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A GRECO PAPER

CORRUPTION AND ANTI-CORRUPTION POLICY IN SERBIA

Transparency International Serbia

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Foreword

In 1999 the Group of States against Corruption (GRECO) was set up to monitor the compliance of the states party to the Partial and Enlarged Agreement and associated documents and conventions, including the Resolution on twenty guiding principles for the fight against corruption, the 1999 Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.

GRECO, with its 29 members, has now begun work, on the basis of mutual evaluation and peer pressure. GRECO is also a forum for the exchange of experience and examples of good practices in the fight against various forms of corruption. The legal nature of the agreement allows for states that are not members of the Council of Europe to join GRECO. One such state is Bosnia-Herzegovina.

The Serbian Government has adopted a Resolution on the fight against corruption which clearly sets out the goal of meeting the obligations undertaken through the Council of Europe, the OECD, the OSCE and the OUN — organisations that FRY is already a member of, or anticipates accession to in the near future.

In the light of this and on the basis of the questionnaire drafted by GRECO at its third meeting (Strasbourg, May 3-5, 2000), Transparency International Serbia has analysed:

a) *The global framework for the fight against corruption in Serbia (legislation, institutions, mechanisms and prevention); and,*

b) *The independence, autonomy and powers of people or bodies with the authority to prevent, investigate, prosecute and adjudicate on corruption offences in Serbia.*

Transparency International Serbia expects this study to serve as a basis for drafting the anticorruption strategy and policies that the

Serbian Government intends to introduce after it has adopted the Resolution. It will also give international organisations and institutions the ability to examine the situation in Serbia at the beginning of the post-Milosevic period. The study will also make comparative research possible, be it longitudinal (comparison of the situation after a certain period) or latitudinal (comparison with other countries), given that the analysis is based on international verification. This analysis also offers a sound starting-point for basic study and research by organisations, think-tanks, media, NGOs and other relevant organisations for the analysis of corruption-related issues in Serbia.

Transparency International Serbia welcomes suggestions and proposals that would be of assistance in ensuring that the next GRECO survey is of even higher quality.

Predrag Jovanović

Belgrade, May 2001

GENERAL APPROACH

1. An overview of the current societal situation in Serbia and the general features of corruption in it

1.1.The state of society and the legacy of the communist regime

There has been some reluctance over the past 10 years to call the former Milošević regime "communist". Yet, this has been unwarranted. The technology of power employed by this regime was characteristic of ideologically highly charged methods of imposing uniformity of thought and labelling all those who disagreed with the official version of life as "traitors", "foreign mercenaries", and "NATO agents". A full control of the media, broad discretionary authorisations granted to the police in pursuing social control, and a pathetically dependent judiciary characterised the official structure of power in Serbia for a whole decade, if not longer. These were direct remnants of the communist epoch, and they flew in the face of the main political developments in the rest of the southeastern European region. Because they were so drastic in their manifestations, it will be extremely difficult in the near future to institute different practices in the media and other sectors relevant to the development of democratic institutions.

Social policy is another victim of the past political era. Social provisions for the most vulnerable parts of the population are so low that most people have been forced out into the street economy, and the shadow economy has thus been inflated to a degree that surpasses the size of the official economy.[1] Removing the shadow economy at this stage

[1] For some well laid out indicators of the performance of FRY economy see Dugalić, V., "Kako dalje?" ("What next"), *Bilten G17*, vol. 1, no. 9, September 2000, pp. 1-2.

would mean leaving large sections of the population out in the cold without any means of subsistence, which, with rising electricity, telephone and maintenance bills, would be sure to spark up social unrest.

The people expect an economic improvement and a change in the manner of societal management. This expectation would be a burden and a responsibility for any government. The decade under Milošević created a deeply entrenched synergism between the state apparatus and organised crime, where grand corruption was the *modus operandi* of many segments of societal management. Addressing this problem in a fully transparent manner, along with instituting adequate self-controls and checks and balances within the state structures is a daunting task, whose accomplishment requires the pooling together of all resources, both state and non-state. Such a pooling together is difficult with unresolved relationships within the federal state, and on the political scene of Serbia, but there are possibilities to make considerable progress in building expertise and setting the conceptual background for a system of transparent governance.

1.2. Public evidence of grand corruption under the previous system

Newspapers in Serbia are full of daily reports of theft and embezzlement by the former apparatchiki of the communist government. In a country where the average salary of a professional was around DM80 per month, some communist ministers were receiving DM10, 000 and more per month only in official salaries from various "consulting" positions in firms whose directors where their party comrades. This did not include the profits generated from private businesses that based their operation on kickbacks between the party functionaries, and often on the siphoning away of the wealth of large state-owned companies into the accounts of the companies owned by the communist ministers or their relatives. Privatisation was used to boost a degenerated social policy, where money from the sale of the national Telecom was partially used to pay the pensions before the last election won by the Milošević regime. Directors of state owned companies were driven around in armoured Audis and Mercedeses, while their workers were forced to work two shifts plus engage in shadow economy in order to secure a bare survival for their families. The former Director of the Customs Service, the notorious Mihalj Kertes, gave away luxury cars to his friends — cars that had been seized at the border because they had been involved in criminal activity. Several dailies have published lists of those who had

simply been given such vehicles by Kertes, and the lists number hundreds. Many former communist functionaries own villas and houses that are worth millions of dollars, and there are speculations that they may own numerous hidden bank accounts in countries such as Switzerland, Libya, Cyprus, etc.

Pervasive corruption also indirectly impacts on the state of *violent crime* in Serbia. Murders in the streets of the Serbian cities are a common occurrence. The underworld is the real power, and it remains to be seen how the new government will tackle the legacy of the communist regime that can briefly be described as a total submission of societal life to Mafia-style norms and practices. The subculture of criminality has penetrated Serbia so profoundly that quick and urgent measures are necessary to restore at least a semblance of order to everyday life, so that proper reforms can be conducted with the necessary time and dedication to detail.

The extent of corruption under the previous regime was difficult to measure exactly, but it permeated every aspect of societal life in Serbia. It was equally present in the judiciary, the police, the health service, and public administration. Its perpetrators and "clients" also came from all walks of life and from all social classes, which makes it difficult to address this problem by repressive measures. Some other measures are called for, and a predominantly preventative anti-corruption policy should gradually be developed.

2. Anti-corruption policy - present and future

2.1. The current status of anti-corruption legal provisions and policy

It is most probably fair to say that Serbia at the moment has no coherent anti-corruption policy. Measures envisaged as anti-corruption tools are haphazard and randomly dispersed through the criminal legislation. There are no specialised police units to fight corruption. The judicial system is poorly equipped to vigorously pursue the real corruption cases, because the division of powers between the executive and the judiciary is still not guaranteed according to western European standards.

It is important to emphasise the difference between "real" corruption and the one that is not "real". The "real" problem of corruption is

that related to the abuse of state resources, state power, and public funds. This is where the structural problems of the Serbian society lie. The corruption that is not "real" is the alleged "corruption" in the small and medium sized businesses and other sectors that did not have any contact with public resources. It should be made very clear that the Serbian society used to live in highly irregular circumstances for at least the past twelve years. This means that everybody, including the political parties, small businesses etc., broke the law in one way or another — whether by changing foreign currency on the black market, owning a foreign currency bank account abroad, receiving and providing cash payments without records, etc. On one level, these were infringements, in many cases crimes punishable by imprisonment. However, this was an inevitable way of life under repression, without functioning banks, in a bankrupt state involved in continuous warfare and other internal and external conflicts. However, this is not the real problem of corruption, because it was an unavoidable result of the circumstances created by the state. The real problem is in the state.

Needless to say, it would be a very bad sign if the new government were to start pursuing the society at large, citizens, small businesses, etc., for the breaches of taxation and other related laws during the past times — in fact, this would amount to deliberately trying to masque a lack of will to address the real problem, and that is the corrupt state apparatus under the previous government and the public service. There needs to be a broad social consensus that the necessities of the past decade would not be used by the new authorities to initiate a campaign of scare-mongering or repression, because that would destroy public support for anti-corruption policy in general.

The new Serbian state has inherited the same old apparatus, and proper insights into all of the shortcomings of this apparatus are a necessary precondition for any effective improvements. This apparatus, amongst other elements, includes legislation and institutions.

Serbian criminal legislation does not even mention the term "corruption" at all. The article of that former federal criminal law that is at stake here (article 179) reads:

"**Član 179 — Primanje mita**

(1) Službeno lice koje zahteva ili primi poklon ili kakvu drugu korist, ili koje primi obećanje poklona ili kakve koristi, da u okviru svog službenog ovlaš-

ćenja izvrši službenu radnju koju ne bi smelo izvršiti, ili da ne izvrši službenu radnju koju bi moralo izvršiti, kazniće se zatvorom od jedne do deset godina.
(2) U osobito teškom slučaju dela iz stava 1. ovog člana, učinilac će se kazniti zatvorom najmanje tri godine.
(3) Službeno lice koje zahteva ili primi poklon ili kakvu korist, ili koje primi obećanje poklona ili kakve koristi, da u okviru svog službenog ovlašćenja izvrši službenu radnju koju bi moralo izvršiti ili da ne izvrši službenu radnju koju ne bi smelo izvršiti, kazniće se zatvorom od šest meseci do pet godina.
(4) Službeno lice koje posle izvršenja ili neizvršenja službene radnje navedene u st. 1. do 3. ovog člana, a u vezi s njom zahteva ili primi poklon ili kakvu drugu korist, kazniće se zatvorom od tri meseca do tri godine.
(5) Primljeni poklon ili imovinska korist oduzeće se."

In translation, the article reads:

"Article 179 — Acceptance of bribes

(1) A public official who demands or accepts a present or some other benefit, or the promise of a present or other benefit, in exchange for performing an official action within one's official competencies, which one is not allowed to perform, or not to perform an action that one is due to perform, will be punished by imprisonment from one to ten years.
(2) In a particularly grave case of bribery as described in Point 1 of this Article, the perpetrator will be punished by imprisonment of at least three years.
(3) A public official who demands or accepts a present or other benefit, or one who accepts the promise of a present or other benefit in exchange for performing an official action that one is due to perform, or not to perform an action that one is not allowed to perform anyway, will be punished by imprisonment from six months to five years.
(4) A public official who, after performing or failing to perform an official action as specified in points 1–3 of this Article, and demands or accepts a present or other benefit, will be punished by imprisonment from six months to three years.
(5) Any presents or benefits received as a result of bribery will be seized."

