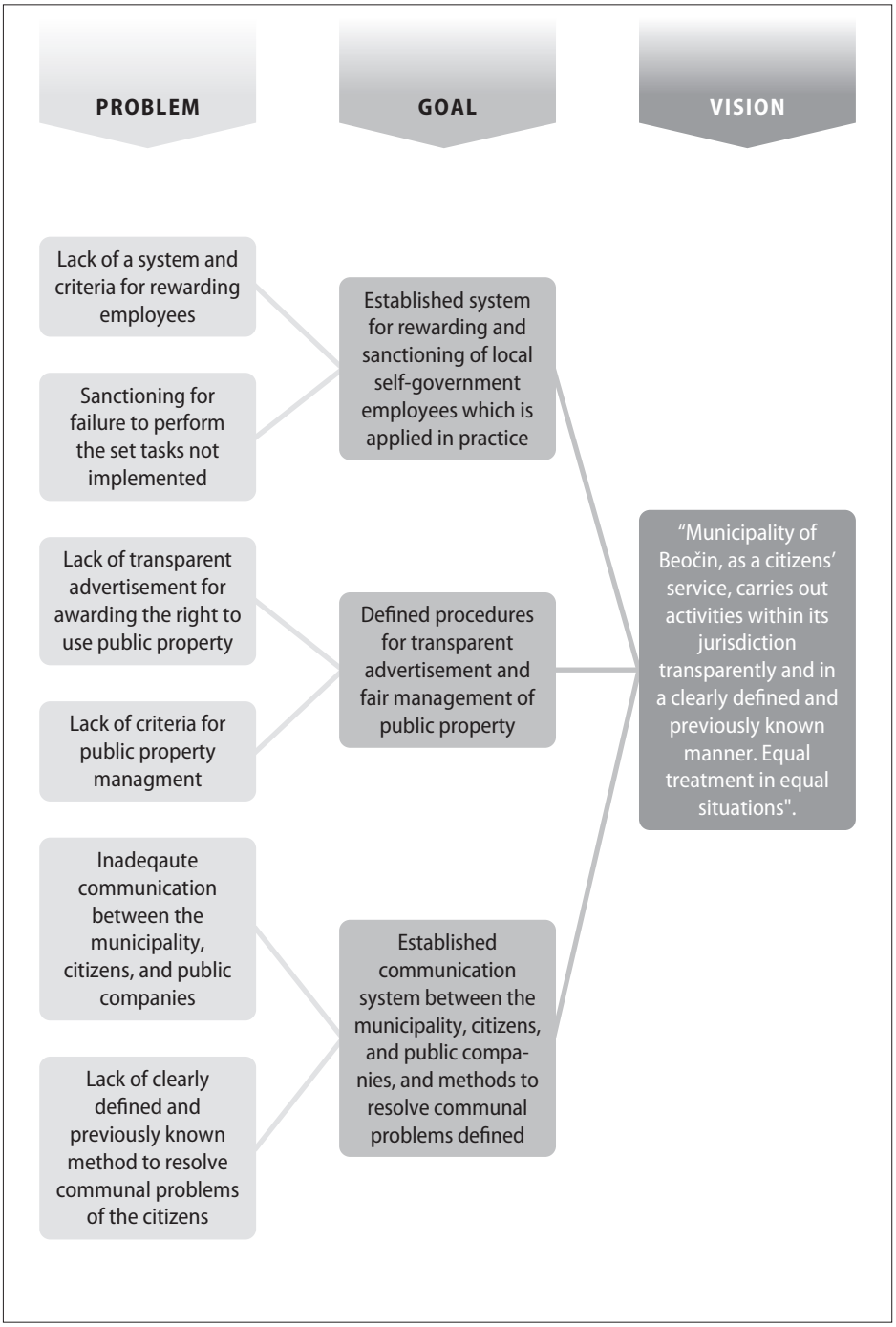
- To what extent it is possible to eliminate a certain cause?
- How promptly it is possible to eliminate a certain cause?

Given these factors, the participants defined key issues for each of the areas they wish to address and the goal they wish to achieve. The following graph demonstrates the relationship between the identified problems, formulated goals and agreed vision of the municipality/ hospital.

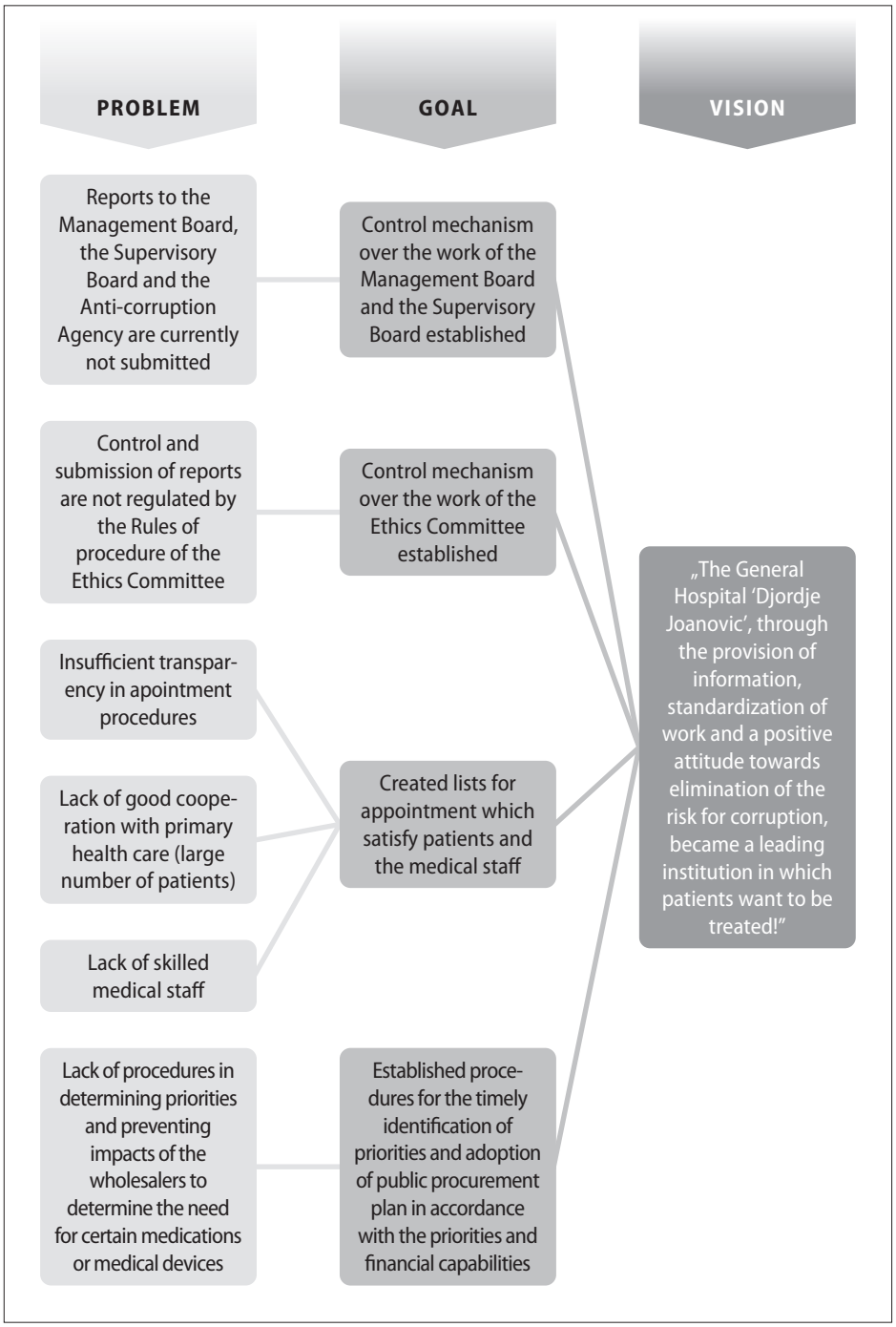
The Municipality of Pantelej (City of Niš)



The Municipality of Beočin



The General Hospital "Đorđe Joanović"



At the last workshop, each institution developed detailed plans of actions that will lead to the resolution of the above mentioned problems, and contribute to achieving the set goals and the vision. The participants worked in groups, jointly defining the activities and responsible persons, considering division of labour in the institution, the necessary resources for the implementation, and the timetable outline. The table shows the activities in relation to the areas where the need to improve procedures has been identified:

The Municipality of Pantelej

Goal	Activities
Realistic assessment of the needs of budget beneficiaries, cost-effective use of budgetary funds and adequate monitoring enabling accountable and transparent budget management.	• Submission of financial plans; • Development of action plans for local communities; • Establishment of the priorities and annual operational plans; • Reporting on the budget realization; • Control and monitoring.
Properly planned and purposeful targeting of resources to the real needs, resulting in a transparent and responsible budget spending.	• Identifying the needs of citizens and associations; • Development of a plan for aid allocation; • Establishment of the criteria and procedures; • Database development and updating, including control and monitoring (the report).
Realistic assessment of employment needs in order to prevent the discretionary decision-making in human resource management and to achieve transparent conditions and procedures in human resource management.	• Harmonization of human resources policy with the development strategy of the municipality; • Establishment of strategic priorities; • Development of a plan for human resource improvement; • Education of persons responsible for human resources; • Previous examination (testing) of candidates; • Establishment of the criteria for evaluating performance; • Evaluation of the performance of employees.

The Municipality of Beočin

Goal	Activities
Established system for rewarding and sanctioning of local self-government employees which is applied in practice.	• Establish a working group (committee) to produce internal documents; • Drafting of documents; • Submission of documents to all employees to be informed about the content, and collect feedback, suggestions, comments, and proposals (anonymously); • Analysis of the received information; • Adoption of the Rulebook on rewarding and sanctioning.
Defined procedures for transparent advertisement and fair management of public property.	• List of assets; • Database establishment; • Grouping of public property, under the following criteria: public property directly necessary for the execution of genuine and transferred competencies of the municipality; property necessary for the activities of public companies and institutions, and commercial property; • Proposal for a Decision on the manner and procedure of leasing or disposal; • Catalogue of available locations.
Established communication system between the Municipality, citizens and public companies, and defined methods to resolve communal problems.	• Introduction of a system for provision of information to the citizens and immediate resolution of their problems – the "48 hours" system; • Provision of information to the citizens about the existence of the system and start of operation – flyers, TV, radio, etc.; • Setting up the municipality website: the competences of each of the services with the application forms and information about the responsibilities of public companies; • Analysis of the functioning of the system.

The General Hospital "Đorđe Joanović"

Goal	Activities
Establishment of a control mechanism over the work of the Management Board and the Supervisory Board.	• The Team for coordination of evaluation of non-medical procedures should develop an internal document to establish procedure for submitting reports on the work of the Management Board and Supervisory Board; • Enacting the proposed procedure and informing the employees and members of Management and Supervisory board; • Drafting reports and annual submission of the reports to the Anti-corruption Agency.
Establishment of a control mechanism over the work of the Ethics Committee.	• Submission of a request of the Ethics Committee to amend and supplement the Rules of procedure so as to envisage the obligation to draft and submit reports twice per year; • Adoption of the decision to amend and supplement the Rules of Procedure of the Ethics committee; • Preparation and submission of reports on the work to the director and the Management Board; • Adopt a decision of the Management Board on the report of the Ethics Committee as a feedback to the Ethics Committee.
Appointment lists created to the satisfaction of patients and the medical staff.	• Electronic scheduling and monitoring of appointment lists; • The appointment list should be linked to the doctor's office and not to the specific doctor (replacement of doctors, annual leave, sick leave, etc.); • Redistribution of medical personnel in accordance with their job, workload and needs; • Continuous notification of the Ministry of Health about the lack of medical staff; • Clear definition of pathological conditions that are resolved and/or referred to the secondary health care, processed by the defined procedure; • Improve the training of medical staff at the primary and secondary levels.

Goal	Activities
Established procedures for the timely identification of priorities and adoption of public procurement plan in accordance with the priorities and financial capabilities.	• Expert Council should establish standards and criteria for the adoption of the Hospital's activity plans; • Expert Council should establish criteria for cooperation with wholesalers and suppliers of medical equipment and facilities; • Adopt an internal act on division of responsibilities for determining needs and priorities in the domain of public procurement; • Contracting with Health Insurance for the following fiscal year should be performed under the three listed principles.

Conclusions

The results of activities in the Municipality of Pantelej, the Municipality of Beočin and the General Hospital "Đorđe Joanović" in Zrenjanin on the prevention of corruption were presented at the final Project conference in June 2014 in Belgrade, where the representatives of these institutions shared their impressions and experiences of the process. According to them, the process has contributed to a better understanding of the problem of corruption, improved communication and collaboration among employees, and empowered employees to actively participate in the process of improving their working environment.