This article has been subsequently taken over in the Serbian Criminal law, as Article 254, in a slightly modified form. A new point 4 has been included, which reads: "The responsible person in a commercial

organisation" (the so-called "organisation of joint labour" in literal translation — a relict of the communist self-management ideology), "or in some other legal person or in an organ of self-management, who commits the offence described in points 1–4 of this Article, will be punished by the penalty prescribed for that offence."[2] This obscure end is so vague that it inevitably leaves a large discretion at the magistrate's disposal in meting out a penalty.

The commentary of the Article in the first version, which is essentially very similar to the current one, reads:

"Bribery of public officials (the most well-known form of corruption in the public service) is an old social phenomenon, which has traditionally been treated by the application of criminal sanctions, whether more or less successfully."[3] This is one of the few places in official texts where the term "corruption" is mentioned. It is sanctioned under various offences, but as a concept it is totally absent from the criminal law, which partly accounts for the empirical fact that, according to some public opinion surveys, over one-half of the Serbian population do not know what corruption is.

This poverty of the criminal legislation concerning corruption (although, again, there are relatively numerous offences that *de facto* sanction instances of corruption) has direct consequences in the corresponding poverty of specific policy to deal with this problem, and the inability of the prosecution and the courts to provide a greater contribution to fighting corruption. Social policy is also constrained by legislative shortcomings. These factors, when combined, make it difficult to build effective anti-corruption mechanisms in Serbia.

3. Organised crime and corruption

There are convincing indications that organised crime exists in a symbiosis with many forms of corruption, and in particular with grand

[2] "Odgovorno lice u organizaciji udruženog rada ili drugom društvnom pravnom licu ili u organu društvenog samoupravljanja koje učini delo iz st. 1–4 ovog člana, kazniće se kaznom propisanom za to delo."

[3] "Podmićivanje službenih lica (najpoznatiji oblik korupcije u službi), predstavlja veoma staru društvenu pojavu, koja se sa više ili manje uspeha suzbijala i primenom krivičnih sankcija".

corruption. The mentioned structural criminalisation of the Serbian state, which occurred under the former regime, has led to a corresponding criminalisation of all transactions that the political elites were involved in. A perpetuation of monopolies throughout the society only helped this trend. Today, divorcing corruption from organised crime in Serbia is literally impossible.

2.2. The moves not taken yet

In a recent article, Michael Emerson succinctly put Serbia's choices at this juncture in time in the following way: "A/ whether to engage in a rapid clean up of political and economic structures and make a rapid economic recovery, or B/ to languish in a long and messy transition, hindered by internal political struggles, poor public and corporate governance, lack of momentum and credibility, and remaining vulnerable to reverses."[4]

Over the past decade and longer, organised crime in Serbia was not only a phenomenon of societal deviation, but also very much the source of power of the former communist nomenclature. The Milošević family had created a special case of the Mafia state, which existed in close connection with the political structure of the state. In such a state, the police, the judiciary, and the executive government were all parts of a Mafia-like structure, where legal norms were usually ignored when they were in conflict with the instructions that emanated from the Big Boss, the Head of the Organisation, or bent so as to suit the main trends of the Mafia business. The whole realm of Serbian politics was a big business that fully conformed to Mafia-style principles. Not only was it possible to be victimised by those in positions of political power; even members of their families were entitled to engage in criminal activity, regardless of any concern for the law or the well being of the other citizens. Sons and daughters of the members of the narrow elite around Milošević thus frequently acted violently, were involved in traffic accidents which were subsequently not investigated at all, established highly successful "businesses", which quickly generated enormous profits contrary to every logic of the market place (the profits often measured over 100%, even 1000% of the value of the initial investment, in periods as short as

[4] Emerson, M., "Reconsidering EU policy for South East Europe after the regime changes in Serbia and Croatia", *Europe South-East Monitor*, Centre for European Policy Studies, Brussels, Issue 16, October 2000, p. 2.

one year or less). The outcome of such a Mafia-like state is an enormous wealth accumulated in the hands of the powerful few.[5] Wealth means *de facto* power, and these people will be a major obstacle to the equalisation of societal positions and a fair privatisation and institutional reform in the years to come, if they are not stripped off their assets in a legal and transparent fashion, as far as these assets have been acquired in illegal ways.

4. Some of the moves not taken yet to fight corruption and organised crime

4.1. Creation of a specialised Anti-Organised Crime Police Squad

The first and the most necessary step for the new government is to create a special police squad for fighting organised crime, which would answer directly to an appropriate parliamentary committee. This squad should draw on the experience and expertise of the best inspectors and former inspectors and police officers of the Serbian police forces. The Squad should not draw its personnel from the Serbian State Security Service, whose record remains heavily blemished from the Milošević era. The Anti-Organised Crime Squad should number several hundred inspectors and police officers, and it should be the core of a new and restructured police force. The introduction of such a specialised anti-corruption squad would have to go hand-in-hand with the gradual disbanding of the specialised State Security Units. The Anti-Corruption Squad would be charged with quickly arresting the key members of the former nomenclature, and preventing them from exerting criminal influence on the remaining state structures that were once fully politically instrumental in the hands of the Milošević family. It would also be the bedrock of a new and firmly entrenched integrity in the police force. The Squad should be empowered to conduct operations that traditionally fall within the competencies of specialised internal affairs units for the investigation of crime in the ranks of the police force. It should also recruit experts for fighting corruption, and a part of it should be dedicated full-time to gathering evidence for the prosecution of the most prominent corruption cases in this period.

[5] For more comparative details on the crime in southeastern Europe, see Fatić, A., *Crime and social control in 'central'-eastern Europe: A guide to theory and practice*, Ashgate, Aldershot, 1997.

4.2. Reform of the judiciary

Under the previous regime the judiciary has been highly dependent on the executive government, which necessitates a comprehensive reform of the courts. A new recruitment process for magistrates and judges should start from scratch, with the former magistrates and judges being allowed to re-apply for their positions. Their applications should then be considered on the basis of **(i)** the quality of their previous work, **(ii)** the average length of time they took until the conclusion of their cases, **(iii)** the proportion of their verdicts that were subsequently voided by higher courts on appeal, **(iv)** their qualifications, **(v)** professional work and exposure, **(vi)** membership in professional associations, **(vii)** social profile as articulated through activity in non-governmental and expert organisations, etc... This is indeed a very radical policy, but without a most radical approach in reforming the judiciary the cancer of corruption and incompetence will remain, and it will spread through the tissue of the new system in not-too-long a time to come.

In the long term, special education programmes for magistrates and judges should be established, and their attendance should be part of the re-assessment criteria for the judges' work pending the expiration of their tenure. Judges' tenure should be limited to 5 years and it should be subject to re-confirmation in Parliament, exclusively on the basis of the reports by expert committees that will argumentatively examine the judges' record during the previous tenure. In this way the government could make sure that the best lawyers become judges, and that the judges continually care for their competence and ability to remain in touch with the development of legal studies and the related societal issues, never to allow themselves to fall into the trap of acting as servants for others.

II OFFENCES AND SANCTIONS

2.1. The offences under which corruption is sanctioned in Serbia

As corruption is not depicted as the relevant context for certain categories of criminal offences in the Serbian criminal law, it is fairly difficult to provide a comprehensive overview of the crimes that are envisaged as possible exemplifications of the phenomenon of corruption. Some such crimes are obvious — e.g. the taking of bribes, but others are less so, especially those that potentially incorporate non-financial aspects of corruption, such as political or professional corruption. One of the most serious problems of the Serbian society is *political corruption*, while at the same time it is very difficult to sanction this type of corruption, because public officials often reflect it in actions that formally fall within the legally allowed discretion in decision-making. In any criminal law it is extremely puzzling to determine an exhaustive list of all offences under which corruption can be sanctioned if corruption as a concept is not present in the law, because such an absence of conceptualisation of corruption has a direct influence on the description of the offences and on the prescriptions of penalties. Bearing this in mind, the list of offences that potentially include the sanctioning of corruption in the Serbian Criminal Law includes at least the following offences:[6]

[6] Only some of the articles are re-written and translated here to illustrate the style of the criminal law. As there are a large number of offences, and the content of the articles of those not re-written is largely self-explanatory, it was deemed unnecessary and space consuming to reproduce the content of the laws here. However, two things should be taken into account when reading the following text: First, some of the concepts used date back to ideological times that are no longer relevant (self-management of enterprises, social ownership of enterprises, and other controversial concepts). Wherever possible, these concepts have been simplified to better fit the current realities.

(a) *Offences against the electoral procedure that include:*

1. Falsification of the results of elections

Član 84 — Falsifikovanje rezultata izbora i glasanja

Član biračkog odbora, izborne komisije, odbora za sprovođenje referenduma ili drugo lice u vršenju dužnosti u vezi sa izborima ili glasanjem, koji na izborima, glasanju o opozivu ili na referendumu izmeni broj datih glasova dodavanjem ili oduzimanjem glasačkih listića ili glasova pri prebrojavanju, ili objavi rezultat izbora ili glasanja koji ne odgovara obavljenom glasanju, kazniće se zatvorom do tri godine.

Article 84 — Falsifying of the results of elections

A member of electoral board, electoral commission, board for the conduct of a referendum, or another person who performs duties relating to elections or any other type of voting, and who changes the number of votes by adding or removing voting ballots in the process of their counting, or publishes a result of the election or voting that does not correspond to the actual results of the voting, will be punished by imprisonment up to three years in duration.

2. Destruction of documents with records of elections

Član 85 — Uništenje dokumenata o izborima i glasanju

Ko na izborima, glasanju o opozivu ili na referendumu uništi, ošteti ili prikrije neki dokument o izborima ili glasanju ili bilo koji predmet namenjen izborima ili glasanju, kazniće se novčanom kaznom ili zatvorom do jedne godine.

Secondly, economic concepts relating to liquidation of enterprises and their bankruptcy are somewhat confusing to a reader, and they have also been simplified and simply termed as relating to bankruptcy, although from an economic point of view there are differences between them and bankruptcy in the strict sense. However, from the point of view of the corruption-related dimensions of the criminal law, these differences tend to be insignificant.

Monetisation is a separate variable that should be taken into account. The values of fines mentioned in the penal provisions are subject to change occasionally. This has been a frequent case during the past decades, because of the unstable value of the Yugoslav currency — the Dinar, and the drammatic turbulences in the monetary policy.

Article 85 — Destruction of documents with records of elections

Those who destroy, damage or hide a document related to elections or voting, or any other object instrumental to elections or voting will be punished by a fine or imprisonment up to one year in duration.

(b) *Offences against the employment-related rights, including:*

4. Violation of the rights arising from employment

Član 86 — Povreda prava iz radnog odnosa

Ko se svesno ne pridržava zakona ili drugih propisa ili samoupravnih opštih akata o zasnivanju ili prestanku radnog odnosa, o radnom vremenu, o godišnjem odmoru ili odsustvovanju, o ličnom dohotku ili drugim pravima iz radnog odnosa, o zaštiti na radu žena, omladine ili invalida ili o zabrani prekovremenog ili noćnog rada i time radniku uskrati ili ograniči pravo koje mu po tim propisima pripada, kazniće se novčanom kaznom ili zatvorom do jedne godine.

Article 86 — Violation of the rights arising from employment

Those who deliberately depart from the laws or other norms or acts relating to the commencement or ceasing of employment, working hours, paid leave or absence, salaries or other rights arising from employment, or relating to the protection of women, youths or invalids at work, or to a ban on extra working hours or work during the night, thus depriving a worker of the rights that one has according to the mentioned regulations, or restrict one's exercise of these rights, will be punished by a fine or imprisonment up to one year in duration.

5. Violation of the rights arising from social insurance

Član 87 — Povreda prava iz socijalnog osiguranja

Ko se svesno ne pridržava zakona ili drugih propisa ili samoupravnih opštih akata o socijalnom osiguranju i time uskrati ili ograniči nekom licu pravo koje mu po tim propisima pripada, kazniće se novčanom kaznom ili zatvorom do jedne godine.

Article 87 — Violation of the rights arising from social insurance

Those who deliberately depart from the laws or other norms or acts relating to social insurance, thus depriving a worker of the rights that one has according to the mentioned regulations, or restrict one's exercise of these rights, will be punished by a fine or imprisonment up to one year in duration.

6. Abuse of the rights arising from social insurance

Član 88 — Zloupotreba prava iz socijalnog osiguranja

Ko simuliranjem ili prouzrokovanjem bolesti ili nesposobnosti za rad postigne da mu se prizna neko pravo iz socijalnog osiguranja koje mu po zakonima ili drugim propisima ili samoupravim opštim aktima ne bi pripadalo, kazniće se novčanom kaznom ili zatvorom do jedne godine.

Article 88 — Abuse of the rights arising from social insurance

Those who exercise a right arising from social insurance by simulating or causing an illness or inability to work - a right that one would not legally have in the circumstances, will be punished by a fine or imprisonment up to one year in duration.

(c) *Offences against the economic system, including:*

7. Unconscientious conduct of business affairs

Član 136 — Nesavesno poslovanje u privredi

(1) Odovorno lice u organizaciji udruženog rada koje vrši privrednu delatnost ili drugom društvenom pravnom licu koje vrši takvu delatnost, koje svesnim kršenjem propisa, društvenog dogovora, samoupravnog sporazuma ili odluka organa samoupravljanja ili izvršenjem odluka organa samoupravljanja za koje zna da su u suprotnosti sa zakonom ili na drugi način očigledno nesavesno postupa u poslovanju, organizovanju procesa proizvodnje ili organizovanju rada ili u pogledu korišćenja društvene imovine ili staranja o ovoj imovini, iako je bilo svesno ili je bilo dužno i moglo biti svesno da usled toga može nastupiti za organizaciju

udruženog rada odnosno društveno-pravno lice imovinska šteta, pa ta šteta i nastupi u iznosu koji prelazi pet hiljada dinara, kazniće se novčanom kaznom ili zatvorom do tri godine.

(2) Ako je usled dela iz stava 1. ovog člana nastupila imovinska šteta u iznosu koji prelazi pedeset hiljada dinara ili je pokrenut postupak sanacije ili postupak za prinudno poravnanje ili stečajni postupak ili je organizacija udruženog rada, odnosno društveno-pravno lice došlo pod stečaj, učinilac će se kazniti zatvorom od jedne do pet godina.

Article 136 — Unconscientious conduct of business affairs

(1) A responsible person in an economic enterprise who deliberately departs from the laws, agreements or decisions by relevant organs, or executes decisions made by certain organs for which one knows that they are in transgression of the law, or who otherwise acts unconscientiously in the conduct of commercial activity, organisation of production, organisation of work or managing of social property, although one was aware, or was due and able to be aware that due to such unconscientious conduct of business the economic enterprise may sustain a material damage, and such a damage actually occurs in an amount over five thousand dinars, will be punished by a fine or imprisonment up to one year in duration.

(2) If due to the offence described in Paragraph (1) of this article a material damage arises over the amount of fifty thousand dinars, or legal proceedings relating to possible bankruptcy are initiated, the perpetrator will be punished by imprisonment from one to three years in duration.

8. Deliberate causing of bankruptcy

Član 137 — Prouzrokovanje stečaja

(1) Odgovorno lice u organizaciji udruženog rada koja vrši privrednu delatnost ili drugom društvenom pravnu licu koje vrši takvu delatnost, koje znajući za nesposobnost plaćanja organizacije, odnosno društvenog pravnog lica, neracionalnim trošenjem sredstava ili njihovim otuđenjem u bes-

cenje, prekomernim zaduženjem, preuzimanjem nesrazmernih obaveza, lakomislenim zaključivanjem ili obavljanjem ugovora sa licima nesposobnim za plaćanje ili propuštanjem blagovremenog ostvarivanja potraživanja, prouzrokuje stečaj organizacije, odnosno društvenog pravnog lica, kazniće se zatvorom od jedne do pet godina.

(2) Ako je delo iz stava 1. ovog člana izvšeno iz nehata, učinilac će se kazniti zatvorom od tri meseca do tri godine.

Article 137 — The causing of bankruptcy

(1) A responsible person in an economic enterprise who by uneconomical expenditure of funds or sale of the enterprise's assets below their value, by taking out of loans that cannot be paid back, by acceptance of obligations that cannot be met, by entering into contractual relations with persons who are unable to meet their financial obligations without due consideration, or by failing to collect debts, causes a bankruptcy of the enterprise, or another legal person that is socially owned, will be punished by imprisonment from one to five years in duration.

(2) If the offence described in Paragraph 1 of this Article is committed without intent, the perpetrator will be punished by imprisonment from three months to three years in duration.

The other offences include the following self-explanatory offences:

9. Deliberate causing of damage to loan-givers,
10. Abuse of authorisations in the conduct of business,
11. Conclusion of contracts harmful to one's company,
12. Revelation and unauthorised acquisition of a commercial secret,
13. Illegal usurpation of socially owned land,
14. Illegal management and allocation of residential premises, and
15. Discrimination between customers;

(d) *Offences against the integrity of the judiciary:*

16. Commission of acts that cause obstacles to the process of deriving judicial proofs,

17. Illegal facilitation of commission of certain judicial actions;

(e) *Offences against the integrity of performance of official duty*

18. Abuse of official position,
19. Transgression of the law by a judge or magistrate,
20. Illegal release of a detained person,
21. Unconscientious performance of official duties,
22. Illegal acceptance or making of payments,
23. Cheating in the performance of official duties,
24. Revelation of an official secret,
25. Fraud,
26. Illegal use of official resources,
27. Illegal mediation or facilitation between parties,
28. Acceptance of bribes,
29. Offering or giving of bribes.

Some of these offences, especially those quoted at the beginning of the list, do not seem at first sight as relating directly to corruption, but all these areas have been severely affected by corruption, and the mentioned forms of sanctioning these offences have a direct potential to penalise quite widespread forms of corruption in the Serbian society today. This is also the reason why this list may not be entirely exhaustive, as most aspects of life in Serbia are affected by corruption, so the criminal legislation that relates to aspects that are not immediately associated with corruption has the potential to penalise corruption in Serbia, which means that this list is an indication of the current state of the Serbian criminal law.

2.2. Organised commission of corruption

2.2.1. The explicit provisions relating to organised crime and an assessment of their value for fighting corruption

There are explicit descriptions of organised crime in the Serbian and Federal Criminal Laws, which allow for the penalisation of organised crime as a separate offence. Article 227 of the Serbian Criminal Law reads:

Član 227 — Zločinačko udruživanje

Ko organizuje grupu ili bandu koja ima za cilj vršenje krivičnih dela predviđenih republičkim ili pokrajinskim zakonom za koje se može izreći kazna zatvora od pet godina ili teža kazna, kazniće se zatvorom od tri meseca do pet godina.

Pripadnik grupe ili bande iz stava 1. ovog člana kazniće se zatvorom do jedne godine.

Pripadnik grupe ili bande koji otkrije grupu, odnosno bandu pre nego što je u njenom sastavu ili za nju učinio krivično delo, može se osloboditi kazne.

Article 227 — Criminal association

Those who organise a group or a gang with a view of commission of criminal offences sanctioned by a republican or federal law, for which a penalty of five years imprisonment or a more severe penalty is prescribed, will be punished by imprisonment from three months to five years in duration.

Any member of a group or gang described in Paragraph 1 of this Article will be punished by imprisonment up to one year in duration.

Any member of the group or gang who discloses the existence of the group or gang before he or she joins it or commits a criminal offence for it may be granted a pardon from penalty.

The weakness of this Article of the Serbian Criminal Law is in the limitation that the organisation of criminal associations is punishable only if they are created with a view of committing crimes for which a penalty of imprisonment of five years and above is prescribed, and most traditional crimes of corruption are not in that realm of penalisation, which suggests that this provision refers to terrorist and para-terrorist, and in any case mainly violent crimes, when committed by a criminal organisation. Namely, these are the types of crimes that are penalised the most severely in the Serbian Criminal Law.

The corresponding Article 26 of the Federal Law is seemingly far more embracing of corruption-related crimes, and it reads:

Član 26 — Krivična odgovornost i kažnjivost organizatora zločinačkih udruženja

Ko je radi vršenja krivičnih dela stvorio ili iskoristio organizaciju, bandu, zaveru, grupu ili drugo udruženje krivično je odgovoran za sva krivična dela koja su proizašla iz zločinačkog plana tih udruženja i kazniće se kao da ih je

sam učinio, bez obzira da li je i u kom svojstvu neposredno učestvovao u izvršenju pojedinog od tih dela.