The work of Partners Serbia, Mena Group Ltd, and Law Scanner through cooperation with these institutions was not focused on the supervision of their work, nor was it aimed at imposing solutions to the members of the working groups. The outcomes of anti-corruption interventions are the result of the work of employees in these institutions. In this regard, the municipalities and the hospital are responsible for the implementation of the approved plans, where they will have the continuous help and support of Partners Serbia. Representatives of all the three institutions have expressed their willingness to continue cooperation with Partners Serbia through a more detailed analysis of the risk of corruption.

Implementation of this methodology in the neighbouring countries has shown that municipalities that engage in anti-corruption interventions often decide to continue with the implementation of anti-corruption activities after the completion of the process. Multiple benefits from this process have been shown when institutions recognize that certain procedures are vulnerable to corruption and reduce their efficiency, and when new practices are introduced, citizens become more satisfied with

the work of the institutions. In addition, the institutions' staff have the opportunity to reform the system they are a part of. Finally, the management of the public institutions significantly benefits from the participation in this process, as it provides an opportunity for employees to create a healthier work environment, and ultimately provide better service to the citizens.

Working with the two municipalities and the hospital, Partners Serbia became convinced of the groundlessness of many prejudices about public sector employees. It was confirmed once again that they usually want simple procedures that are understandable for the citizens and enable prompt and successful completion of tasks.

The process conducted in the two municipalities confirmed once again the validity of the authors' methodology, that enduring work based on the principle of *"one-city-at-a-time"*, leads to the development of a network of cities and municipalities that actively work to eliminate the risk of corruption, creating in this way *"islands of integrity in a sea of corruption"*[7]. Once again, we express gratitude to the management and employees of the Municipality of Pantelej and the Municipality of Beočin for their decision to participate in the Project and the devoted work at the working group meetings. We are confident that by implementing the adopted plans, these municipalities will be recognized as promoters of a new approach to solving the problem of corruption, and that presented processes and results of the activities will motivate the leadership of other local self-governments in Serbia to carry out similar activities.

Within this Project, the anti-corruption methodology was for the first time implemented in a health care institution. After completion and the evaluation process, we believe that conditions to replicate the methodology in other health care institutions have been created. The process carried out in a hospital in Zrenjanin was used to determine which modifications in the methodology need to be performed. Bearing in mind that the methodology was designed to fit the specifics of local self-government units, it was necessary to more thoroughly present the theoretical framework and to further define the understanding of corruption among employees in a health care institution, in particular among the medical staff. In addition, the meetings at the hospital had to be shortened due to the nature of the work of medical staff that often includes shifts and duty hours. Finally, the health care institution where the anti-corruption intervention was piloted employs about 20 times more people than the municipalities, and it will therefore be necessary to adjust the organizational structure of the health care institutions in the future processes. In collaboration with the authors of the methodology, Partners Serbia, Mena Group and Law Scanner will seek to further develop the methodology and adapt it to the specifics of

7 http://blog.partnersglobal.org/islands-of-integrity-in-sea-of-corruption/

health care institutions. In this regard, we would like to thank once again the management and staff of the General Hospital "Đorđe Joanović" in Zrenjanin, for the opportunity to test the applicability of the methodology in a different setting, and for their courageous decision to be the first medical institution in Serbia to implement such process.

Analysis of the Corruption Offences Case Law in Serbia

Law Scanner

The level of corruption in Serbia and the significance of the fight against corruption have been explored and analyzed both by international organizations (e.g. the European Commission[8]), and a large number of relevant local organizations (Anti-Corruption Council, Transparency Serbia, etc.) The Government of Serbia introduced the fight against corruption among priorities of its work, insisting that reforms of the criminal system and raising capacities of relevant institutions to "prosecute all severe types of crime and corruption" are necessary for the success of that process.[9] The role of the police, prosecution and courts in combating corruption is crucial, and includes investigating and sanctioning the cases of corruption, as well as contribution to prevention of corruption. The Analysis of case law of the two criminal offences associated with corruption represents an indicator of the total efficiency of the fight against corruption in Serbia.

The Analysis is focused on Soliciting and Accepting Bribes, and Bribery, as criminal offences in the narrow sense. The main objective of this analysis is a clear understanding of the role of national courts in criminal proceedings relating to these offences, special attention they should be paying in processing the corruption offences, as well as the analysis of the sentencing policy of the courts.

In order to provide a better view of the domestic case law, this text can be divided into five sections:

8 See Report of the European Commission on the progress of Serbia for 2013, pages 49-51, available (in Serbian) at: http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_2013.pdf

9 Prime Minister's address to the Serbian Assembly, 27.April 2014, available in Serbian at: http://www.srbija.gov.rs/pages/article.php?id=208780

1. The first part concerns the very notion of criminal offences of Soliciting and Accepting Bribes and Bribery, legal definitions, a closer explanation of the each individual offence and the integral elements of these offences.
2. The second part refers to the analysis of the final decisions of the Serbian courts with special reference to their reasoning in terms of the arguments that courts provide for their decisions, the penal policy of the courts and, ultimately, the ways in which local courts recognize (interpret) the mitigating and aggravating circumstances taken into account in sentencing.
3. The third part includes a review of statistical data on the types of sanctions, the scope of sanctions and fields that are most vulnerable to corruption.
4. The fourth part presents a comparative overview of the case law of the Supreme Court of the Republic Croatia, from the same perspective used to analyze the case law of the domestic courts (reasoning of verdicts, sentencing policy, and mitigating and aggravating circumstances).
5. The final part of the analysis includes summarized conclusions based on the previous analysis with recommendations for further developments in the Serbian case law.

It was our intention to combine in this way all that is relevant for a complete understanding of the very offences and of the court practice, with the final goal of establishing what exactly needs to be improved in the court practice in Serbia in order to fight corruption more efficiently.

The term "Corruption" and the legal framework

The term corruption derives from the Latin word **corruptio** and, according to the *Vujaklija* lexicon of foreign words and phrases, it means: wickedness; malice; perversion; decadence; buying-off; inducement; spoilage; decomposition; rot; decay; forgery.

However, the fact that this term does not have a domestic origin does not mean that the Serbian society is immune to this type of disease. On the contrary, bearing in mind both the data available to the relevant national and international institutions dealing with corruption, as well as the case law of domestic courts, it appears that corruption has found a fertile ground in this region.

Considering that domestic criminal regulations do not recognize the definition of corruption, this term can be found in the National Strategy for the Fight against Corruption from 2005[10] *(Corruption is a relationship based on*

10 "Official Gazette of the RS", No. 109/2005.

abuse of authority in the public or private sector in order to obtain personal benefit or for the benefit of another), as well as in the National Strategy for the Fight against Corruption in the Republic of Serbia 2013–2018[11] *(Corruption is the abuse of power in order to obtain personal benefit or for the benefit of another. It may take the form of abuse of office or social position or influence in the public or private sector)*, which is taken from the Law on the Anti-Corruption Agency[12].

In the period from 2001 to 2006, domestic criminal law defined a set of criminal offences under the title "Criminal offences of corruption" which by their nature represent different forms of abuse in different fields (soliciting and accepting bribes, bribery, corruption in the state administration, spending funds from the budget for a purpose other than designated, corruption in public procurement, etc.).

According to the current Criminal Code (CC), as amended in 2009, 2012 and 2013[13], this group of offences ceased to exist under this title, but mainly remained grouped into the 33. Chapter of the CC as criminal offences against official duty. Grouping of the abovementioned criminal offences in this chapter does not necessarily mean that corruption as such cannot appear in any other form or be linked to any other criminal offences. Therefore, it would not be wise to restrict only to the specific and clearly defined criminal offences prescribed by the Criminal Code, rather the priority should be given to some essential elements that characterize the essence of these criminal offences.

Relying on the definitions quoted above, several specific determining factors can be identified:

1. The abuse of power or a relationship based on abuse of authority – it can be briefly described as a behaviour contrary to the prescribed rules and procedures, as well as to the principle of good faith. A prerequisite for the fulfilment of this conclusion rests on the fact that a person has some kind of power or authority, or the corresponding influence that can be used in a manner opposite to the requirement stipulated by the law or other act.
2. The public or private sector as a field in which it can occur – defines the area where the abuse can emerge. None of the definitions confer a particular significance to one of these two sectors, evidently considering that corruption is a harmful phenomenon regardless of the field where it is manifested.

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11 "Official Gazette of the RS", No. 57/2013.

12 "Official Gazette of the RS", No. 97/08, 53/10 and the decision of the Constitutional Court No. 66/11.

13 "Official Gazette of the RS" No. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12 and 104/ 13

3. The aim – is clearly and precisely defined in both definitions and involves the acquisition of personal gain or the gain of another. The benefit gained by the offender may not be property or finance, but may also be manifested in some other form. Neither the Law nor the strategies have determined what benefits can be obtained by a person, but include only the general guideline (benefit), leaving in this way the courts and other state authorities to assess, in each case, whether the conditions for the existence of a criminal offence with such features exist.
4. The intent – for all criminal offences of corruption the fulfilment of this requirement is necessary. This would mean that these offences can only be performed with intent and that if there is no premeditation or intent, there is no subjective element of the offence. For this reason, most of the criminal offences in this area are generally easy to be recognized by "Whoever with intent to obtain benefit for himself or for another... "

Given the fact that the listed characteristics describe this type of criminal offences, that is, no single act of corruption can be imagined without the cumulative fulfilment of the above conditions, the domestic legislation (CC) defines a number of criminal offences that fall into this group.

As the main representatives, the criminal offence of Soliciting and Accepting Bribes (Article 367 CC) and Bribery (Article 368 CC) should be initially mentioned, as by definition they include the offences of corruption in the narrow sense. However, one should not lose sight of other criminal offences, such as Abuse of Office (Article 359 CC), Violation of Law by a Judge, Public Prosecutor and his Deputy (Article 360 CC), Fraud in Service (Article 363 CC) or e.g. Influence Peddling (Article 366 CC), as relatively new criminal offences in domestic law.

Soliciting and Accepting Bribes

Art. 367

(1) An official who directly or indirectly solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another to perform an official act within his competence or in relation to his/her official powers that should not be performed or not to perform an official act that should be performed,

shall be punished by imprisonment of two to twelve years.

(2) An official who directly or indirectly solicits or accepts a gift or other benefit or a promise of a gift or benefit for himself or another to perform

an official act within his competence or in relation to his/her official powers that he is obliged to perform or not to perform an official act that should not be performed,

shall be punished by imprisonment of two to eight years.

(3) An official who commits the offence specified in paragraphs 1 and 2 of this Article in respect of uncovering of a criminal offence, instigating or conducting criminal proceedings, pronouncement or enforcement of criminal sanction,

shall be punished by imprisonment of three to fifteen years.

(4) An official who after performing or failure to perform an official act specified in paragraphs 1, 2 and 3 of this Article solicits or accepts a gift or other benefit in relation thereto,

shall be punished by imprisonment of three months to three years.

(5) A foreign official who commits the offense specified in paragraphs 1 through 4 of this Article shall be punished by the penalty prescribed for that offense

(6) A responsible person in an enterprise, institution or other entity who commits the offense specified in paragraphs 1, 2 and 4 of this Article shall be punished with penalty prescribed for that offense.

(7) The received gift or material gain shall be seized.

According to the cited statutory provisions, the criminal offence of Soliciting and Accepting Bribes consists of requesting gifts, accepting gifts or receiving promises of gifts or other benefits in order to perform an official act that cannot be performed (and vice versa), or to perform an official act that must be performed (and vice versa), or requesting or receiving gifts or other benefits after the execution or non-execution of an official act.

The perpetrator of this criminal offense can be an official, foreign official or responsible person in the company, institution or other entity. Hence the fact is that the criminal offence of Soliciting and Accepting Bribes can be performed as a part of the official powers or in connection with official powers.

This offense is considered completed at the time the gift was requested, or received, while the attempt of the criminal offence is not possible.

The law also prescribes the mandatory seizure of gifts or other material benefit.

The penalties prescribed for the offence of Soliciting and Accepting Bribes range from between 3 months and up to 15 years, depending on the form of the offence.

Bribery

Art. 368

(1) Whoever makes or offers a gift or other benefit to an official or another, to, within his official competence or in relation to his/her official powers, perform an official act that should not be performed or not to perform an official act that should be performed, or who acts as intermediary in such bribing of an official,

shall be punished by imprisonment of six months to five years.

(2) Whoever makes or offers a gift or other benefit to an official or another, to, within his official competence or in relation to his/her official powers, perform an official act that he is obliged to perform or not to perform an official act that he may not perform or who acts as intermediary in such bribing of an official,

shall be punished by imprisonment up to three years.

(3) Provisions of paragraphs 1 and 2 of this Article shall apply also when a bribe is made or offered to a foreign official.

(4) The offender specified in paragraphs 1 through 3 of this Article, who reports the offence before becoming aware that it has been detected, may be remitted from punishment.