Article 26 — Criminal responsibility of the organisers of criminal associations

Those who create or use an organisation, gang, conspiratorial group, or some other association for the commission of criminal offences are criminally responsible for all the criminal offences that have arisen from the criminal plans of such associations, and will be punished in the same way as though they themselves had committed such crimes, regardless of whether and in what capacity they had directly participated in the commission of any particular such offence.

These are very explicit provisions, and in fact it would be difficult to imagine more useful formulations, yet, organised crime has been prosecuted rarely, due to problems in the detection and a lack of political will to pursue it. Although this article is very broad and it would provide ample room for the prosecution and penalisation of organised corruption, its value in combating corruption is very limited, because corruption generally falls in the categories of crimes that are predominantly sanctioned by the Serbian Criminal Law. Of course, this does not preclude future legislative changes that would allow this provision to be either incorporated in the Serbian Criminal Law, or which would transfer the jurisdiction for some of the corruption-related crime that is now sanctioned by the Serbian Criminal Law to the Federal Criminal Law.

Due to the reasons explained in Section 2.1, many crimes that are not normally associated with corruption involve a substantial component of corruption in Serbia today. One of the closest such legal characterisation to that of organised crime is the crime of co-offending, which is sanctioned by Article 22 of the Federal Criminal law. This is not in correspondence with the proper concept of organised crime, and in the western European legislation it is normally depicted as quite a separate characterisation from those relating to organised crime in the strict sense; however, the description of co-offending in the Federal Criminal Law of Yugoslavia does contain some association to organised crime. It reads:

Član 22 — Saizvršilaštvo

Ako više lica, učestvovanjem u radnji izvršenja ili na drugi način, zajednički učine krivično delo, svako od njih kazniće se kaznom propisanom za to delo.

Article 22 — Co-offending (Participation in the commission of a crime)

If several individuals commit a crime together, by direct participation in the commission of the crime or in some other way, each one of them will be punished by a penalty prescribed for that crime.

This characterisation is particularly interesting in the phrase: "by direct participation or in some other way", which suggests that a criminal organisation might be behind a crime, even if all of its members do not directly participate in the commission of the crime.

It is important to emphasise here that the proper concept of organised crime is that which refers to crimes committed in the interests of, or coordinated by, a criminal organisation, rather than any crime that is simply committed in an organised manner. There are crimes committed in a procedurally organised manner that do not fall under the definition of organised crime in the strict sense, because they are committed by one or two "unorganised" individuals, and there are crimes committed by criminal organisations, as part of their activities, that — at least seemingly — do not require a particularly high degree of procedural organisation. In fact, many such crimes fall under the ordinary definition of street crime (murder or mugging, for example). Although Article 22 of the Federal Law sanctions co-offending, this phrase allows the inclusion of sanctioning of organised crime, while the main problem is in the fact that this article only allows for the penalisation of all those involved, but not for the aggravating circumstance of a crime being committed as part of an organised criminal activity.

Other closely related legal characterisations of offences are:

1. Incitement to commit a crime (Federal Criminal Law)

Član 23 — Podstrekivanje

(1) Ko drugog sa umišljajem podstrekne da učini krivično delo kazniće se kao da ga je sam učinio.

(2) Ko drugog sa umišljajem podstrekava na izvršenje krivičnog dela za koje se po zakonu može izreći pet godina zatvora ili teža kazna, a delo ne bude ni pokušano, kazniće se kao za pokušaj krivičnog dela.

Article 23 — Incitement to commit a crime

(1) Those who deliberately incite others to commit a criminal offence will be punished as though they themselves had committed that offence.

(2) Those who deliberately incite others to commit a criminal offence for which the law allows a prison sentence of five years or a more severe sentence to be meted out, and the offence is not attempted, will be punished in the same way as though they had attempted the commission of that offence.

2. Aiding and abetting (Federal Criminal Law)

Član 24 — Pomaganje

(1) Ko drugome sa umišljajem pomogne u izvršenju krivičnog dela kazniće se kao da ga je sam učinio, a može se i blaže kazniti.

(2) Kao pomaganje u izvršenju krivičnog dela smatra se naročito: davanje saveta ili uputstava kako da se izvrši krivično delo, stavljanje učiniocu na raspolaganje sredstava za izvršenje krivičnog dela, otklanjanje prepreka za izvršenje krivičnog dela, kao i unapred obećano prikrivanje krivičnog dela, učinioca, sredstava kojima je krivično delo izvršeno, tragova krivičnog dela ili predmeta pribavljenih krivičnim delom.

Article 24 — Aiding and abetting

(1) Those who deliberately aid and abet others in the commission of a crime will be punished as though they themselves had committed that crime, or they may be punished less severely.

(2) By aiding and abetting is meant in particular the following: Offering advice or instructions as to how to commit a crime, providing the direct perpetrator with the means for the commission of a crime, assisting in overcoming the obstacles to the perpetration of the offence, or a promise given in advance of the commission of the crime to hide the perpetrator, the means with which the crime is to be committed, the traces of the offence, or the objects obtained by the offence.

Offences whose formulation seems the most similar to those formulated here, and which form part of the Serbian Criminal Law, are far further removed from the concept of organised crime once their content is examined, so they will not be fully quoted here. Examples include the characterisations of the offences of:

(a) Failure to report a criminal offence or a perpetrator (Article 203 of the Serbian Criminal Law), or
(b) Assisting the perpetrator after the commission of an offence (Article 204).

These offences are more closely related to the crimes against the judicial system, but they are also potentially inclusive of corruption, due to the pervasive corruption in the judicial system, which has natural reflections on the witnesses and the management of evidence and testimonies.

The limits of responsibility related to the crimes characterised as co-offending or aiding and abetting, which in the Federal Criminal Law are potentially related to organised crime as a concept, are clearly laid out in the same law:

Član 25 — Granice krivične odgovornosti i kažnjivosti saučesnika
(1) Saizvršilac je krivično odgovoran u granicama svog umišljaja ili nehata, a podstrekač i pomagač — u granicama njihovog umišljaja.
(2) Saizvršilac, podstrekač ili pomagač koji je dobrovoljno sprečio izvršenje krivičnog dela može se osloboditi od kazne. To važi i u slučaju pripremanja krivičnog dela, bez obzira da li je zakonom određeno kao posebno krivično delo ili je zakonom propisano kažnjavanje za pripremanje određenog krivičnog dela (član 18, stav 2).
(3) Lični odnosi, svojstva i okolnosti usled kojih zakon isključuje krivičnu odgovornost, ili dozvoljava oslobođenje od kazne, ublažavanje ili pooštravanje kazne, mogu se uzeti u obzir samo onom izvršiocu, saizvršiocu, podstrekaču ili pomagaču kod koga takvi odnosi, svojstva i okolnosti postoje.

Article 25 — Limits to the criminal responsibility and punishability of co-offenders (Note: the concept "co-offenders" in the title of this Article is used in the broad sense, which includes Co-offending as per Article 22 of the Federal Criminal Law, Incitement (Article 23), and Aiding and abetting (Article 24))
(1) Co-offenders are criminally responsible within the limits of their intent or lack of it, and those who have incited the perpetrator to commit a crime and those who have aided and abetted the perpetrator are responsible within the limits of their intent.

(2) Co-offenders, those found guilty of incitement, and those found guilty of aiding and abetting, who have deliberately and voluntarily prevented the commission of a crime may be granted a pardon from penalty. This also applies in the case of preparation of a crime, regardless of whether such a preparation is determined by law as a separate crime, or the law prescribes penalisation for the preparation of a specifically determined crime (Article 18, Paragraph 2).

(3) Personal relationships and circumstances that entail the exclusion of any criminal responsibility, or which provide legal grounds for the granting of a pardon from penalty, a reduction or an increase in the severity of the sentence meted out, may be taken into account in the passing out of a sentence only on those perpetrators, co-offenders, those found guilty of incitement, or those found guilty of aiding and abetting, where such relationships and circumstances actually exist.

The above characterisation, especially Paragraph 3, is obviously redundant in formulation. This, unfortunately, has been a structural feature of the Yugoslav legislation, which has allowed very considerable discretion to the magistrates and judges in deciding on the sentences, not only by the broad spans of legally prescribed sentences for most offences, but also by the wordy phrases and redundant formulations that could be subsequently interpreted in ways not necessarily envisaged by the law-makers. In some cases, marital relations or relations of direct kinship provide legal grounds for the exclusion of criminal responsibility. For example, this exclusion applies in the characterisation of the criminal offence of Failure to report a criminal offence or the perpetrator, sanctioned by the Serbian Criminal Law (Article 203), where the immediate family members of the perpetrators, priests who have heard the perpetrators' confessionals, physicians and legal representatives of the perpetrators are not considered criminally responsible for failure to report the crime committed by the perpetrator with whom they are in one of the mentioned relationships.

2.2.2. The general policy of aggravating circumstance

The general policy adopted by the lawmakers is that aggravating circumstances are tied to consequentialist considerations of the amount of damage caused by the offence, rather than to the manner of commission of the crime. This means that the general tendency is to sanction

those crimes whose material consequences are more severe more harshly than those whose consequences are not so severe, even in some cases where the nature of the crimes themselves is such that those that have not resulted in the most serious consequences are potentially more dangerous or damaging than those that have resulted in a serious damage. For example, Paragraph 2 of the mentioned Article 136 of the Serbian Criminal Law (Unconscientious conduct of business affairs) provides for a harsher penalty if the damage caused to the commercial enterprise is more severe. This is a common case in the Serbian criminal law. Generally speaking, there is a tendency in the Serbian and Federal criminal legislation to sanction criminal association as a separate offence, while treating the penalisation of offences, or more precisely, its gradation, as a matter of largely consequentialist considerations.[7]

2.3. Corruption on the level of actions sanctioned by administrative sanctions

Two characteristic types of offences that encapsulate the most common manifestations of corruption include:

1. creating or using an invoice or any other accounting document or record containing false or incomplete information, or
2. unlawfully omitting to make a record of a payment in order to commit, conceal or disguise the offences of corruption.