(5) Provisions of paragraphs 1, 2 and 4 of this Article shall apply also when a bribe is given or promised to a responsible officer in an enterprise, institution or other entity.

According to this provision, the criminal offence of Bribery consists of giving gifts, offering gifts or promises of gifts or other benefits in order to perform an official act that is not to be performed (and vice versa), or to perform an official act that must be executed (and vice versa), as well as mediation in bribery.

The perpetrator of this criminal offence can be any person, and the gift must be made, offered or promised to an official or other person, to a foreign official or responsible person in the company, institution or other entity. The difference regarding the perpetrator of the offence is made in relation to mediation in bribery, since the agent may be a third party and not the recipient or the provider of bribe.

The maximum penalty that may be imposed for the criminal offense of Bribery is up to 5 years in prison, depending on the form of the offence.

It is important to underline the possibility of statutory exemption from punishment of the perpetrator of the offence of Bribery if he/she has reported the offence before knowing that it has been detected.

Case-law research in the field of soliciting and accepting bribes and bribery

The case law research in the area of criminal offences of Soliciting and Accepting Bribes and Bribery covered the period from January 2010 to March 2014. In order to provide more complete information, official Requests were sent to all the Basic and Higher courts in Serbia in accordance with the Law on Free Access to Information of Public Importance[14]. They were requested to provide: information on whether there are proceedings in the aforementioned courts in connection with the criminal offense of Soliciting and Accepting Bribes from Article 367 of the Criminal Code and Bribery from Article 368 of the Criminal Code, the number of proceedings conducted, information about the stage of the proceedings, the relevant statistical data and copies of final decisions for that period. The majority of the courts responded to the submitted requests, and finally 75 decisions of higher courts and 34 decisions of the basic courts were obtained.[15] Some of the courts have not provided the requested information, since there were no finalized proceedings in the mentioned period.

The aim of the research was to gain insight into the way in which Serbian courts interpret the aforementioned offences, the way they explain their decisions and interpret some of the evidence presented during the trial, the maximum penalties imposed on persons found to have committed the criminal offence, as well as which mitigating and aggravating factors courts take into account when sentencing.

The research was based on the assumption that, in terms of understanding the content of these offences, the legal norm defined in the Criminal Code of RS, as well as case law, or the application of a legal standard to a particular case, are of equal importance. Through the analysis of the collected data, the research found a number of important features of case law in this area.

14 "Official Gazette of the RS", No. 120/2006, 54/2007, 104/2009 and 36/2010

15 One basic court and two higher courts did not respond to the requests for access to information of public importance

I

The first thing that catches the eye while analyzing the very content of the decisions, is that the quality of making the decisions varies not only among the courts (referring to their actual or functional competence), but even within the court – among the judges. This does not refer to the writing style, the quality of the sentences or skill of judges to translate their knowledge into words in a way that renders their decision clear and understandable, as stipulated by the provisions of Article 122 of the Court Rules[16]. On the contrary, it is the fulfilment of the conditions referred to in Article 428 of the CPC, that provides the content of a written decision.

The provision of Article 428 of the CPC[17], inter alia, stipulates the contents of the decision made in each case and orders the judge to include in the decision all the facts established in the criminal proceedings, and the reasons why certain evidence was deemed proven or unproven, why the judge denied some motions by the parties, laying particular emphasis on the assessment of the authenticity of controversial evidence, reasons which guided the judge in resolving legal issues, particularly in determining whether the defendant had committed the criminal offence, and in applying particular provisions of the law on the defendant and the criminal offence. If the defendant has been found guilty, the rationale will specify the facts the court took into consideration in determining the penalty, the reasons that guided it in finding that a harsher penalty should be imposed, or that the penalty should be mitigated or that the defendant should be relieved of a penalty, or that a community service, or seizure of a driver's license should be imposed, or that a suspended sentence or a judicial admonition, or a security measure should be imposed, or the seizure of the proceeds from crime or seizure of assets deriving from a criminal offence, or revocation of probation.

The Criminal Procedure Code also stipulates a sanction for contrary conduct of the first or second instance courts in case of failure to comply with Article 428 of the CPC. The sanction is contained in Paragraph 2, Item 2 of Article 438 of the CPC and provides that, if it turns out that the summary judgment contradicts itself or the reasons of the judgment contradict the summary judgment, or if the judgment has no reasons, or the reasons of the facts which are subject matter of evidentiary actions are not given in it, or those reasons are completely unclear or substantially contradictory, or if in respect of the facts which are subject matter of evidentiary actions there exists substantial contradiction between what is stated in the reasons of the judgment about the content of the records or transcripts of testimony

16 "Official Gazette of the RS", No. 110/09, 70/11 and 19/12)

17 "Official Gazette of the RS", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

given in the proceedings and those instruments or transcripts themselves, and it is for those reasons not possible to examine if the judgment is lawful and proper, a substantive violation of the provisions of criminal procedure exists, resulting in the annulment of the appealed decision and referal of the case back to the court of first instance for re-trial.

With such clear provisions of the CPC, it is apparent that each judge individually is expected to adequately argument his/her judgment, regardless of whether it involves the conviction or acquittal, and to provide as many reasons to establish the decision. A judge shall, on the basis of careful assessment of each piece of evidence, individually and in conjunction with other evidence, reach a conclusion about the certainty of the existence of certain facts.

After a thorough reading of all the decisions delivered by the courts in Serbia (making a total of 109), it seems that in the vast majority of cases, the assessment of evidence individually, and in particular their connectedness and comparison with other evidence, is lacking. If a rough territorial delimitation would be performed, it could be concluded that the courts in the territory of Vojvodina, which are under the jurisdiction of the Appellate Court in Novi Sad, particularly stand out for the quality of their decisions.

In most cases, the first instance (and second instance) decisions consist of quoting the testimony of the defendant, victims and witnesses, then quoting the article of the law that is applicable in the specific case, the allegation that the defendant committed the offence with premeditation (if convicted), almost without any particular explanation as to how the intent of the defendant is reflected, and on what basis the court concluded that the intent existed; finally enumerating the aggravating and mitigating circumstances that the court took into account in sentencing. What is missing is precisely what the CPC requires the judges to do when explaining their decisions – arguments for the decision. On the contrary, the first instance courts find that it is enough to cite the testimony of the parties and witnesses heard without their detailed analysis, establishment of their mutual links and the clarifications of potential contradictions in their statements.

Beyond the most common phrase that "the Court give credence to the testimony of the defendant, the injured party or witness because it is clear, logical and consistent....", additional reasons for the conclusion are often lacking. The fact is that a substantial part of the court's decision depends on the so-called "free judge's opinion", but it is also a fact that the court's opinion or belief cannot be the only argument for conviction or acquittal, and that in this respect it is necessary to provide a more specific, detailed and thorough explanation of the judge's stance. Otherwise, an absurd situation happens at times where the content of the decision has, for example, over 30 pages of text without almost a single argument, which violates the right of a party to a fair trial, reflected in the right to a clear, understandable, and especially a well-reasoned judgment.

An even bigger problem is the fact that the appellate courts, which should represent a remedy to the work of the lower courts, are satisfied with such decisions, and thereby contribute to the development of bad practice.

Therefore, the work of the courts in Vojvodina (the jurisdiction of the Court of Appeal in Novi Sad) should be praised in this regard, as the cases of poorly or insufficiently substantiated decisions represent exceptions and are usually sanctioned in the second degree.

II

The next issue that needs to be paid particular attention to is the level of penalty to be imposed on persons found to have committed the offence of Soliciting and Accepting Bribes or Bribery.

The above cited articles indicate that the range of punishment prescribed for the offence of Soliciting and Accepting Bribes ranges between two to fifteen years, with the exception set in Article 367 Para 4 of the Criminal Code, decreasing the lower limit for the execution of the criminal offence down to three months.

A somewhat different situation applies in the case of compliance with the requirements referred to in Article 368 of the Criminal Code that sets the upper limit for imprisonment to five years.

Considering the level of punishment for criminal offences of Soliciting and Accepting Bribes and Bribery, one gets the impression that the legislator made sure that the perpetrators of these acts are sanctioned appropriately. However, if data on the prevalence of systemic corruption in Serbia are taken into account, as well as the fact that it is present in all segments of society (even the police, as indicated by a number of decisions that have been subject to analysis), it seems that regardless of the legally prescribed punishments, these criminal offences are still executed to the same extent. Reading the final decisions of the domestic courts, it appears that the cause lies partly in the work of police and the prosecution (whose main task is to collect as much usable evidence to substantiate the charges against the perpetrators of these criminal offences), whereas it is largely based on the penal policy of the courts in Serbia. Instead of punishing the perpetrators of these criminal offences as stringently as possible, in order to achieve the effect both for the perpetrator of the offence (the same does not happen again), and for other persons (to be aware that they can expect a long prison sentences if they commit any of these offences), the national courts do not achieve any of the above mentioned aims through their penal policy. Eventually, such penal policy does not contribute to the suppression of the problem of corruption, which should be a primary goal.

It would be reasonable to expect that in an alarming situation, which is present in Serbia in terms of the extent of corruption in all the spheres of society, the competent state authorities would also contribute to the fight against it – primarily the police and the prosecutor's office (whose

main task is to collect as much useful evidence to substantiate the charges against the perpetrators of these criminal offences), and subsequently the courts, as a last resort that should ensure that such behaviour is severely sanctioned, contributing in this way to the suppression of the problem of corruption.

Since this part of the analysis of case law does not include the statistical data on the types of penalties that are imposed on the offenders, nor the level of fines imposed, it can be roughly concluded that in a vast proportion of the criminal proceedings suspended sentences have been imposed. The few prison sentences that are imposed to the offenders, reach the highest limit of about 3 years imprisonment. The highest sentence was 3 years and 6 months imprisonment and it was imposed to a person who has previously been convicted several times.

As the intention is to particularly focus on the issue of mitigating and aggravating circumstances in the next chapter, in this part of the analysis, the focus is primarily placed on the level of penalties imposed and the factors that govern the courts when sentencing the offenders.

The fact that the courts, under certain conditions prescribed by law, have an opportunity to impose the penalties that are less severe than those prescribed by law for that offence, is not disputable. It is also not contentious to conclude that the institute of mitigation of punishment should always be applied when it turns out that there are particularly mitigating circumstances, and when it is determined that a reduced sentence can achieve the purpose of punishment.

The second part of the previous sentence (when it is determined that a reduced sentence can achieve the purpose of punishment) is in fact the reason the judges most often use when deciding to impose a sentence below the statutory limit. As much as it seems that the impression of the court that the reduced sentence could achieve the purpose of punishment is the subjective aspect of the judge, it may equally be said that the court's freewill should be based on some objective elements, i.e. factors that must provide a basis for the court's decision to mitigate the sentence for the offender. If this conclusion is linked with the facts listed above (widespread corruption, its effects on a society as a whole, disappointing statistics about the level of corruption reached in Serbia[18]), the impression is that the legal norms that allow the possibility of mitigating the sentence should be interpreted more restrictively in cases where the subject of criminal proceedings is any offence that incorporates elements of corruption.

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18 See: "Perception of Corruption in Serbia – Public Opinion Survey", December 2013, conducted by UNDP in Serbia, available in Serbian at: http://www.gm.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/Corruption%20UNDP_SRB_Benchmarking%20Survey%20Serbian%20December%202013.pdf

Instead of such acting of the judges, it turns out that these offences (with elements of corruption) are approached in the same way as any other criminal offence, although the general indicators in the society show that it is necessary to introduce a drastic change and a different approach, both in the collecting of evidence, and in sentencing perpetrators of these criminal offences.

Another issue that needs to be pointed out is the fact that judges may also impose the appropriate security measures, stipulated in Chapter VI of the Criminal Code, one of which referred to in Article 85 of the CC – Prohibition to Practice a Profession, Activity or Duty, is particularly striking.

Pursuant to Article 85 of the CC, the court may prohibit an offender from practicing a particular profession, activity, or all or certain duties related to the disposition, use, management or handling of another's property or taking care of that property, if it is reasonably believed that his further exercise of that duty would be dangerous. The court shall determine the duration of the measure referred to in paragraph 1 of this Article that may not be less than one or more than ten years, calculated from the day the decision became final, and the time spent in a prison or medical institution where the security measure has been exercised shall not be credited to the term of this measure. If ordering a suspended sentence, the court may order revoking of such sentence if the offender violates the prohibition to practice a particular profession, activity or duty.

With such legal options for sanctioning persons who received bribes during the exercise of an authority, it remains unclear why this security measures is not applied to a greater extent in criminal proceedings. In the analysis of the final decisions, it turned out that this measure was imposed only once and by the court located on the territory of Vojvodina, or under the jurisdiction of the Appellate Court in Novi Sad.

It may also be noted that among other security measures, the ones imposed are Seizure of Objects (Article 87 CC) and the Expulsion of Foreigner from the Country (Article 88 CC), but it seems that the abovementioned measure of prohibition to practice a particular profession, activity or duty would be significantly more effective in particular case.

Moreover, the question of confiscation of assets derived from criminal offence of corruption is also interesting. The data on the seized property indicate that the state has failed to identify and seize significant assets. In practice, the problems arise in connection with the seizure and subsequent confiscation of property acquired through crime. The key problems mentioned in this regard involve a significant lack of knowledge in terms of financial investigation, lack of skilled expert witnesses, monitoring of cash flows and the implementation of more effective financial investigations.

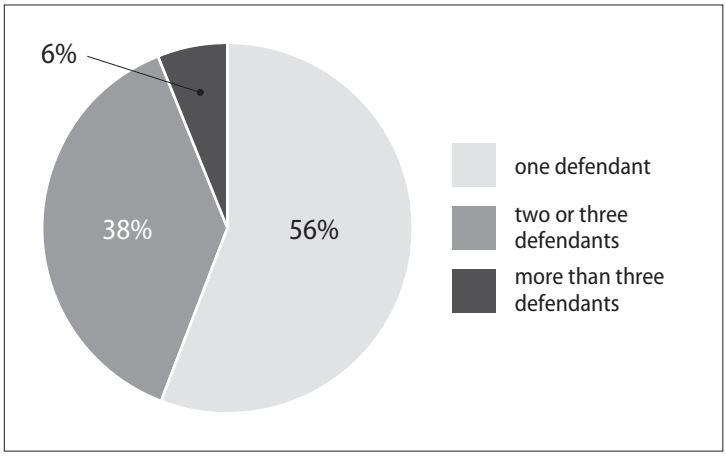
III

Statistics on court proceedings

According to the responses of the courts for the period of 1st January 2010 to 1st March 2014 for Soliciting and Accepting bribes (Article 367), there have been a total of 349 proceedings and 193 for Bribery (Article 368).

The first difference observed in these proceedings is related to the number of defendants in a single criminal proceeding. For Bribery, the proceedings are almost always conducted against one defendant, while in cases of Soliciting and Accepting Bribes it is not the case.

1. Number of defendants in proceedings for Soliciting and Accepting Bribes

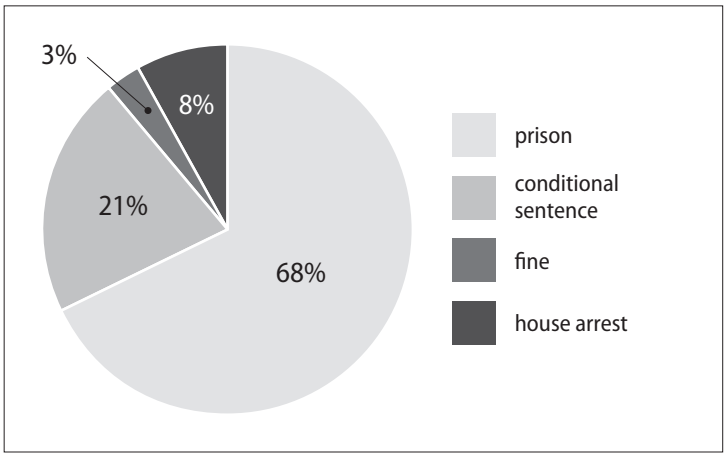


For the offence of Soliciting and Accepting Bribes (to perform or not to perform the action)[19] the Criminal Code stipulates prison sentence ranging from two years to 15 years and for Bribery from six months to five years. In accordance with the provisions of the Code, there are differences in the level and types of criminal sanctions.

Among sentences for the criminal offence of Soliciting and Accepting Bribes, there are 68% prison sentences, then fines 21% and 3% of suspended sentences. The novelty in the Criminal Code is house arrest, which is imposed in 8% of procedures.

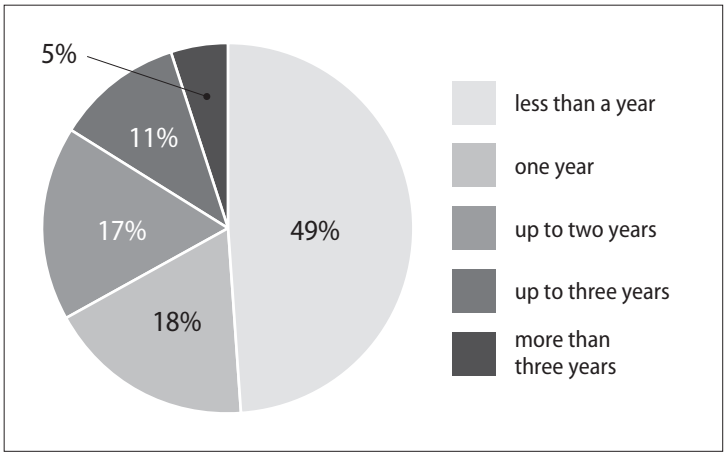
19 In the Criminal Code Article 367. item 4. for soliciting and accepting bribes after performing or failure to perform an official act a lower sanction is stipulated (imprisonment from three months to 5 years).

2. Prevalence of criminal sanctions
for criminal offence of Soliciting and Accepting Bribes



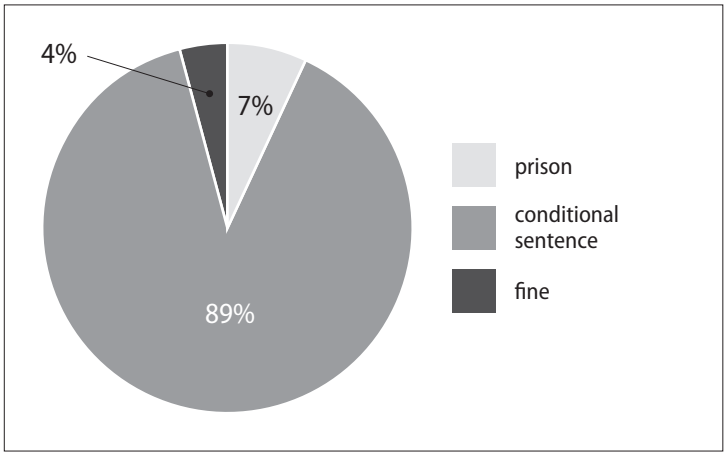
With regard to the penal policy of the courts, taking into account the level of imprisonment specified in the Code, it can be described as soft. Prison sentences of less than one year prevail in 49% of final decisions, and over three years only in 5% of cases. As a special kind of criminal sanctions, the Code stipulates security measures, which represent measures of supplementary character and are imposed with other kinds of sanctions (fines, cautinary measures), or the remittance of punishment. They are imposed only in 8% of cases.

3. Duration of prison sentences
for criminal offence of Soliciting and Accepting Bribes



In the cases of Bribery, the situation is completely different. The largest number of sanctions were suspended sentences (89%), prison sentences accounted for 7%, while the prevalence of a fine was in 4% of final decisions. Security measure of seizure was imposed in 11% of final decisions.

4. Prevalence of criminal sanctions for criminal offence of Bribery



Such practice has no potential to contribute to the fight against corruption. Penal policy of the courts for Soliciting and Accepting Bribes must be much more harsh. It is necessary to affect the citizens' awareness through judicial proceedings, indicating that Bribery is equally a criminal offence as well as Soliciting and Accepting Bribes. Hence, in order for the measures against corruption envisaged in the Strategy, the Action Plan and the Criminal Code to be efficient, it is necessary to adequately use all the protective mechanisms and punish all the participants in corruption. Serbian courts must offer an important contribution to eliminating deeply rooted attitudes in the society implying that "giving gifts is a part of our tradition, culture and mentality"[20].

In the Free Access to Information Request, a single area as most susceptible to corruption was not indicated, as one of the goals of this survey was to determine what are the segments of the society in which judicial proceedings are mainly initiated. For both types of offences, the most proceedings are completed in the fielld of policing (45% Soliciting

20 Similar statements were used in debates at the round tables organized within the Project "Active Citizens Against Corruption – Best Practices to Cure and Prevent Corruption in Local Communities", where participants filled out questionnaires aimed at assessing their understanding of corruption.

and Accepting Bribes, 25% Bribery). The same percentage of proceedings exists in the construction field for Soliciting and Accepting Bribes (25%), while the third is Soliciting and Accepting Bribes in the health sector (10%). When it comes to Bribery, it is present in the justice (14%) and healthcare system (14%). The prevalence of court proceedings initiated for corruption in education is almost identical to Soliciting and Accepting Bribes and Bribery (between 7-8%).

Trial Monitoring

Trial monitoring was conducted in seven cities in Serbia (Belgrade, Cacak, Nis, Smederevo, Zrenjanin, Pancevo and Sabac). During the period in which the researchers attended the trials, the largest number of scheduled hearings related to the criminal offence of Soliciting and Accepting bribes. In accordance with the obtained trial schedule, monitoring was conducted in the higher courts.

The areas that were the subject of the proceedings are very different and on the basis of the monitoring it was not possible to determine which area was the most frequent one in the proceedings for corruption. However, it is important to note that there are no deviations from the results of the analysis of the final decisions of the higher courts, and that Soliciting and Accepting Bribes appears in the police, customs, public procurement, health, education and construction.

Problems characteristic for court proceedings for Soliciting and Accepting Bribes and Bribery fit entirely into the general shortcomings of the entire judiciary. General characteristics of the trials are frequent delays of the hearings, lengthy proceedings, absence of witnesses, as well as replacements of the judges and council members. Also, the timing of a hearing within one working day is generally not respected. It often happens that the beginning of the trial is postponed, whereas the main reasons that appear for the delay involve late appearance of the judge and jurors, prolonged duration of the previous hearings, and a large number of trials in one day.

In addition to these general causes for the lengthy criminal proceedings, another one perceived as specific to the criminal offence of Soliciting and Accepting Bribes has been noted. The analysis of the final court decisions indicated that in 44% of proceedings for Soliciting and Accepting Bribes, there is more than one defendant. The results of the trial monitoring confirmed the fact that in these cases it is difficult to secure the presence of all the defendants and thereby satisfy the procedural requirements for the conduct of the proceedings.

IV

The last issue that needs to be paid special attention to is the issue of mitigating and aggravating circumstances that the judge evaluates when sentencing the offender.

As noted above, Article 54 of the Criminal Code provides that the court shall determine a punishment for a criminal offender within the limits set forth by the Law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstances that are relevant for the level of punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender; in determining the fine in particular amount (Article 50), the court shall afford particular consideration to financial status of the offender; and the circumstance which is an element of a criminal offence may not be taken into consideration either as aggravating or extenuating, unless it exceeds the degree required for establishing the existence of the criminal offence or particular form of the criminal offence, or if there are two or more of such circumstances, and only one is sufficient to define the existence of a severe or less severe form of criminal offence.

From the content of the cited article it may be concluded that the issue of mitigating and aggravating circumstances by its nature requires to be evaluated in each specific case and is linked to the offender, his personal situation, past life, conduct after the offence, the motives for which the offence was committed, and many other facts that affect the decision of the judge to impose a sentence less severe than the one stipulated by law.

Due to the subjective nature of all the circumstances which are considered when sentencing the defendant, the trial judge would need to evaluate each of them both individually and in connection with other circumstances relevant to sentencing, and subsequently explain in detail why in this particular case he/she considers that the conditions for a more lenient sentence are met. Each of the potential reasons for mitigating the sentence must have a basis in the facts that contribute to the mitigation.

Thorough analysis of the final decisions indicates that the judges approach this part of the reasoning more formally than they actually evaluate the individual reasons for mitigating the sentence. Moreover, completely different life circumstances in most cases are evaluated in the same way, although there are no grounds for this either in the specific situation, or in the law. For example, it is observed that as a mitigating circumstance judges perceive the fact that a person is young, or relatively young, the fact that someone is older, so practically every age of the

defendant is taken as a mitigating circumstance. Identical situation can be found in regards to the term "family person", so for example, someone may have one, or four children or no children at all, but will have the same treatment in terms of mitigation and alleviation of sentence on that basis. These examples can be traced in almost every decision and it seems that such practice has undermined the institute of mitigation, losing the purpose intended by the legislator.

The purpose of the aforementioned examples is not intended to encourage judges not to take into account all the stated life situations which, indeed, under certain conditions and in a given set of circumstances, may influence the decision of the court in sentencing. On the contrary, the intention is to associate all the life situations with other reasons for mitigation of sentence that would establish the grounds for the court's decision if it concludes that the conditions are met to mitigate the sentence to a certain person, thus achieving the purpose of punishment. As an illustrative example, one can imagine a situation in which the defendant is truly a family man, father of two children and middle-aged. All of the above would not entail sufficient grounds to reduce the sentence to the defendant, as the given life situation still does not meet the requirements of Article 54 of the Criminal Code defined in the law as "the personal circumstances of the defendant". However, if the previous life situation would be substantiated with the circumstances that the defendant is the only employed, supporting a family, has an ill family member to whom he must supply medication, rents an apartment, has no previous convictions, and that is the current life situation that actually led him to commit the offence, then it could be discussed about the real possibility that the defendant receives a sentence that is more lenient than the one prescribed by law. Identical logic could be used in a situation when it comes to the conduct of the defendant after the commission of the offence and his behaviour towards the victims of crime.