While in some cases these two types of corrupt practice may be sanctionable under the criminal offence of "Tax evasion" (Article 154 of the Serbian Criminal Law), the sanctioning of the largest proportion of such offences remains on the level of administrative infractions, and is within the jurisdiction of the Serbian Financial Police, which upon the inspection of documents either levies fines or brings forward criminal charges. The practice of false invoicing is widespread and is usually sanctioned on the level of administrative sanctions, unless the falsification involves official documents or identification papers, in which case the sanctions are criminal.

2.4. Money laundering

Money laundering has not been established as a separate criminal offence as such in the Serbian criminal legislation.

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[7] For some considerations see Fatić, A., *Crime and social control in "central"-eastern Europe: A guide to theory and practice*, Ashgate, Aldershot, the UK, 1997, the parts on Serbia and Montenegro, and the introductory considerations.

2.5. Criminal organisations

The establishment, management and participation in a criminal organisation are established as separate criminal offences — see Section 2.2, especially Sub-Section 2.2.1.

2.6. Legal persons and corruption

Legal persons cannot generally be held responsible for corruption. Corruption is sanctioned under various criminal offences, and legal persons cannot be prosecuted criminally. Only private persons who act in official and responsible capacities within the legal persons can be prosecuted criminally. Money laundering is not well established as a criminal offence in the Serbian criminal legislation, which additionally complicates the establishment of responsibility for money laundering-related corruption.

2.7. Territorial jurisdiction for the prosecution of corruption[8]

Territorial jurisdiction of the Yugoslav courts is divided between the criminal offences that are sanctioned by the Federal Criminal Law and those sanctioned by the Serbian (and Montenegrin) criminal legislation.

2.7.1. Federal jurisdiction according to territoriality

Territorial jurisdiction of Yugoslav courts for any criminal offences, not only those that involve corruption, is defined in Chapter Twelve of the Federal Criminal Law, Articles 104–107. The jurisdiction is defined very comprehensively, and it allows the prosecution of any crime committed abroad by a Yugoslav national, even the prosecution of crimes committed by foreign nationals in some cases, when they are found on Yugoslav soil. The general principle of territorial jurisdiction on Yugoslav soil is best explained by quoting the full text of Article 104 of the Federal Law:

[8] Discussed here is the territorial jurisdiction in terms of the applicable laws. The judicial territorial jurisdiction in terms of the jurisdiction of specific courts is not relevant to this perspective on anti-corruption legislation, and it is described in the federal Law on the Criminal Procedure, Chapter II, Articles 22–38.

Član 104 — Važenje jugoslovenskog krivičnog zakonodavstva za svakog ko na teritoriji SRJ učini krivično delo

(1) Jugoslovensko krivično zakonodavstvo važi za svakog ko na teritoriji SRJ učini krivično delo.

(2) Jugoslovensko krivično zakonodavstvo važi i za svakog ko učini krivično delo na domaćem brodu, bez obzira gde se brod nalazio u vreme izvršenja dela.

(3) Jugoslovensko krivično zakonodavstvo važi i za svakog ko učini krivično delo u domaćem civilnom vazduhoplovu dok je u letu, ili u domaćem vojnom vazduhoplovu, bez obzira gde se vazduhoplov nalazio u vreme izvršenja dela.

Article 104 — Jurisdiction of the Yugoslav criminal legislation for everyone who commits a criminal offence on the territory of FRY

(1) Yugoslav criminal legislation applies to everyone who commits a criminal offence on FRY territory.

(2) Yugoslav criminal legislation also applies to everyone who commits a criminal offence on a Yugoslav ship, regardless of where the ship was located at the time of the commission of the offence.

(3) Yugoslav criminal legislation also applies to everyone who commits a criminal offence in a Yugoslav civilian aircraft while in flight, or in a Yugoslav military aircraft, regardless of where the aircraft might have been located during the commission of the offence.

For offences committed abroad, Article 105 of the Federal Law specifies that for all crimes described as being directed against the constitutional order and security of FRY (Articles 114 through 133 and 135 through 138), except the offence of causing national, racial or religious hatred, division or animosity (Article 134), as well as for the offence of counterfeiting money, if the counterfeited money is the Yugoslav currency, Yugoslav jurisdiction applies fully. The text of the article reads exactly:

Član 105 — Važenje jugoslovenskog krivičnog zakonodavstva za određena krivična dela izvršena u inostranstvu

Jugoslovensko krivično zakonodavstvo važi za svakog ko u inostranstvu učini krivično delo iz čl. 114. do 133. i čl. 135. do 138. ovog zakona ili iz člana 168. ovog zakona ako se falsifikovanje odnosi na domaći novac.

Article 105 — Jurisdiction of the Yugoslav criminal legislation for certain criminal offences committed abroad

The Yugoslav criminal legislation will apply to anyone who commits criminal offences described in Articles 114 through 133 and 135 through 138 of this Law, as well as the criminal offence described in Article 168 of this Law, if the counterfeited currency was the Yugoslav one.

The crucial point of Article 105 is that it applies to Yugoslav and foreign citizens alike. Even if a perpetrator is sentenced for one of these offences abroad, he or she, if apprehended on Yugoslav soil, will be tried again, and the sentence served abroad will be calculated into the sentence passed by the Yugoslav court.

For Yugoslav citizens only, any criminal offence described by the Yugoslav criminal legislation, including those under which corruption can be subsumed, can be prosecuted on Yugoslav soil. Article 106, which specifies this, reads:

Član 106 — Važenje jugoslovenskog krivičnog zakonodavstva za državljanina SRJ koji učini krivično delo u inostranstvu

Jugoslovensko krivično zakonodavstvo važi za državljanina SRJ i kad u inostranstvu učini koje drugo krivično delo, osim krivičnih dela navedenih u članu 105. ovog zakona, ako se zatekne na teritoriji SRJ ili joj bude ekstradiran.

Article 106 — Jurisdiction of the Yugoslav criminal legislation for FRY citizens who commit criminal offences abroad

The Yugoslav criminal legislation applies to any citizen of FRY when one commits a criminal offence abroad other than the criminal offences described in Article 105 of this Law, if one is found on FRY territory or is extradited to FRY. The main significance of this Article is that it ensures that FRY citizens cannot avoid facing culpability for criminal offences committed abroad by returning to FRY, with a view of the fact that the FRY Constitution forbids the extradition of a FRY national to another country. The prosecution according to Articles 105–6 will not take place if (a) the perpetrator has fully served a sentence passed on him for the same criminal offence by a foreign court, or (b) the perpetrator has been acquitted of the charges for the same offence by a foreign

court, or the sentence passed by a foreign court has become outdated or a pardon has been granted.[9]

Finally, Article 107 of the Federal Criminal Law envisages that a foreign citizen will be prosecuted according to the Yugoslav criminal legislation if he or she has committed abroad a criminal offence against FRY or her citizen, if he or she is found on FRY territory or is extradited to FRY. A foreign citizen will also be prosecuted according to the Yugoslav criminal legislation if one has committed a criminal offence against a foreign state or a foreign citizen in another country, for which offence the criminal legislation of that country prescribes a penalty of five years of imprisonment or a more severe penalty.[10]

2.7.2. Serbian criminal legislation's jurisdiction according to territoriality

The jurisdiction of the Serbian (and Montenegrin) republican criminal legislation is strictly territorial in the sense that the republican criminal jurisdiction extends to all criminal offences that are sanctioned by the republican criminal law when they are committed on the territory of the respective republic, while in cases where criminal offences have been committed on the territories of both constituent Yugoslav republics, the criminal legislation of the republic on whose territory the of-

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[9] Article 108 of the Federal Criminal Law, Paragraphs (1) and (2).

[10] **Član 107 — Važenje jugoslovenskog krivičnog zakonodavstva za stranca koji učini krivično delo u inostranstvu**

(1) Jugoslovensko krivično zakonodavstvo važi i za stranca koji van teritorije SRJ učini prema njoj ili njenom državljaninu krivično delo i kad nisu u pitanju krivična dela navedena u članu 105. ovog zakona, ako se zatekne na teritoriji SRJ ili joj bude ekstradiran.

(2) Jugoslovensko krivično zakonodavstvo važi i za stranca koji prema stranoj državi ili prema strancu učini u inostranstvu krivično delo za koje se po tom zakonodavstvu može izreći zatvor od pet godina ili teža kazna, kad se zatekne na teritoriji SRJ a ne bude ekstradiran stranoj državi. Ako ovim zakonom nije drukčije određeno, sud u takvom slučaju ne može izreći težu kaznu od kazne koja je propisana zakonom zemlje u kojoj je krivično delo učinjeno.

[11] **Article 107 — Jurisdiction of the Yugoslav criminal legislation for a foreign citizen who commits a criminal offence abroad**

(3) Yugoslav criminal legislation applies also to a foreign citizen who, outside the FRY territory, commits against her or her citizen a crimi-

fence is being tried will be applied.[11] This jurisdiction is also regulated within the Federal Criminal Law, by Articles 110 and 112.[12]

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nal offence in cases other than the criminal offences described in Article 105 of this Law, if the perpetrator is found on FRY territory or is extradited to FRY.

(4) Yugoslav criminal legislation applies to a foreign citizen who commits abroad a criminal offence against a foreign state or a foreign citizen, for which a penalty of five years of imprisonment or a more severe penalty can be passed according to the criminal legislation of the foreign state where the criminal offence has taken place, if the perpetrator is found on FRY territory and is not extradited to a foreign state. Unless there is a conflicting provision within this Law, in such cases the court cannot pass a more severe sentence than the one prescribed by the law of the country where the criminal offence was committed.

[12] **Član 110 — Važenje republičkog krivičnog zakona za krivična dela izvršena na teritoriji republike**

(1) Krivični zakon republike važi za svakog ko na teritoriji te republike učini krivično delo predviđeno tim zakonom, bez obzira na to gde mu se za to delo sudi.

(2) Ako je krivično delo izvršeno na teritoriji dve republike, primeniće se zakon republike u kojoj se učiniocu sudi.

Article 110 — Jurisdiction of the republic's criminal law for criminal offences committed on the territory of the respective republic

(1) A republic's criminal law will apply to everyone who commits a criminal offence sanctioned by that law on the territory of the respective republic, regardless of where the offence is being tried.

(2) If the criminal offence was committed on the territories of both republics, the law of the republic where the offence is being tried will be applied.