Taking a step back to the offences of Soliciting and Accepting Bribes and Bribery which are the subject of this analysis, as well as the numbers indicating the level of corruption in Serbia[21], the degree of danger or injury to the protected good must be particularly taken into account (in the broad sense, corruption may even endanger the entire state system), which should lead to a more restrictive interpretation of Article 54 of the CC.

Instead of the expected court practice in Serbia, once again we find ourselves in the same situation as explained in the previous section (the level of sentences) where courts approach corruption as any other offence that does not fall under this category of incriminated acts, although general indicators of the state of society in terms of corruption are not encouraging.

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21 http://www.gm.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/Corruption%20UNDP_SRB_Benchmarking%20Survey%20Serbian%20December%202013.pdf

It is particularly important to emphasize the fact that the Higher Court in Belgrade provided the required sentences for the purposes of this analysis, previously darkening the parts of the decisions relating to mitigating circumstances that have been evaluated in determining the sentence to the defendants, so it was not possible to conclude whether there is different practice in the conduct of this court in sentencing the defendants in relation to other courts in Serbia. As this information does not fall under the information protected by the Law on Personal Data Protection[22], it remains unclear why the Higher Court in Belgrade has decided not to allow access to this data in the decisions.

Finally, it is useful to illustrate one of the interesting proceedings that took place in one of the courts in Serbia. The defendant was the person who had committed a certain surgical intervention in a health center in Serbia. For his services of scheduling the victim's surgery at the health center, perform the surgery and occasionally visit and monitor the victim's recovery, he received a certain amount of money. At the time of performing the surgery, the defendant was on an unpaid leave and came at the health center just for this reason, to perform this surgery. The first instance court held that the defendant could not be held responsible for the criminal offence of Soliciting and Accepting Bribes because he was on an unpaid leave in the reference period, when, in accordance with the provisions of Article 78 of the Labour Law[23], his rights, duties and responsibilities rest, resulting in the fact that the defendant's status of official, responsible person also rests. Therefore, the first instance court concluded that the statutory requirements for the criminal offence of Soliciting and Accepting Bribes were not met. The public prosecutor appealed against the decision, pointing to the fact that the court wrongfully concluded in its finding that the defendant's rights, duties and responsibilities rested, as a result of unpaid leave, but on the contrary, it is precisely in accordance with the provisions of the Labor Law that the defendant was still employed person and the type of unpaid absence is treated as a form of employee's absence from work during which time the functions to which he had been elected or appointed did not cease. The second instance court dismissed the appeal as unfounded and upheld the first instance decision, acquitting the defendant for commission of the criminal offence of Soliciting and Accepting Bribes from Article 367 of the Criminal Code, accepting fully the reasons stated in the explanation of the first instance court. It would be beneficial to hear additional expert opinion on the reliability of this conclusion of the first instance court (and second instance court), considering that this kind of acting and failure to sanction the offences on the grounds given by the acting courts, may potentially lead to a widespread abuse of the status of the responsible person.

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22 "Official Gazette of the RS ", No. 97/2008, 104/2009, 68/2012, and the decision of the Constitutional Court No. 107/2012

23 "Official Gazette of the RS ", No. 24/2005, 61/2005, 54/2009 and 32/2013

Review of the comparative case-law in the courts in Croatia

In order to draw a grounded and proper conclusion on the quality of domestic judicial decisions, the way they are written, the level of penalties imposed by the courts and a number of other facts relevant to the comprehensive consideration of the work of the local courts, the best way is to compare them with the practices of other countries. A realistic assessment of domestic court decisions can be performed by placing it on "European and world market of case law".

For the purposes of this analysis, a comparison is made with the court decisions of the Republic of Croatia, as a country in the region, with almost equal legal system, the definitions of the criminal offences of Soliciting and Accepting Bribes and Bribery, prescribed penalties, mitigating and aggravating circumstances that the courts take into account when imposing sentences to the offenders and finally, a country that twenty years ago was a part of the former Yugoslavia, where all the republics had identical criminal law. The Republic of Croatia is now a member state of the European Union, and the problems it faced along the way of accession are nearly the same problems Republic of Serbia faces today.

The said offences are regulated by Articles 347 and 348 of the Criminal Code of the Republic of Croatia and read as follows:

Accepting a Bribe

Article 347

(1) An official or responsible person who solicits or accepts a gift or some other gain, or who accepts a promise to be given a gift or some other gain to perform within the scope of his authority an official or other act which he should not perform, or to omit an official or other act, which he should perform,

shall be punished by imprisonment of six months to five years.

(2) An official or responsible person who solicits or accepts a gift or some other gain or who accepts a promise to be given a gift or some other gain in order to perform within the scope of his authority an official or other act which he should perform, or to omit an official or other act, which he should not perform,

shall be punished by imprisonment of three months to three years.

(3)An official or responsible person who, after the performance or omission of an official or other act referred to in paragraphs 1 and 2 of this Article, solicits or accepts a gift or some other gain

shall be punished by imprisonment up to one year.

(4) The gift or other pecuniary gain received shall be forfeited.

Bribery

Article 348

(1) Whoever gives or promises to give a gift or some other gain to an official or responsible person in order to perform, within the scope of his official authority, an official or other act which he should not perform, or to omit an official or other act which he should otherwise perform, or whoever mediates in bribing an official or responsible person in such a way

shall be punished by imprisonment for three months to three years.

(2) Whoever gives or promises to give a gift or some other gain to an official or responsible person in order to perform, within the scope of his official authority, an official or other act which he should perform, or to omit an official or other act which he should not perform, or whoever mediates in bribing an official or responsible person in such a way,

shall be punished by fine or imprisonment for up to one year.

(3) The court shall remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1 and 2 of this Article, provided that he gives the bribe on the request of an official or responsible person and reports the offence before it is discovered or before he learns that the offence has been discovered.

(4) The gift or the pecuniary gain given under the circumstances referred to in paragraph 3 of this Article shall be restored to the person who gave a bribe.

The contents of the quoted articles obviously indicate that they are almost identical as the content of the articles prescribed by the Criminal Code of RS. For this reason, the analysis which is valid for the legislation of the Republic of Serbia in connection with these criminal offences can be almost entirely accepted for the legislation of the Republic of Croatia

as well. Further analysis of case law of the surrounding states and method of implementation of substantive legal provisions in specific cases, is even more important for domestic jurisprudence for that reason.

Court decisions in the Republic of Croatia (RH) that were available for analysis are published on the website of the Supreme Court case law (http://sudskapraksa.vsrh.hr/supra/Default.asp) in their original format, facilitating the work and enabling a comparative overview of the case law. On the official website of the Supreme Court of the Republic of Croatia, a total of 69 decisions relating to the offences of Soliciting and Accepting Bribes and Bribery of Articles 347 and 348 CC RH are available. Since the analysis of case law of domestic courts focused on three key points (argumentation of the decision, the level of imposed sanctions and the mitigating and aggravating circumstances in sentencing offenders), special attention is also dedicated to the above points.

Initially, the question of argumentation of the decisions in RH (as well as the remaining two points), was possible to be observed only in the Supreme Court decisions, so it must be borne in mind that the decisions by the highest court are explained in a different way from the first instance decisions. For this reason, it was not possible to determine how first instance courts justify their judgments, or compare evidence and draw conclusions, finally evaluating the other circumstances relevant to the adjudication of each particular case.

However, the content of the decisions of the Supreme Court of the RH indicates that the Court, even though acting in the second instance, tends to indicate as many arguments in support of its conclusions. Even in situations in which it confirms the first instance decision and fully accepts the reasons noted by the lower instance court, the Supreme Court, in the second instance, aims to complete the allegations raised in the appealed decision before the Supreme Court. Moreover, the Supreme Court of the RH links certain evidence presented during the trial once again, explaining their contents and legal power granted to them by the establishment of its findings. Acting in this way, the court of the second instance not only explains the arguments stated in the appeal (which is its main task), but also independently, through the reasoning of the potentially relevant violations of the criminal proceedings or application of relevant provisions of the Criminal Code of the RH.

Therefore, it can be concluded that in terms of reasoning and argumentation of the decisions, Croatian courts are far ahead of the domestic ones and it would be beneficial to follow the example of good practice in the neighborhood.

The same conclusion can be also drawn in terms of sentencing, particularly in terms of assessment of the mitigating and aggravating circumstances in sentencing the offender.

Noting once again the fact that access to the decisions of the Croatian courts was relatively limited in order to be able to draw a conclusion

about how the courts weigh the penalty when they find that someone has committed a criminal offence, this conclusion is complemented by the analysis of the following points – the mitigating and aggravating circumstances.

All the issues previously mentioned in the analysis of domestic rulings and recommendations – in what way the circumstances that lead to the mitigation or the imposition of a heavier penalty to the defendant should be interpreted – the Croatian courts already apply. In order to avoid repetition of these findings, the most convincing is to display a part of contents of one of the decisions of the courts of Croatia that were analyzed:

Decision of the Supreme Court of the Republic of Croatia Kž 741/07-5

"The defendant unfoundedly appealed the decision on punishment, as the court of first instance properly evaluated the importance of mitigating and aggravating circumstances.

The defendant is not right when he claims that his sentence was too harsh because the court of the first instance has given too little importance to the mitigating circumstances established, such as no previous convictions, poor health and family situation, and has not found further mitigating circumstances for the defendant, which is the great contribution that the defendant gave in the war, regret, proper conduct, age of 63 years and indigence.

Mitigating circumstances established by the court are repeated by the defendant, in an attempt to unfoundedly give them even greater significance, and as for the new mitigating circumstances, they are not of such significance to be imposed a more lenient sentence.

Although the fact that the defendant was a surgeon in the war, who was exposed to the great efforts and risks, that he is in the age of 63, that he had appropriate conduct in court, which are undoubtedly mitigating circumstances, they do not justify a more lenient punishment, because a lenient sentence would not meet the expected sentencing purposes under Article 50 and the general purpose of criminal sanctions under Article 6 of the CC. This refers to the purpose of individual prevention, but especially to the general prevention as the community's condemnation must be adequately expressed to the perpetrators of such criminal offences, considering that the corruptive offences are infiltrated into all segments of the society, so the unacceptability of such criminal behaviour must be pointed out to the possible perpetrators , and the fairness of punishment to all other citizens.

The defendant is not right in an attempt to question the importance of identified aggravating circumstances through the appeal, which is unacceptability and social risk of these criminal offences, arguing that it is an element of any criminal offence, including the present, so that these elements cannot be evaluated as aggravating circumstances.

The court of the first instance, however, acted properly in evaluating the circumstances of the defendant as aggravating.

Hence the social danger and the danger of the criminal offence is not the same in any criminal offence, as there are offences that entail a higher degree of endangering the protected social value than the others.

In this case, where the doctor as a person from a mainly humane and ethical profession, receives bribes from patients, then it is undoubtedly more dangerous than accepting bribes in other professions that do not essentially entail the element of humanity.

Thus, social risk, or danger, are circumstances beyond the nature of a criminal offence in line with Art. 56 CC on influencing the choice of the type and severity of the punishment, so this is not a double assessment of the same circumstances as wrongly considered in the appeal.

In terms of financial standing, this circumstance of the defendant was rightly evaluated as not mitigating because during the proceedings the defendant gave the information to the court that he has middle-income, not low , as it is now suggested in the complaint.

Therefore, neither the individual punishments of imprisonment of nine months and four months, nor the single sentence of imprisonment of one year, are too severe. Both individual sanctions are set closer to the lower limit of the prescribed punishment, since the criminal offence referred to in Article 347 Para. 1 of the CC prescribes a prison sentence of between six months to five years, and for the offence referred to in Article 347 Para 2 of the Criminal Code for a period of three months to three years".

The quoted part of the decision may be sufficient to conclude that the decisions of the Croatian courts are much ahead the decisions of the courts of the Republic of Serbia, both in the part relating to the manner of reasoning, implementation, analysis, and connecting of all the evidence, as well as in relation to the application of the Criminal Code of RS, the circumstances taken into account by the court when sentencing, the consequences of these criminal offences caused to the society at large and the degree of social danger that these criminal offences can produce to the community. In this section, the domestic courts may follow the example of good practice in the region.

Conclusion

The key role in the fight against corruption belongs to the courts. This role has become even more emphasized after receiving a series of reports of a large number of international organizations, including the European Commission, which indicate the degree of corruption that exists in the Republic of Serbia. In addition, the opening of the Chapters 23 and 24 that deal with the judiciary, the rule of law and human rights, Serbian courts will be under continuous screening of the Delegation of the European Commission to monitor the improvement of their work, the way they help in resolving the problems experienced by the Serbian society, including corruption as one of the most prominent ones. For all of these reasons, their contribution to this fight should be much higher.

In this regard, it is of particular concern that the existing case law indicates that national courts still lack awareness with regard to the social threat that corruption carries and the attitude of courts in line with these consequences offence. On the contrary, it appears that these offences are approached in the same way as any other criminal offences of minor significance, concurrently failing to assess the fact that some criminal offences pose danger to the protected social values in a higher degree than other criminal offences.

In this sense, the lack of adequate proactive approach in the fight against corruption represents one of the main problems the institutions need to face. Furthermore, the practical implementation of the regulations indicates the need to establish permanent control mechanisms, in particular internal control. Of course, when analyzing the state of the fight against corruption in the RS, it is necessary to bear in mind that the existing capacities (budget, staff salaries, equipment of the institutions) is limited, which significantly limits the capacity for adequate law enforcement and the fight against corruption.

Although the scope of this study was limited to the period of the last four years (2010–2014), the collected data and observations in connection with the case law in the area of criminal offences of Soliciting and Accepting Bribes and Bribery, clearly point to the need to ensure that national judges are offered additional training in this area to raise awareness regarding the social dangers that these offences cause, and the way to approach the proceedings for criminal offences that have corruption as the main feature. In addition, it would be desirable to familiarize the local judges with examples of good practice, particularly in the region, which could be followed as the criminal law does not significantly differ. Otherwise, the Republic of Serbia may face problems upon the opening of the Chapters 23 and 24 relating to the administration of justice, and the subsequent accession to the European Union, as it is required to provide effective legal protection for both individuals and the protection of the entire state system. At this point, it seems that it takes a lot of work in this field in order to reach the expected level.

Corruption in the Health Care System

Law Scanner

According to the European Health Consumer Index (EHCI), in the last two years the quality of health care services in Serbia has been in the last place in Europe.[24] Numerous causes have contributed to this: financial situation, frequent changes of regulations, the lack of adequate safeguard mechanisms and lack of accountability. All this resulted in a rapid rise of corruption and the lack of public confidence in the health care system.

The survey on public opinion on corruption conducted by CESID and UNDP was published in December 2013.[25] The results of this survey indicated that doctors are amongst the most corrupt professions in Serbia.

Corruption in the health care sector has been recognized as a major problem in our society. The main indicator of its prevalence is a very high citizens' perception about the incidence of corruption. In order to justify the high level of corruption in the health care sector, the phrase "It is our mentality" is often used as an argument. However, none of the representatives of this standpoint was able to offer any explanation for this and have failed to defend this stance.

Looking at the objective state of the health care system and analyzing the various segments, ranging from the patients' and medical staff opinion to the regulations, it can be concluded that there are a number of issues that encourage corruption. Some deficiencies indicate systematic problems, and may represent general negative features that affect the spread of corruption. In this sense, a major influence of political parties on the manner of functioning of the health care system is often highlighted. Furthermore, political parties hinder or completely prevent implementation of the reforms and creation of a national strategy for health sector improvement that would be applicable in our system.

24 http://www.healthpowerhouse.com/files/ehci-2012-press-serbia.pdf

25 http://www.gm.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/Corruption%20UNDP_SRB_Benchmarking%20Survey%20Serbian%20December%202013.pdf

Contrary to the slow and inadequate reforms, partial changes of the regulations are very common and characteristic for Serbia. Frequent amendments to the laws and regulations governing the right to health care and health insurance create confusion in the implementation, both to the state authorities and the patients. Therefore, the same bodies in different local governments do not interpret the standards in the same way, generating conditions for corruption. Violations of rights guaranteed through health insurance are often present, since there is no precise list of services covered by compulsory health insurance.

An additional problem is created due to undefined procedures for the provision of medical services in the health institutions and patients' poor awareness of their rights. As health care facilities provide a variety of services depending on the level of care[26] it is necessary that the procedures cover the types and the scope of these services. Regulating the procedures may partially impact the reduction of corruption. However, in order to achieve this overall goal, it is necessary to educate citizens on the national level. Such campaign could significantly contribute to health care education and increased awareness of the whole society on that matter.

Consequences of the lack of transparency of the work of hospitals and health care centers have led to the creation of waiting lists for specialist examinations, hospitalization and surgeries. This problem and the importance of transparency of the institutions in order to reduce corruption are constantly emphasized. However, it appears that there is not enough political will to open the health care facilities and the Republic Health Insurance Fund to the public.

Despite the fact that there are numerous mechanisms in Serbia which can take measures to reduce corruption in accordance with their competencies, their capacities remain underutilized. Within the Ministry of Health, there is a Department for Health Inspection, which can monitor lawfulness of the work of the medical institutions, and submit charges to judicial authorities. In addition, the Department for Health Insurance, in accordance with the regulations, may have an effect on the amendments of the regulations that would contribute to the reduction of corruption and abolish the contradictory norms.

The existence of various professional organizations should not be viewed only in the light of the protection of their members but also as a significant factor in the fight against corruption. However, various chambers of health workers (Serbian Medical Chamber[27], Chamber of Nurses and Health

26 Health care in Serbia is organized at three levels: primary (health center), secondary (general and special hospitals) and tertiary care (clinics, institutes and clinical centers)

27 "Official Gazette of the RS", No. 121/2007

Technicians[28], Chamber of Dentists[29], Chamber of Pharmacists[30], Chamber of Biochemists[31]), do not participate actively in reducing corruption.

The Law establishing the Agency for Anti-Corruption (Agency)[32] stipulates that state bodies and organizations, territorial autonomy and local self-government bodies, public services and public companies, are required to adopt an integrity plan (Plan) by 31st March 2013. Pursuant to the Law on Health Care, the Republic of Serbia is the founder of hospitals, and local government of the health care centers, indicating that all the health care institutions are included in the program of integrity plans adoption. However, the law does not specify sanctions if the integrity plan is not submitted to the Agency. The purpose of the integrity plan is to enable health care institutions to assess their own performance and vulnerabilities to corruption and design a strategy for reduction or elimination of corruption. According to the report of the Agency for 2013, only 28% of institutions have adopted a plan of integrity[33].

Citizens' perceptions regarding corruption in the health care system

The survey on corruption in health care was conducted in six cities (Belgrade, Nis, Novi Sad, Zrenjanin, Pancevo and Sabac). A total of 200 citizens were interviewed.

The perception of corruption in the health care sector is at a very high level. Citizens are aware of its presence, but only a small percentage is willing to actively participate in the fight for the elimination of the causes of corruption, mainly due to lack of confidence in the work of state institutions. In addition, there is no comprehensive strategy for the protection of those who report corruption, particularly the "whistleblowers" who can directly point to corruption cases.

According to the results of the survey, 98% of citizens believe that corruption in the health care system is present and only 2% that it is

28 "Official Gazette of the RS", No. 115/2006, 21/2008 and 69/2008

29 "Official Gazette of the RS", No. 89/2007, 85/2008 and 37/2014

30 "Official Gazette of the RS", No.106/2006, 118/2008, 5/2010 and 113/2013

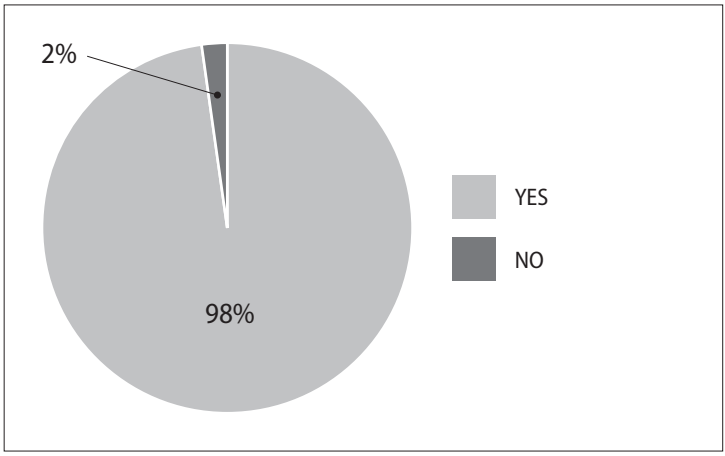
31 "Official Gazette of the RS", No. 70/2006 and 26/2014

32 Law on Anti-Corruption Agency ("Official Gazette of the RS", No. 97/2008, 53/2010)

33 http://www.acas.rs/images/stories/izvetaji/Izvestaj_o_radu_za_2013_i_Izvestaj_o_sprovodjenju.pdf

not. This information is of great concern because it can directly affect the patients to perpetuate corruption. Unless there is a serious fight against corruption, patients may come to accept it over time as a socially acceptable phenomenon. Such a situation would further complicate the implementation of anti-corruption measures.

1. Do you believe that corruption is present in the health care sector in Serbia?



Citizens may have the knowledge of the existence of corruption in the health care system based on their own personal experience or indirectly. A large percentage of the population (70%) is aware of the specific circumstances of conditioning the provision of health services with giving bribes. Comparing the number of people who are aware of the existence of corruption and those who have had direct experience of corruption, it can be concluded that the health care system is fully susceptible to the growth of corruption.

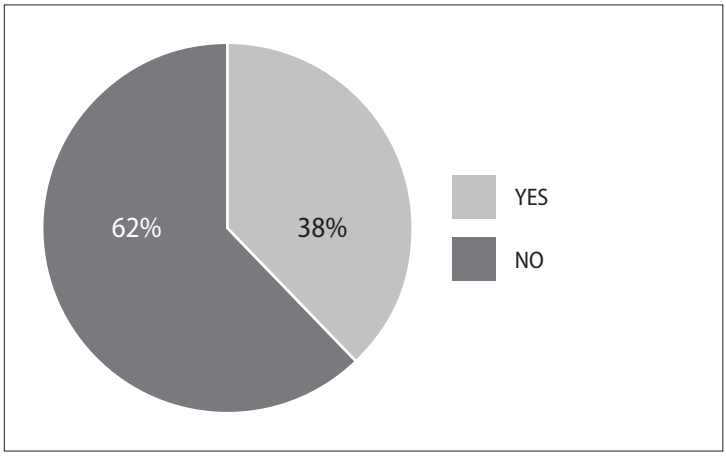
Also, the fact that 86% of people who have had experience or knowledge of corruption have not addressed any competent body, indicates that anti-corruption measures, to be defined and implemented with the aim of suppression of corruption, must be directed both to health professionals and the patients.

The extent of the citizens' lack of trust in the institutions, particularly those whose main responsibility is to protect the rights of patients, is indicated by the fact that 62% of those surveyed would not report corruption to the Protector of patients' rights[34] as they believe they would not get adequate help. Protector of patients' rights started operating in 2005, and its office is located in each

34 "Official Gazette of the RS", No. 107/2005, 72/2009 – other law, 88/2010, 99/2010, 57/2011, 119/2012 and 45/2013 – other law.

health care institution. The main objective was to provide patients better access to health care, but this solution proved to be very poor because the person appointed as a protector of patient rights still performs other legal work in the health care institutions. It is obvious that the Protectors of patients' rights could not be independent in his/her work, because of a conflict of interest.

2. Would citizens report corruption to the Protectors of patients' rights?



The Law on Patients' Rights,[35] adopted in May 2013, changed the methods of protection and introduced a new protection mechanism (Advisor for the Protection of Patients' Rights) and extended the list of patients' rights. However, the role of the Advisor in the domain of the fight against corruption is not defined by this law, despite the fact that its potential anti-corruption effect had been discussed during the public debate on the draft law.

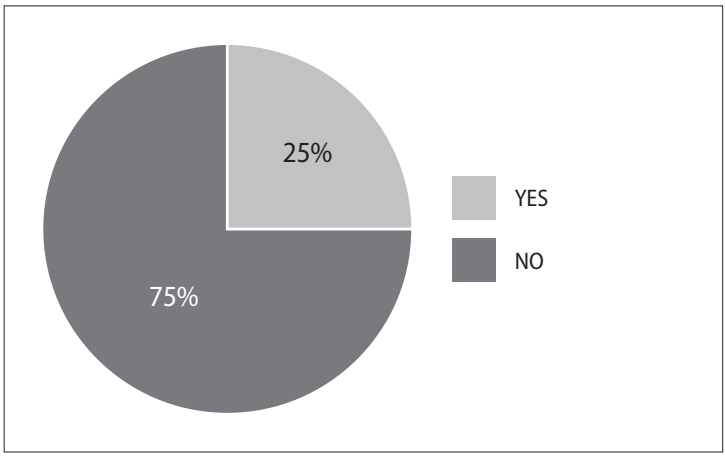
Later, in August 2013, the Rules on Acting upon the Complaint, Form and Content of the Records and Reports of the Advisor for the Protection of Patients' Rights[36] was adopted, which does not contain provisions on the competence of the Advisor upon complaint submitted with regards to corruption. Acting in this way, the Ministry of Health and the National Assembly have failed to recognize importance of the body that has direct contact with patients, and therefore reduced the possibility of gaining confidence in its work.