[13] **Član 112 — Važenje republičkog krivičnog zakona za krivična dela izvršena van teritorije SRJ**

Za krivična dela predviđena zakonom republike, kad su ta dela izvršena van teritorije SRJ, podrazumevajući i krivična dela izvršena na domaćem brodu ili u domaćem vazduhoplovu dok su ovi van teritorije SRJ, primenjuje se krivični zakon republike u kojoj se učiniocu sudi.

Article 112 — Jurisdiction of the republic's criminal law for criminal offences committed outside the FRY territory

For criminal offences sanctioned by a republic's criminal law, where these offences have been committed outside the FRY territory, including those offences committed on a Yugoslav ship or on a Yugoslav aircraft while they are outside the FRY territory, the criminal law of the republic where the offence is being tried will apply.

For offences sanctioned by a republic's criminal law that are committed abroad, the criminal law of the republic where the offence is tried will apply.[13]

These provisions exhaust the jurisdiction determinations of the Yugoslav criminal legislation, and include corruption-related, as well as non-corruption-related regulations.

III PROCEDURE AND ORGANISATION

3.1. Anti-corruption institutions and policies

The area of concrete anti-corruption institutions is the most wanting in terms of regulation and policy initiatives in Serbia and FRY. Largely because corruption as a general societal problem has not been adequately encapsulated in the criminal legislation, the institutions that would normally result from such an encapsulation on an enforcement level do not exist in a developed form.

Theoretically, there is an *integrity system* that is built into the legal structure of economic and other legal persons, in the form of various *governing and supervisory boards*, many of which consist largely, or even predominantly, of individuals who come from outside the ranks of the organisation itself. Secondly, the integrity system involves various regulations that are built into the *organisational statutes and rules of conduct*. Thirdly, the *prosecutorial system* exists for those instances of corruption that are sanctionable under the differing descriptions of particular criminal offences in the Yugoslav criminal legislation. Fourthly, there is a *special unit within the Serbian Police Force, which is charged with combating economic crime*. It should be noted here that the concept of "while collar crime" is not well established in Serbia, so most analysts discuss white-collar crime as economic crime, without making the necessary distinctions. Namely, white-collar crime is a considerably broader concept than that of economic crime. It is usually used in contrast to "street crime", and involves all those actions that are not subsumable under street crime, and that in their commission depend crucially upon the organisational positions and influence of their perpetrators. Thus, white collar crime may include economic crime, but there are instances of white collar crime that are not economic, strictly

speaking — e.g. match-fixing in the sports that does not always include payments or financial benefit, etc. The Economic Crime Unit within the Serbian Ministry of the Interior (which controls the Police Force) deals *de facto* with many instances of white collar crime, but it is not properly equipped to deal with white collar crime generally speaking. Currently a reorganisation of the Serbian Crime Police (Kriminalistička policija) is underway, and some structural improvements with special units being additionally formed are envisaged, but the tradition of such specialised forms of fighting crime is poor, and police work has traditionally focused on military policing.[14]

A combination of specialised anti-corruption units with the style of community policing has proven the most effective in fighting corruption, yet this tradition is largely absent from Serbian law enforcement.[15]

3.2. The prosecutorial system and the significance of specialised police

The prosecutorial system in FRY is a complex one. It is divided between the prosecution for offences that are prosecuted by the victims of crime and by private legal action, and those that are prosecuted by the public prosecutor. The general form of the prosecutorial system is mainly regulated by the federal Law on the Criminal Procedure (Zakon o krivičnom postupku).[16]

The brief account of the prosecutorial and judicial criminal procedure consists of three main phases:

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[14] Military policing is based on large "stop-and-search" operations, mass raids in the streets, and a massive uniformed police presence as a deterrent to crime. It is opposed to the so-called "community policing", which is based on a close involvement of the police with the respective communities, on an empathic work with the community, and on detective work as opposed to military-style deterrence.

[15] See Fatić, A., *Crime and social control in "central"-eastern Europe: A guide to theory and practice*, Ashgate, Aldershot, the UK, 1997. Serbian, enlarged version: *Kriminal i društvena kontrola u istočnoj Evropi*, Institut za međunarodnu politiku i privredu, Beograd, 1997.

[16] The most recent edition is*: Zakon o krivičnom postupku sa kratkim objašnjenjima*, priredio Momčilo Grubač, Službeni glasnik, Beograd, 2000.

3.2.1. The "pre-criminal procedure"

The report of a criminal offence is submitted to the public prosecutor according to territorial jurisdiction. The report may be submitted in written form or orally. It may also be submitted to a court or to the police, in which case the court or the police transfer the report to the public prosecutor (Law on the Criminal Procedure, Article 150). If the police have found it that there is convincing reason to believe that a crime has taken place, they are due to collect the relevant evidence and conduct certain investigative actions, including the possible temporary detainment of any suspects. On the basis of the report, or any other information that a criminal offence might have taken place, the public prosecutor will conduct preliminary investigations and determine whether sufficient grounds are present for the initiation of criminal procedure. All the actions taken in this phase, most of which take place within the realm of police work, and under the general guidance of the public prosecutor (except in situations where the police have discretionary powers to conduct investigatory actions in their own right, and such discretionary authorisations in this phase of the process are broad), are termed "the pre-criminal procedure".

3.2.2. The formal investigation

The public prosecutor, by submitting formal charges to the investigative magistrate/judge of the court under whose jurisdiction the offence falls, initiates a formal investigation, and the conduct of the formal investigation is directed henceforth by the court.

3.2.3. Criminal proceedings (the trial)

Once the investigation is concluded, the investigative magistrate/judge brings up the charges to the court, and the criminal trial, or criminal procedure, begins.

The prosecutorial system involved can be described as a mixture between that of mandatory and that of discretionary prosecution, which is considerably tilted towards a more discretionary model. The public prosecutor, for offences that are prosecutable by him or her, may or may not initiate an investigation, and may withdraw the charges in the course of a formal investigation, in which case the court ceases the investigation. In this sense, the system contains substantial elements of

prosecutorial discretion. However, this discretion is limited by additional regulations, such as that the Prosecutor is not allowed to dismiss a criminal offence report on the basis of the presence of circumstances that in themselves exclude criminal responsibility, as such circumstances will be considered in the criminal procedure.[17]

While the public prosecutor is primarily responsible for collecting information that is needed for deciding whether or not a criminal offence has taken place in situations where a report of criminal offence has been made by someone else than the police, and while the prosecutor may ask the police and other governmental departments and related organisations for assistance in the collection of such information, the critical role in prosecuting corruption belongs to the police. It is generally considered that corruption cases are more rarely prosecuted than other criminal cases, partly because the typical perpetrators of corruption-related offences tend to be more familiar with the legal system, they tend to be better educated than, for example, the typical perpetrators of street crime, and they tend to better plan their offences. In such circumstances, reports of corruption-related offences may amount to little more than a browsing through the remainders of evidence that may or may not indicate corruption, that has been damaged, and that is consequently of little value to the court. If, however, the police are the ones who disclose a corruption-case, their authorisations allow them to conduct immediate investigative procedures, detain suspects and seize objects relevant to the crime, thus providing a dramatically broader manoeuvring room for the formal investigation and the laying of formal charges.

[17] Ibid., commentary of Article 153.

IV PREVENTIVE AND OTHER MEASURES[18]

4.1. Has your country adopted statutory rules, codes of conduct or similar instruments governing the behaviour of elected representatives and/or public officials, including measures aimed at preventing undue influence from being exercised on them? If yes, please attach, if possible, a summary and a translation into French or English of the most significant provisions dealing with prevention of corruption. Please indicate whether procedures have been established for ensuring respect of such statutory rules, codes of conduct or similar instruments and whether a body has been established with effective powers to impose sanctions, disciplinary measures or other measures.

The facts and norms

FRY has regulations, both on the federal and on the level of the two republics, which relate to the behaviour of the elected representatives of the state and public officials. These regulations contain measures for

[18] The questions discussed here are originally stated as Chapter 5 of the GRECO Questionnaire. As this study has been completed as an answer to the GRECO Questionnaire, the form of the questions is exactly the same as in the Questionnaire, however Chapter 4 of the Questionnaire contains topics relating to international cooperation in the area of anti-corruption. As the political changes in Serbia have happened relatively recently prior to the writing of this study, it was too early to discuss successes in international cooperation, as many international activities were only to commence. This is why the original Chapter 4 from the GRECO Questionnaire has been ommitted here and Chapter 5 of the Questionnaire has been included as Chapter 4 of this study, for reasons of consistency in enumeration, for the benefit of the reader.

the prevention of illegitimate influence being exerted on the elected and other officials in state organs and public services.

Apart from the criminalisation of certain offences from this domain, through the criminal offences of abuse of official position, offering and receiving bribes, unconscientious performance of official duty, etc., within the criminal legislation (something has already been said about those offences in the earlier text within this study), there are regulations in the laws that govern the work of public administration, actions of functionaries and other employees in the public service. These regulations prescribe the entitlements, obligations and responsibilities of public servants and elected state representatives.

On the federal level, the *Law on the system of state administration, the federal government, and the federal organs of state administration* (*Zakon o osnovama sistema državne uprave i o Saveznom izvršnom veću i saveznim organima uprave*), has been enacted in the former Socialist Federative Republic of Yugoslavia, and it is still partially applicable in this area. In addition to the continuing application of the key provisions of this law, special norms have also been generated concerning the entitlements and duties of Members of Parliament and other functionaries in the Federal Assembly and members of the federal government.

A new *Law on the position of the employees in the federal administration* is also in preparation and it should soon enter the parliamentary procedure. In 1991, a *Law on employment in state administration* was enacted in 1991 (*Službeni list Republike Srbije*, no. 48, 1991). The same year, in Montenegro a *Law on public employees* was enacted (*Službeni list Republike Crne Gore*, no. 45, 1991).