Although 95% of the respondents know that bribery is a criminal offence, 25% stated that they have willingly offered a gift or money to health care workers for the provision of health care services.

35 "Official Gazette of the RS", No. 45/2013

36 "Official Gazette of the RS", No. 71/2013

3. Do citizens, on their own initiative, give money, gifts or provide other services, to health care staff for provision of health care services?



Comparing all the aforementioned results, two conclusions can be reached. There is a high perception of corruption in the health care sector, which is encouraged both by the citizens and the staff of health care institutions. The main cause of this conclusion is related to the lack of accountability, poor sanctioning system and the inefficiency of the state bodies. Second, the citizens have no confidence in the safeguarding mechanisms and "take care" of their own health without reporting corruption.

The Views of Representatives of Civil Society Organizations on the Role of Civil Society in the Fight against Corruption

Partners for Democratic Change Serbia

As a part of the Project, Partners Serbia and Law Scanner explored the views of the representatives of civil society organizations (CSOs) on the role of CSOs in the fight against corruption. Survey and focus group were used as research methods.

In the period from March to May 2013, the survey of representatives of the CSO was conducted via the internet service of the Bureau of Social Research, available at www.tvojstav.com.

Invitation to participate in the survey was accepted by 63 organizations across Serbia.

Unija za organsku poljoprivredu Srbije EKOplus; Biro za društvena istraživanja; Transparentnost Srbija; Bibliotekarsko društvo Srbije; Kulturni centar DamaD; Udruženje poslovnih žena Zaplanja "ZA!" Gadžin Han; Udruženje građana "U korak sa Evropom"; Bibija Romski ženski centar Beograd; Forum mladih sa invaliditetom; Udruženje "Mali razvojni klub"; UNOPS; IMM Inter – institucionalna profesionalna mreža u sektoru voda Srbije; AS – Centar za osnaživanje mladih osoba koje žive sa HIV-om i AIDS-om; Centar za afirmaciju i integraciju Roma; Unija pronalazača Srbije i dijaspore "Teslino jedinstvo"; Centar za razvoj građanskog društva PROTECTA; Udruženje multiple skleroze Pčinjski okrug Vranje; Udruženje slepih i slabovidih Srbije "Beli štap" Region jugoistočna Srbija; Hor Juventus; Atina – udruženje građana za borbu protiv trgovine ljudima; Centar za ruralni razvoj – Aleksandrovac; Udruženje građana Dečja radost Zaječar; Centar za razvoj neprofitnog sektora;

Centar za evropske politike; Centar za razvoj sindikalizma; Razvojna Agencija za Preševo i Bujanovac; Centar za orijentaciju društva; Beogradski centar za ljudska prava; Centar za društveno ekonomski razvoj Jagodina; Green Hand – Zelena ruka; Grupa za razvojne projekte – GDP Novi Sad; CentRa; UG Intermerium Kruševac; Evropski pokret u Srbiji; Kulturako maškaripe; N.V.O. Konstantin veliki; Udruženje građana "Kormilo" Zrenjanin; Udruženje Fenomena; U.G. Enzuzijasti Kučeva; Centar za pravna i finansijska istraživanja; Pravno dokumentaciona kancelarija; Udruženje samohranih roditelja i jednoroditeljskih porodica ZAJEDNO; Udruženje Roma Marakana; Udruženje žena "Svilen konac – Obrovac"; Udruženje Pavlos Vlasotince; Udruženje građana "Poverenje"; Ekološko udruženje Rzav – God Save Rzav"; NVO Lokalna agenda 21 za Kostolac; Udruženje građana Ekobečej.

These organizations are primarily active in the fields of human rights, development of democracy and democratic institutions, control of public authorities, and have specialized in areas such as education and research (6 organizations), working with youth (10), representing business, professional and vocational interests (3), law, legislation and public policy (6), minority rights (5), women's rights (3), ecology (5), social care (4), culture and arts (3), good governance (2) economy and entrepreneurship (3), etc. The primary target groups of these organizations are: children and youth, women, members of minority groups, persons with disabilities, as well as policy makers and public institutions (local self-government units, legislative, judicial and executive authorities, etc.). Among these organizations, 58% are active across Serbia, while others are active at the local and international levels.

Among the surveyed organizations, 60% implement programs in the field of anti-corruption. Such organizations stated that they have conducted the following types of activities in the field of anti-corruption: surveys (32%), education (26%), advocacy (29%) and cooperation with public institutions (22%).[37] However, it is of concern that only 23% of all the CSOs representatives attended trainings in the field of anti-corruption.

Among all the organizations surveyed, 27% of CSOs cooperated with the Anti-Corruption Agency or the Anti-Corruption Council, 13% of organizations collaborated with other public institutions (the Commissioner for Information of Public Importance and Personal Data Protection, the Office for Cooperation with Civil Society of the Government of the Republic of Serbia, Ministry of Interior, public companies, towns and municipalities,

37 Multiple answers were offered.

the Ombudsman, the State Audit Institution), while 60% of the organizations did not have any cooperation with any public institutions in the field of anti-corruption. 63% of the organizations were familiar with the competencies of the state bodies engaged in the fight against corruption.

CSO representatives reported that 53% of public institutions were willing to provide them with all the requested information (on the basis of the Law on Free Access to Information of Public Importance or other basis), while 47% reported that that was not the case. Among the organizations that have reported that public institutions were not willing to provide them with all the requested information, a large percentage (88%) have stated that they plan to begin or continue implementing projects in the field of anti-corruption.

According to the representatives of CSOs, **the most important for the suppression of corruption in Serbia** is:

- More effective policing and justice – 37%
- The adoption of new laws and bylaws – 8%
- The adoption of a new Anti-corruption Strategy[38] – 5%
- Campaign to inform the public about ways to prevent and combat corruption – 29%
- Educational programs for children and youth – 5%
- Other – 16% (coordinated anti-corruption community engagement, transparency in the work of public institutions, effective law enforcement, strengthening the capacity of public institutions to improve organization, standardization of procedures and criteria, etc.).

According to the surveyed CSOs, **a key role in preventing and combating corruption in Serbia belongs to**:

- Prosecutors' offices and courts – 56%
- Government of the Republic of Serbia – 13%
- Local self-governments – 6%
- Citizens and CSOs – 18%
- Other stakeholders (independent institutions, the media, etc.) – 6%

Among the surveyed organizations, 95% were not involved in the drafting process of the Strategy for the Fight against Corruption of 2005, or the drafting of the Strategy adopted by the Government of the Republic of Serbia by the time this survey was undertaken.

CSO representatives believe that **CSOs can most efficiently contribute to the prevention and combating of corruption in Serbia in the following ways**:

38 The survey was conducted prior to the adoption of the new Anti-corruption Strategy.

- Reporting cases of corruption to the competent authorities – 21%
- Informative campaigns for citizens – 32%
- Educational activities (seminars, trainings, workshops) – 27%
- Research and reporting on "high-level" corruption cases – 10%
- Other method (assisting state bodies in establishing criteria and procedures, networking of different profile CSOs, etc ...) – 9%

94% of the surveyed CSOs expressed willingness to engage in a broad campaign of CSOs aimed at preventing and combating corruption.

Internal anti-corruption capacities of civil society organizations have also been explored. Only 20% of organizations indicated that they have developed internal anti-corruption procedures, primarily Codes of Ethics, that they apply maximum transparency in the work, or the proper procedures governing conflict of interest, the procurement of goods and services for the organization, etc. Among the organizations that have no such procedures, 55% think that they would be useful.

* * *

As a part of the Project, the presented results of the survey were used to initiate a debate within civil society about its role in the fight against corruption. During the final Project conference held in June 2014, more than 20 representatives of CSOs participated in the focus group discussing this issue. It was recognized that values such as education and integrity, as well as commitment to activism, justice and equal opportunities need to characterize civil society organizations.

In the further course of the conference, the representatives of CSOs discussed the most common and the most significant problems and obstacles that CSOs face in the fight against corruption. The present representatives of CSOs agreed on some of the major problems and obstacles. These involve: bureaucratization, lack of strategy and networking of organizations, unstable funding of CSOs, CSOs political affiliation and corruption in CSOs, including donor bias.

Following the discussion and determination of the obstacles and problems faced by the CSOs in the fight against corruption, a discussion on the activities necessary to overcome these obstacles took place. Some of the recommendations include:

- Develop a strategy for the CSOs' development, to regulate measures (sanctions) for CSOs that do not comply with "fair play" (compliance with the Code of Ethics and measures with regards to the integrity, and the like);
- Develop a strategy of coordinated work of the CSO in the fight against corruption;
- Introduce integrity systems in CSOs;
- Supervise donor assistance in the fight against corruption;

- Establish local services for whistleblowers;
- Insist on the implementation of existing Anti-corruption Strategy and implementation of law. Carry out intensive monitoring over the work on these tasks.

Finally, the CSOs representatives have agreed that it would be desirable to find partners for the implementation of these activities outside of civil sector, in order to combat corruption in our society more successfully. Civil society organizations have recognized the following partners:

- The media and journalists' associations;
- Independent institutions (Anti-corruption Agency, the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, the State Audit Institution);
- International organizations and donors;
- Citizens (general public).

* * *

Presented results of the survey and recommendations may form the basis for further cooperation within the civil society, in order to strengthen mutual influence and recognition of the civil society as an important factor in the process of fight against corruption. Clearly there is a need to further strengthen networking within the civil society and the need to additionally increase internal capacity of civil society organizations working in the anti-corruption field. It is necessary to utilize partnerships established within the civil society, to develop joint approach to government authorities, monitor their work and advocate for improvement of the legal framework in the fight against corruption. The need for such involvement of the civil society is of particular importance in the process of Serbia's accession to the European Union.

The survey results also indicate that representatives of the civil society perceive stable state institutions that *implement the laws, primarily the police and the judiciary,* as the most important actors in the fight against corruption. They also believe that it is very important to organize campaigns aimed at citizens within the fight against corruption in Serbia, implying that the representatives of the civil society perceive informed and active citizens as significant partners in the fight against corruption.

Finally, it is important that representatives of the civil society organizations have recognized that partnerships developed within the civil society sector, as well as partnership of the civil society with citizens, need to be expanded on cooperation with independent state authorities and the media, for which the support from international organizations is particularly important.

Working on this Project, Partners for Democratic Change Serbia and Law Scanner promoted a comprehensive approach to the fight against corruption, which relies on partnerships between representatives of different segments of society – civil society organizations, public institutions, independent state institutions, the media, private sector and citizens. A comprehensive approach is also reflected in the initial premise of the Project – that the participation of the aforementioned stakeholders in sanctioning corrupt behaviour, establishment of procedures for the prevention of corruption, and continuous educational campaigns aimed at citizens are necessary for a successful fight against corruption. We hope that the implemented activities and the achieved goals within this Project have contributed to building a healthy foundation for a society that leaves no room for corruption.

ANNEX 1

Corruption-IQ test[1]

For each of the following statements, there are four answers to choose from to determine whether you agree or disagree with the statement and to what extent. Please be as honest as possible as you think about these statements. (Denial is not an option!) Remember, the scores are just between you and your pencil.

Scoring criteria:
1 = Strongly disagree
2 = Disagree
3 = Agree
4 = Strongly agree

When it comes to taking any kind of action about corruption in my local government and community I am of the opinion that:	1	2	3	4
1. Corruption is everywhere; it exists in all countries, even in the most developed ones. So, there is nothing our local government can do about something endemic!				
2. Corruption, like sin, is part of human nature; it always existed. There is nothing we can do about it!				
3. Corruption is a culturally determined and vague notion: what is seen as corruption in our culture might not be seen that way in other countries. Even in the same culture, it is so difficult to distinguish between gift and bribe!				
4. Getting rid of corruption in our local government and community can be done only through a massive social change, based on a dramatic shift in people's attitudes and values. This effort exceeds our capacity, competencies and resources.				
5. Corruption is not that harmful. It is just the "grease" for our political and economic systems that help them operate more smoothly. It is just the way of doing business.				
6. There is nothing that local governments can do when corruption is systematic and the people at the top are corrupt.				