The other regulations in the area include: laws on state administration in Serbia and in Montenegro, laws on the inspection and control of the work of public administration, the resultant directions arising from those laws, etc. In addition, the internal rules of the parliaments and governments have also been adopted, namely:

1. *Rules of the Lower House of the Federal Assembly* (*Poslovnik Veća građana Savezne skupštine*), *Službeni list SRJ*, no. 1, 1995 and no. 5, 1995;

2. *Rules of the Upper House of the Federal Assembly* (*Poslovnik Veća republika Savezne skupštine*), *Službeni list SRJ*, no. 43, 1994;
3. *Rules on the Serbian Assembly* (*Službeni list RS*, no. 69, 1994 and no. 70, 1994);
4. *Rules on the Montenegrin Assembly* (*Službeni list RCG*, no 37, 1996 and no. 16, 1997);
5. *Rules of the Federal Government* (*Službeni list SRJ*, no. 67, 2000);
6. *Rules of the Serbian Government* (*Službeni list RS*, no. 44, 2000);
7. *Rules of the Montenegrin Government* (*Službeni list RCG*, no. 3, 1997).

According to all of the above regulations, the responsibility for the proper conduct of duties falling within the domain of public administration is divided between the responsibility of the so-called "functionaries", whose appointments are political, and the other public servants who hold lower ranks. *Functionaries* within the public service are *politically* responsible if in the performance of their duties they do not follow the observance of the law, other regulations and general acts. In such cases, it is envisaged that such employees would be *replaced* in their positions, while the replacement itself does not exclude the possibility of a criminal, financial and other types of responsibility being established. Functionaries are responsible to the political organ that appoints them, and these organs differ depending on the part of the public service and the function performed.

Political responsibility

Either the Lower, or the Upper House of Parliament, or any of the governments, can initiate a process for the establishment of responsibility of high-ranking public servants. Such proposals need to be argued and supported by facts that enable the procedure to be conducted efficiently and meaningfully. The procedure involves the opportunity for the functionary whose responsibility is being established to present facts or arguments to his/her defence, as well as to provide the necessary information that might be relevant to the conclusion of the process. During the process, the administrative body that appoints the functionary may decide to suspend the functionary from duty until the conclusion of the proceedings, and in any case it is this body that makes the

final decision on his or her replacement and relatedly, responsibility. If the functionary resigns, the resignation itself does not eliminate the process for the establishment of his or her responsibility for any abuses.

Disciplinary and material responsibility

The responsibility of all lower-level public servants, whose positions are not political appointments, is regulated by the so-called "disciplinary" and "material" responsibility. Disciplinary responsibility relates to breaches of discipline in the workplace, and material responsibility relates to damages caused to the institution or organisation by inappropriate action. Both types of responsibility are sanctioned by laws, as well as the internal statutory acts within the separate public administration branches.

According to Article 4 of the Law on employment in the state organs of Serbia (*Službeni glasnik RS*, no. 48, 1991 and no. 66, 1991), the functionary who directs a state organ in its function also decides on the rights, obligations and responsibilities of all employees and political appointees in those organs.

The rights, obligations and responsibilities of the President, president of a permanent working body of the Assembly, their deputies, presidents and members of governments, heads and judges of the Constitutional Court are decided by persons, or bodies established through the acts of he President, the Assembly, the governments, and the Constitutional Court.

The above formulation clearly points out the limitations of these regulations, because the highest officials of the state are not responsible for the integrity of their function to Parliament, but rather to bodies and persons appointed by the very individuals whose responsibility is to be maintained, and this in itself creates a lax system that allows considerable abuses to be made and lines of responsibility to very much end at the top of the political ladder.

The realities

The reality of the control effort in the above-described area is considerably different from what the stated norms might suggest. During the previous years of the communist regime, political responsibility

was almost non-existent, as the imperative of remaining in power drove the former government deep into the realm of crime, to an extent that made issues of responsibility for the proper performance of duties arising from public administration little more than fictions.

After the change of government late in 2000, the system has somewhat changed, but even though the general atmosphere might have changed somewhat due to the ideological shift that has started to occur with the replacement of the former regime, it would be highly idealistic to expect substantial improvements in the manner of work of public administration in a short time-span without a high level of engagement by international and domestic experts and international organisations.

4.2. Has your country adopted statutory rules, codes of conduct or similar instruments that members of professions especially exposed to corruption (e.g. lawyers, accountants) must observe?

The Federal Law on the Attorneys' Activity (*Savezni zakon o advokaturi*, *Službeni list SRJ*, no. 24, 1998 and no. 26, 1998) regulates the rights and duties of attorneys in their professional work, which is considered a public service. The statutes of the bar associations prescribe disciplinary and other infringements for which attorneys are responsible, as well as the organs that establish the responsibility and the way in which they do so. Rules of conduct on the level of the bar associations prescribe the ethical principles of the attorneys' profession, and the same is the case with other similar professions.

The federal *Law on Accounting* (*Zakon o računovodstvu*, *Službeni list SRJ*, no. 46, 1996) and related laws from the domain of public finance regulate the issues of behaviour and conscientious conduct of business in the work of accountants. All accountants must pass a special professional examination. The statutes and general acts of the respective financial and accounting organs and organisations additionally regulate these issues.

Similar rules and laws exist for most professions.

4.3. What mechanisms are in place in your country to prevent the unlawful use of public finances?

The laws on the budget and on the financing of organs and public services regulate issues relating to the legal disposition of public finance.

To this effect, the FRY Law on financing provides for a special organ — the Federal Budgetary Inspection, which controls the expenditure of funds from the federal budget. Similar organs exist in the republics as well, according to the republics' laws in the area of public finance. The work of the budgetary inspections is, however, dependent on the political integrity of the government, because it is an executive organ, which means that on an operational level it cannot function properly if it is not given a proper autonomy within the government and special competencies and powers to investigate the highest government officials. Under the previous government, this was not the case, and the budgetary inspection played only a marginal role.

According to Article 24 of the *Decision on the Federal Government* (*Uredba o Saveznoj vladi*, *Službeni list SRJ*, no. 67, 2000), the Federal Budgetary Inspection directly controls the income and expenditures for specific purposes from the federal budget, as well as the financial and material conduct of business by the decision-makers and the beneficiaries of the funds from the federal budget.

According to Article 25 of the same *Decision*, the Federal Administrative Inspectorate oversees the legality of formal acts and everyday operation, as well as the inspection of the work of federal organs and federal organisations, including the realisation of the rights of the citizens before these organs and organisations. It also oversees the status of general acts concerning the internal organisation and systematisation of workplaces within the federal organs and organisations. The Inspectorate further oversees the implementation of the *Law on administrative procedure* (*Zakon o opštem upravnom postupku*) and the regulations adopted on the basis of that law, in the work of federal organs and federal organisations. It also oversees the implementation of regulations concerning the office management of federal institutions.

4.4. Apart from taxation requirements, are there rules in your country imposing upon elected representatives and/or public officials the obligation to declare their assets or income? If yes, when? Are there other forms of control mandatory or voluntary?

The laws on state property and the laws on public administration do not contain specific rules that envisage an obligation of elected representatives of the state or other officials in the public administration to

declare their private assets before assuming duties, being appointed, or after ceasing to perform that duty. This issue is a matter of agreement, namely a decision of the state, whose various organs may provide a recommendation to the prospective functionaries to declare their assets before assuming duties. However, after they have ceased to perform those duties, this issue is generally not raised, except if an abuse of the function or an illegal gain are established to have occurred, which are then the subjects of criminal proceedings.

The statutory rules concerning transparency of personal asset accumulation are extremely poor, and they cannot serve as an adequate tool for anti-corruption activities. Even if the political appointees do declare their property at the beginning of their mandate, namely if they follow the advice given by various state institutions, they may not necessarily declare the property in earnest, and there is no way to force them to declare everything that they own. Further, even if they do honestly declare all that they have at the beginning of the mandate, they are generally not asked to do so again at the end of the mandate, which then deprives the whole system of meaning, because it is impossible to establish illegal gain if the original size of the assets is not compared to the resultant size of the assets after the end of appointment.

4.5. Are there special rules ensuring transparency and equality n the tendering of public contracts? Is there an appeal procedure? Please describe them.

(a) *Rules of tendering and its transparency*

Yugoslav regulations on the tendering of public contracts are dispersed through numerous laws that regulate various areas of public contracting (*Law on Construction* (*Zakon o izgradnji objekata — Službeni glasnik Srbije* 44/95, 24/96, 16/97; *Law on the Acquisition and Alienation of Property Owned by the State* (*Zakon o pribavljanju i otuđivanju nepokretnosti u državnoj svojini*), *Law on Foreign Investments* (*Zakon o stranim ulaganjima*) *Law on Concessions* (*Zakon o koncesijama*) *Law on Land for Construction* (*Zakon o građevinskom zemljištu*), etc. The general policy that regulates tendering was in fact succinctly formulated in the former *Law on Construction Works* (*Zakon o investicionim radovima*), which provided that all public works could be legally contracted only pending one of the two possible tendering procedures:

(i) by public bidding, or
(ii) by the collection of sealed offers.

The *Law on Concessions*, however, provides for *obligatory public bidding as a general rule*, and in some special cases it allows for the collection of sealed offers.

In the area of public investment works, the *Law on Construction* contains only one article where it specifies the above issues, namely Article 36, Paragraph 1, where it states that "The production of technical documentation and the building of objects are contracted through a public competition or the collection of offers, or through a direct negotiation between the parties", and that "the investor decides on the way of making the technical documentation available to various parties and the building of objects (Article 26, Paragraph 2). The Law does not contain any provisions that suggest that the latter way of contracting, through direct negotiation between the parties, is to be applied only in cases of smaller investments or urgent works. No special conditions that would guarantee the transparency of the tendering procedure are envisaged, apart from the declaration that the investor should secure the equal participation of all interested parties in a public bidding.

This normative regulation implies that tendering itself is obligatory, but it leaves the question of its substantive and procedural transparency largely unanswered. Namely, according to the above legislation, *the investor is entitled to choose the best offer at one's own discretion*. The best offer does not mean here only the offer that is the least costly to the investor; the considerations include other elements of the offer as well, including the quality of the offer in the sense of the services that it includes.

The general policy of obligatory tendering is prescribed for most cases of public procurement and/or investment. There is no difference in the legislation concerning the legal nature of the parties, namely the same rules apply regardless of whether the parties to the contract are municipalities, cities, the state, or legal persons.

***(b)** Appeals procedure*

In the case that the investor does not select the best offer, there is no legal appeals procedure in the strict sense, which would imply that the bidders have a legal right to demand the voiding of the contract with the initially selected bidder and a recommencement of the bidding, or some

type of arbitration to the effect of concluding the contract with another bidder. As law does not explicitly regulate this issue, it has been decided on so far by a position taken by the Serbian court in judicial practice. According to this position, where it is clear that the investor has chosen an offer that is not the best offer according to all relevant criteria, the other bidders cannot demand the voiding of the investor's decision by legal action, but they *are* entitled to seek compensation for the damages from the investor. However, the damages envisaged here involve *only the damages arising from the direct costs sustained in the process of participating in the tender*, not the damages that arise from the failure to obtain the contract. The courts have taken this position on the basis of an interpretation of Article 103, Paragraph 2 of the *Law on Obligations*, which reads: "If the conclusion of a contract is forbidden only to one party, the contract will remain valid if the law does not prescribe otherwise for the specific case, and the party that has infringed upon the legal prohibition will sustain the pertaining consequences" ("Ako je zaključenje određenog ugovora zabranjeno samo jednoj strani, ugovor će ostati na snazi ako u zakonu nije što drugo predviđeno za određeni slučaj, a strana koja je povredila zakonsku zabranu snosiće odgovarajuće posledice.")

It is possible that certain tenders themselves may involve an in-built appeals procedure, but legally speaking this is left to the investor's discretion. A further building up of statutory regulations in companies, cities and municipalities would most probably increase the likelihood of such procedures being included in a greater proportion of public tenders, but at the moment such statutory regulation is poor and does not provide a sufficient basis for the inclusion of proper appeals procedures in most current tenders.

4.6. What actions can victims of corruption bring in order to obtain compensation? If the contents of a contract have been influenced by corruption, for instance by the payment of a bribe, is it possible to annul the contract? If so, specify the procedure to be followed and notably who is empowered to file a claim for the voiding of the contract.

(a) *The legal nature of contracts and issues of their validity*

There is no sufficiently clear regulation in the laws of contract-making situations where the motives for the conclusion of a contract were

corrupt. Namely, as corruption is not adequately conceptualised and sanctioned in the Serbian *Criminal Law* (only some offences that fall under corruption are criminalised in that law), the possible voiding of contracts could proceed only in cases where corruption as defined in the specific characterisations of particular offences in the Serbian *Criminal Law* is indicated (the offences described in the first part of this study).

Concerning the issue of voiding of contracts generally, according to the *Law on Obligations*, the rule is that every contract must have a *causa* (basis) in order to be concluded and in order to produce a legal effect. Every contractual obligation must have a legal basis (Article 51 of the *Law on Obligations*). A contract is considered legally void unless there is no recognisable and valid basis for it, or it is forbidden (Article 52 of the *Law on Obligations*). The *causa* of a contractual obligation is forbidden if it is contrary to the public order, obligatory rules, or good practice (Article 51 of the same law).

A forbidden *causa* (and thus a forbidden contract) is sanctioned by the voiding of the contract (Articles 103–110). *Any party* to a contract can invoke the legal annulment of the contract according to this principle, and the principle itself is observed "by official duty", which means that *either parties to the contract, or officials in charge of validating contracts*, are entitled to file for the voiding of a contract if they establish that the *causa* of the contract is invalid or illegal. The right to demand the voiding of a contract on the above basis is *not time-restricted*, that is it does not expire with time elapsed since the conclusion of the contract. A contract cannot become valid through the expiration of time or change of circumstances.

The procedure in this case includes civil legal action, which demands the determination of invalidity of a contract, namely a legal decision *in declaratory form* that simply establishes that the contract has been void since its conclusion. *The consequence of this process is the restoration of the initial situation as a general rule* (Article 104 of the *Law on Obligations*). Namely, the parties will return to each other what they have received on the basis of a void contract, be it in kind, or in the monetary equivalent if the return of the goods exchanged is not possible, except in cases where the law specifically provides otherwise. For example, the Serbian *Criminal Law* provides the seizure of any goods acquired through the criminal offence of offering or taking bribes.

If there is sufficient legal basis in the legislation, primarily in the criminal legislation, to establish the illegality of the *causa* or basis of a contract, then the relationship between the contracting parties can at least be restored into the pre-contractual situation, namely the contract will be pronounced void. However, in situations involving criminal activity that is sanctioned as such in the criminal legislation, the consequences of the legal procedure will be as described by the criminal law.

Conclusion:

Given the general normative framework of the regulation of tendering and the voiding of contracts, a further building up of the other parts of the legislation would allow these principles to cover all cases of corruption, not only those that are encapsulated in the provisions of the criminal law at the moment. Thus, the *Law on Obligations* allows a reasonable normative context for fighting corruption in public procurement, public investment and construction works and other akin areas, subject to a further development of specific legal provisions, primarily in the criminal legislation, that will provide more grounds for invalidating the *causa* of contracts. Namely, if the criminal legislation is revised, or a new anti-corruption law enacted, which would broaden the scope of crimes that are considered as corruption, then it would theoretically be possible to void all contracts involving corruption. This, as far as the *Law on Obligations* is concerned, is already possible, but with the limitations arising from the criminal law's definition of crimes that fall under the phenomenon of corruption. In order to be voided, a contract must be considered illegal, and as corruption is generally regarded as a criminal offence, the existence of a basis to consider a contract illegal largely depends on the considerations elaborated earlier on.

4.7. Please describe briefly the means available to citizens and the media to have access to information held by local and state authorities, as well as the conditions and restrictions applied to such access (including, if you so wish, regarding confidential information and official secrets).[19]

The treatment of state secrets by the former Yugoslav and the FRY states has been notoriously rigid, and it has been connected with some

[19] According to the original GRECO Questionnaire, this question is numbered 5.12. See previous footnote for explanation.

of the political events in the course of the dissolution of the former Yugoslavia. The secession of Slovenia was marked in this area by the prosecution and jailing of the editors of the *Mladina* magazine for allegedly "betraying a state secret", in the early 1990s. More recently, the war over Kosovo, among other repressive acts, brought the jailing of the journalist Miroslav Filipović, of the *Danas* daily, by a military court, also for allegedly betraying a state secret (movements of the army and police units, etc.). The files kept on the citizens by the State Security may or may not be made available to the public, which is a matter that has not yet been decided either in public debate or on a political level.

PART TWO: INSTRUMENTS FOR FIGHTING CORRUPTION

1.1. Are there specific bodies specialised in the fight against corruption in your country? If so, please specify when these institutions were created, their legal basis, their composition, and functions and/or powers. If such institutions do not exist, please indicate why.

1.2. Are there special departments, services, units or persons within the police, the prosecution service, the judiciary or other State authorities (e.g. intelligence services) which have been assigned specific functions and/or powers in the prevention, control, investigation and enforcement of measures to combat corruption? If so, please indicate since when such departments, services, units or persons are in place and describe their organisation and powers.

FR Yugoslavia, and the former Yugoslavia beforehand, had very little experience and almost no institutional tools for fighting corruption. Today the situation remains much the same. The new Serbian Parliament has formed a special committee for the investigation of possible corruption in a few large Serbian companies, and many newly appointed officials find themselves in the positions of having to deal with corruption not only as a legacy of the previous times, but also as a structural feature of the apparatus inherited from the previous regime.

Where most countries have specialised anti-corruption police units, Serbian police have until April 2001 had a combined anti-organised crime and anti-corruption section, which had been formed late in 2000, under the transitional Serbian government between the federal elec-

tion in September 2000 and the Serbian election in January 2001, and which had arrested some of the high profile suspects, but these had been arrests that had been entirely unproblematic and had only been a matter of political decision and timing. Such was the arrest of the former Chief of State Security, General Radomir Marković, in February 2001, and previously the arrest of the former Director of State Customs, Mr. Mihalj Kertes, who was later released. This police unit was not a proper anti-corruption police section, because its specialisation did not derive from special training; rather it derived from a certain number of police officers having been assigned a specific set of duties, without proper equivalents being generated on the level of police education, within the police academy, or on the level of on-the-job training. In April 2001 the Serbian Ministry of the Interior abolished this special squad, most probably with the idea of further developing the reform of the police apparatus in this field.

In the prosecution, there is an informal division of tasks between individual prosecutors, some of whom usually prosecute some rather than other types of cases, but this is not translatable onto the level of any type of structural division within the prosecutorial organisation. There is even less specific anti-corruption specialisation within the judicial organisation. All the judges within criminal courts try all criminal cases, and the allocation of cases to judges is performed by the administrative service of the courts, whose employees as a general rule do not have any specialised knowledge required to assess a case according to the issues involved and consequently assign it to an appropriate judge. The generalist nature of the work of the criminal judiciary is a tradition, and there are few indications that this might change in the foreseeable future.

1.3. Are there special units, inspection bodies or persons responsible for preventing and investigating internal corruption cases in selected branches of public administration (for instance, within the law-enforcement bodies or other government institutions)? If so, please specify when they were established, their organisation and their powers. Are public officials required to inform these units, inspection bodies or persons of corruption cases that come to their knowledge while performing their functions?

There are no special bodies or units charged with preventing corruption in specific parts of the public administration, apart from the

general budgetary commissions and public service inspectorates with very general tasks, described for the federal government under 5.3. Public officials are generally required to conform to the law and the rules of service, and part of this requirement is obviously to refrain from corrupt action. However, the substance of such responsibility is very weak for the exact reason of a lack of *specialised* anti-corruption structures and organisations.

1.4. How do the institutions referred to in questions 1.1, 1.2. and 1.3. co-operate with each other? How do they co-operate with other public bodies? Is there an authority responsible for co-ordinating their action?[20]

On the political level, one of the Deputy Prime Ministers of the Serbian government is assigned the coordinaton of anti-corruption and anti-organised crime activities, and a number of working groups and councils have been set up within the two governments to coordinate this area of policy.

1.5. What measures are in place to ensure that persons or bodies in charge of preventing, investigation, prosecuting and adjudicating corruption offences enjoy the necessary independence and autonomy to perform their functions: notably, in order to avoid undue pressure from superiors or the political power? Are there safeguards for officials reporting such pressure to their superior, to the police, to the prosecutor, to other authorities or to the public?[21]

Under the previous regime, political pressure in the area of law-enforcement was a rule, rather than an exception. Today, steps are underway to create new structures and new laws, which would then allow a greater degree of independence to the police and the other bodies involved in the fight against corruption.

[20] Question no. 1.9 per original GRECO Questionnaire.

[21] Question no. 1.12 under the original GRECO Questionnaire.