1 Robert Klitgaard, Ronald MacLean Abaroa and Lindsey Parris *"Corrupt Cities – Practical Guide to Cure and Prevent Corruption"*, and Fred Fisher, *"Restore the Health of your Organization – A Practical Guide to Curing and Preventing Corruption in Local Governments and Communities, Volume 1: Concepts and Strategies"*

When it comes to taking any kind of action about corruption in my local government and community I am of the opinion that:	1	2	3	4
7. Worrying about corruption in our local government and community would be a waste of time, given everything else we need to do. Anyway, the free market and the democratic system will make corruption gradually disappear!				
8. Corruption in our local government and community does not exist at least not to the extent where we should worry about it.				
9. The costs of curing and preventing corruption in our local government and community would far out-weigh the benefits.				
10. Any effort to cure and prevent corruption in our local government could hurt a lot of innocent people so it is better to ignore it.				
ADD YOUR TOTAL SCORES				

Questionnaire for the assessment of vulnerability to corruption in the Municipality of Pantelej

Please complete this questionnaire in order to identify the activities and services of your municipality which may be vulnerable to corruption more than others.

Assessment of vulnerability to corruption is calculated according to the following formula: C = M + D – A / T[1]

C (Corruption) = M (Monopoly) + D (Discretion in decision-making) - A/T (Accountability/Transparency)

Choose the number from 1 to 5 that best describes your opinion about the respective item. During the evaluation use the following marks:

1 = very low, 2 = low, 3 = medium, 4 = high, 5 = very high

M = Monopoly. Assess the level of monopoly of respective activities or services (Is there competition for the provision of these services? Are citizens (users) able to select an alternative?)

D = Discretion. Assess the level of discretion for making decisions and providing services (Are rules and procedures for decision making sufficiently clear? Are there too many rules and procedures, some of which are mutually contradictory and are prone to discretionary choice?)

O/T = Accountability / Transparency. Assess the level of accountability / transparency of decision-making (Is hierarchy of accountability to higher authorities for decision-making clear? Is information on the reasons for decision making available? Is it easy to access the information?)

Thank you!

1 Robert Klitgaard, Ronald MacLean Abaroa and Lindsey Parris *"Corrupt Cities – Practical Guide to Cure and Prevent Corruption"*, and Fred Fisher, *"Restore the Health of your Organization – A Practical Guide to Curing and Preventing Corruption in Local Governments and Communities, Volume 1: Concepts and Strategies"*

	Monopoly	Discretion	Accountability and transparency	Total
1. Issuing permits and approvals				
1.1. Issuing approval for registration of the tenants assembly				
1.2. Permits for temporary use/exploitation of municipal public space (property)				
2. Control and inspection				
2.1. Control of waste management, water and sanitation				
2.2. Control of the exploitation of the used public areas				
2.3. Control over the work of local community councils				
3. Public property management				
3.1. Construction of new infrastructure (water, sewer, roads, landfills, etc.)				
3.2. Management of projects related to community development and infrastructure				
4. Public procurement of goods and services				
4.1. Developing description of services/jobs				
4.2. Publication of tender				
4.3. Evaluation and selection of the tender winners				
4.4. Drafting the purchase contract				
4.5. Monitoring the implementation of the contract until its finalization (financial and material monitoring)				
5. Administration of public services				
5.1. Administration of rural water supply systems. Management of advertising space.				
5.2. Management of rural cemeteries				
6. Human resource management in local self-government				
6.1. Recruitment of staff				
6.2. Releasing staff				
6.3. Staff performance evaluation				
6.4. Remuneration and promotion of staff				
6.5. Building staff capacity				
7. Financial management				
7.1. Tax collection				
7.2. Budget planning				
7.3. Adoption of the budget				
7.4. Budget Execution				
8. Donations and support to natural persons and legal entities				
8.1. Social benefits for individuals				
8.2. Donations for associations and other legal entities				

ANNEX 3

Questionnaire for assessment of vulnerability to corruption in the Municipality of Beočin

	Monopoly	Discretion	Accountability and transparency	Total
1. Issuing permits and approvals				
1.1. Zoning permits, building permits				
1.2. Issuing of licenses for taxi transport				
1.3. Permits for temporary use/exploitation of municipal public space (property)				
1.4. Issuing decisions on the need for the environmental impact assessment (only for objects the construction of which is vested to the municipality)				
2. Control and inspection				
2.1. Building site (if an engineer complied with the conditions specified in the building permit)				
2.2. Control of the activities/management of atmospheric water, waste and sewage				
2.3. Control of the exploitation of the used public areas				
2.4. Control over keeping of domestic animals				
2.5. Condition of municipal roads (holes, damage, etc.)				
3. Public property management				
3.1. Rental/transfer and sale of public property of the local government				
3.2. Construction of new infrastructure (water, wells, sewers, roads, health centers, kindergartens/ schools, etc.)				
3.3. Operation and maintenance of existing infrastructure (local roads, health centers, kindergartens, schools)				
3.4. Operation and maintenance of social housing service of the local government				
3.5. Management of projects funded by the EU or other donors, focused on infrastructure and buildings				
3.6. Other new investments (industrial zone, energy efficiency, etc.)				
3.7. Management of projects related to community development and infrastructure				

	Monopoly	Discretion	Accountability and transparency	Total
4. Public procurement of goods and services				
4.1. Developing description of services/jobs				
4.2. Publication of tender				
4.3. Evaluation and selection of the tender winner				
4.4. Drafting the purchase contract				
4.5. Monitoring the implementation of the contract until its finalization (financial and material monitoring)				
5. Administration of public services				
5.1. Water and sanitation, protection of the environment				
5.2. Street lighting				
5.3. Management of advertising space				
5.4. Administration of waste management (waste collection and disposal to landfill)				
5.5. Management of cemeteries				
6. Human resource management in local self-government				
6.1. Recruitment of staff				
6.2. Releasing staff				
6.3. Staff performance evaluation				
6.4. Remuneration and promotion of staff				
6.5. Building staff capacity				
7. Financial management				
7.1. Tax collection				
7.2. Budget planning				
7.3. Adoption of the budget				
7.4. Budget Execution				
8. Donations and support to natural persons and legal entities				
8.1. Social benefits for individuals				
8.2. Donations for associations and other legal entities				

ANNEX 4

Request for access to information of public importance

Institution
Address
.....

Belgrade, ... (date)

REQUEST
For access to information of public importance

Pursuant to Article 15 Para 1 of the Law on Free Access to Information of Public Importance ("Official Gazette of RS", no. 120/04), we request from the above mentioned institution:

Information on whether it keeps the requested information and submission of copies of final decisions containing the requested information: via mail, email, or other customary manner.

This request refers to the following information:

1. Are there proceedings conducted, or that have been conducted, before your court in connection with the criminal offences of Soliciting and Accepting Bribes Article 367 and Bribery Article 368 of the Criminal Code of Serbia in the period from 1 January 2010 to 1 February 2013.

If you have the requested documents, please provide us with the numbers of cases, the stage of the proceedings, the relevant statistical data and copies of final decisions for the period from 1 January 2010 to 1 February 2013.

We need the requested information for the purposes of scientific research, for monitoring the implementation of the Criminal Code, pursuant to Article 6 of the Law on Personal Data Protection ("Official Gazette of RS", no. 97/08).

We are hereby committed to use the obtained data solely for the purposes of scientific research, with the respect of the right to privacy; and if you desire to additionally protect the identity of the participants in the proceedings, please use corrector, black marker or other means to prevent availability of information that may indicate identity of the parties and other participants in the proceedings.

Since this information is necessary for the purposes of scientific research, we declare that we are familiar with criminal liability in the case of disclosure of secrets (therefore citing Article 337 of the Criminal Code "Official Gazette of RS", no. 85/05, 72/09, 111/209 and 121/12).

Please send the requested information to the address: .....
or e-mail address: .....

Questionnaire: The role of civil society organizations in the fight against corruption in Serbia

Dear Colleagues,

Partners for Democratic Change Serbia and Law Scanner, with the support of the Delegation of the European Union to the Republic of Serbia and the Office for Cooperation with Civil Society of the Government of the Republic of Serbia, are implementing the project *"Active citizens against corruption: Best practices to cure and prevent corruption in local communities"* (the Project). The Project aims to promote transparency, openness and accountability of public administration through the support of a comprehensive model for fighting corruption at the local community level, which includes active civil society and the implementation of innovative strategies. Within the Project, research and development of an analysis on the presence of corruption in Serbia and its impact on the efficiency of public administration is envisaged. Since the successful fight against corruption involves active citizens and their associations, one aspect of the research is dedicated to the assessment of the level of awareness of civil society organizations (CSOs) on the work of anti-corruption bodies, the content of the basic anti-corruption documents (strategies and legislation), the experiences of CSOs in the drafting of these documents, as well as identification of attitudes about their future role in the general fight against corruption in the country.

In this regard, the experience of your organization in this area will be highly relevant for the development of our analysis, and we kindly ask you to complete this questionnaire and to answer the questions in as much detail as possible, providing any additional suggestions, comments or questions.

Thank you in advance for your participation in this Project.

1. Name of the organization:
   .....

2. What is the primary field of activity of your organization? (please choose one answer):
   - Education and Research
   - Working with young people
   - Representation of business, professional and vocational interests
   - Law (Legislation and Public Policy)
   - Minority rights
   - Women's Rights
   - Ecology
   - Arts and culture
   - Social care
   - Good Governance
   - Industry and Entrepreneurship
   - Other ..... (specify)

3. What is the primary target in the work of your organization? (Please select one answer).
   - Children and youth
   - Women
   - Members of minority communities
   - People with disabilities
   - Refugees and IDPs
   - Decision-makers (public authorities, local self-government)
   - Businesses
   - Other ..... (specify)

4. Your organization implements projects in the territory of:
   - Republic of Serbia
   - Particular cities/municipalities ..... (specify)
   - Region of the Western Balkans
   - Other ..... (specify)

5. Does your organization address issues of anti-corruption in the implemented programs and projects?
   - Yes
   - No

6. If the answer to the above question is YES: which activities your organization is implementing or has implemented in the field of anti-corruption?
   - Research
   - Education
   - Advocacy
   - Working with local communities/institutions/organizations to develop strategic documents

7. As a part of the program that your organization implements, have you established cooperation with the Anti-Corruption Agency, Anti-Corruption Council, or other public authorities competent for the fight against corruption?
   - Yes, we have cooperated with the Anti-Corruption Agency
   - Yes, we have cooperated with the Anti-Corruption Council
   - Yes, we have cooperated with the Anti-Corruption Agency and the Anti-Corruption Council
   - We have not cooperated with the Anti-Corruption Agency nor the Anti-Corruption Council
   - We collaborated with other state authorities

8. As a part of this cooperation, were the competent authorities willing to provide you with relevant information?
   - Yes
   - No

9. If the answer is NO: Does your organization plan to implement programs in the field of anti-corruption?
   - Yes
   - No

10. Have the representatives of your organization participated in training in the field of fight against corruption?
    - No
    - Yes (if the answer is yes, please specify the training programs attended)

    .....

11. Are you familiar with the competencies of the Anti-Corruption Agency and the Anti-Corruption Council?
    - Yes, We are familiar with the competencies of the Anti-Corruption Agency
    - Yes, We are familiar with the competencies of Anti-Corruption Council
    - We are familiar with the competencies of both the Anti-Corruption Agency and the Anti-Corruption Council
    - We are not aware of the competencies of neither the Anti-Corruption Agency nor the Anti-Corruption Council.

12. What do you think is necessary for suppression of corruption in Serbia? (Please select one answer)?
    - More effective policing and justice
    - The adoption of new laws and regulations
    - The adoption of a new strategy to fight corruption
    - Conducting a campaign to inform the public about ways to prevent and combat corruption
    - Educational programs for children and youth
    - Other ..... (specify)

13. Who do you think should play a key role in preventing and combating corruption in Serbia? (Please select one answer)
    - Prosecutors' offices and courts
    - The Government of the Republic of Serbia
    - Local self-governments
    - Citizens and civil society organizations
    - Other ..... (specify)

14. Has your organization been involved in the drafting process of the Strategy for the Fight against Corruption in 2005 or the Draft Strategy of the Government of Serbia drafted in 2012?
    - Yes, we participated in the drafting of the Strategy in 2005
    - Yes, we participated in the drafting of the Strategy in 2012
    - Yes, we have participated in the preparation of both documents
    - No, we did not participate in the drafting process.

15. If the answer to the above question is YES: Please explain how your organization was involved?
    .....
    .....

16. How could CSOs contribute to the prevention and suppression of corruption in Serbia? (Please select one answer):
    - Report cases of corruption to the competent authorities
    - Information campaigns for citizens
    - Educational activities (seminars, trainings, workshops)
    - Research and reporting on "high-level" corruption cases
    - Other ..... (specify).

17. Are you and your organization interested in taking part in a wider campaign of civil society organizations aimed at preventing and combating corruption in Serbia?
    - Yes
    - No

18. Does your organization have internal anti-corruption procedures? If your answer is YES: Please briefly describe the procedure.
    - Yes

    .....
    .....
    - No

19. If your answer is NO: Do you think that these procedures would be necessary for your organization?
    - Yes
    - No
    - Not sure

20. Your additional comments, suggestions, questions...

    .....
    .....
    .....
    .....
    .....
    .....

Thank you for your cooperation!