**Sanctioning the Violation of Anti-corruption Legislation in Serbia**

**Executive Summary**

Corruption in Serbia is widespread, and the problem has been identified in numerous reports of the EU as well as other international organizations. Poor functioning of the judiciary system, the attempt to reform it, which brought even more problems instead of solutions, is often cited as one of the major obstacles to combating corruption.

Some of the negative consequences of the unsuccessful judicial reform have been removed. However, the publicly proclaimed independence of the judiciary needs to be proven in practice.

The work of independent state authorities and their contribution to the fight against corruption in certain areas is hampered by the lack of political will (disregard of recommendations) and poor enforcement of legislation, which has led to the extremely slow sanctioning of violations of anti-corruption legislation. Misdemeanor proceedings for requests that independent authorities filed were suspended due to the statute of limitations not only in a small amount of cases. So far there have been no cases of proactive action of the prosecution based on the findings of independent bodies - examples that the prosecution initiated misdemeanor or criminal proceedings for irregularities identified in the reports of independent bodies. The media reported on this system in an unsystematic way, which is why the public did not have a full picture of the functioning of independent bodies and mechanisms of sanctions for violations of anti-corruption legislation. Thus, there was no public pressure on the system that would act as a corrective mechanism.

**Within the project[[1]](#footnote-1), Transparency Serbia monitored what type of violations of anti-corruption legislation independent bodies observed, which mechanisms for sanctioning were initiated, how magistrate's courts and public prosecutor's offices acted and how the media reported on it.**

The gathered and analyzed data refers to the years 2011, 2012 and 2013.

**Misdemeanor Proceedings**

Within the project, the requests for initiating misdemeanor proceedings that the State Audit Institution (SAI), the Anti-corruption Agency (Agency) and the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) filed were analyzed.

In the observed period, the Agency, SAI and the Commissioner filed 993 requests, and only 177 have been resolved.

Table 1: Review of filed requests for misdemeanor proceedings and resolved cases by years

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Filed and resolved requests by years | **Agency** | | **SAI** | | **Commissioners** | |
| Filed requests | Resolved | Filed requests | Resolved | Filed requests | Resolved |
| 2011 | 19 | 15 | 29 | 17 | 27 | 24 |
| 2012 | 35 | 19 | 125 | 26 | 22 | 16 |
| 2013 | 504 | 10 | 205 | 38 | 27 | 12 |
| **Total** | **558** | **44** | **359** | **81** | **76** | **52** | **993**  **177** |

In total, these three authorities in the observed period filed 993 requests for initiating misdemeanor proceedings of which 177 have been resolved.

It is important to indicate a few factors that significantly influenced the number of filed requests.

SAI has, with the strengthening of its capacities, from 2012 significantly grown and the number of audited institutions, or rather audits, has also grown, therefore the number of misdemeanor proceedings initiated has also increased.

Also, 2012 was an election year, and after long delays, and the changes in the Anti-corruption Agency itself, at the end of 2012 and the beginning of 2013 there were intensive efforts to sanction political parties for failure to submit reports on the financing of election campaigns. The vast majority of these requests were filed during 2013 and magistrate's courts in the period, when the manner of handling the cases was analyzed (September and December 2013), did not resolve these cases.

**The analysis shows that the efficiency of handling the cases in the first instance is one of the biggest problems in the chain of prosecuting violations of anti-corruption laws which are under the competence of independent bodies. The proceedings often last a very long time, and not rarely, the cases are dismissed due to the statute of limitations.** The statute of limitations should be resolved in some cases after the amendment of the Law on Misdemeanors and the adoption of new laws on financing political activities and public procurement. The problem is, however, that the statute of limitations remained unchanged in the case of violations of the Law on the Anti-Corruption Agency and the Law on Personal Data Protection. For the final evaluation of what the reason for the slow proceedings is, it would be necessary to analyze the entire work of magistrate's courts, the workload of judges, which is beyond the scope of this project**.**

The analysis of the observed cases of extremely long proceedings in cases where requests were filed concerned ministers and other public officials (Rasim Ljajić 30 months without trial, Saša Dragin – the case was resolved after 27 months, Božidar Đelić freed after 22 months, Dragan Marković Palma, the case has not been resolved for 18 months).

**There has been a number of procedural issues, such as the inability to deliver the summons to the defendant for trial**. The situation where the filed charges become obsolete due to the fact that the defendant, who is a Member of Parliament, was unavailable to the court or the hearing could not be held because the President of the Municipality did not collect the summons for the trial at the post office after the postman left “a notice to collect a delivery in the PTT service“ in his mailbox.

**Anti-corruption Agency**

The Anti-corruption Agency is an independent state authority, established by the Law on the Anti-corruption Agency, with competences in many anti-corruption areas – party financing, conflict of interest, supervision of the application of the anti-corruption strategy and other. The Agency is still lacking capacities, and in the previous period faced internal problems (organizational and strategic). In the past, despite numerous cases that were pointed out in the public, a very small number of misdemeanor charges were filed against political parties and the majority of filed charges became obsolete during the proceedings in the magistrate’s courts. In some cases from previous years, the Agency practically demonstrated tolerance towards violating the Law in areas under its competence (i.e. regarding (not) initiating proceedings for violating obligations to report the participation of an official’s company in a public procurement procedure). We also monitored the intensity of the activities of this state authority for sanctioning the observed misdemeanors within this project. In the beginning of 2013, the Agency initiated the coordination and closer cooperation with other anti-corruption authorities, including magistrate’s courts and prosecutor’s offices, however the results of this cooperation are yet to be proven in practice.

Table 2: Review of resolved cases by requests filed by the Anti-corruption Agency

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency** | 2011 | 2012 | 2013 |
| Fines | 1 | 13 | 4 |
| Reprimands | 2 | 2 | 1 |
| Freed | 3 | 0 | 0 |
| Suspension (termination, obsolete) | 8 | 3 | 4 |
| No jurisdiction of court | 1 | 1 | 1 |
| **Total of resolved cases** | **15** | **19** | **10** |

44 cases by requests filed by the Agency were resolved in the course of three years. In **2011** of the 15 resolved cases, a fine was imposed only in one case (of 70.000 dinars, for not transferring management rights, 13 months after filing the charges). In as many as eight cases the proceedings were terminated, of these six due to the statute of limitations. In **2012** there was a higher number of fines imposed, mostly for misdemeanors from the Law on the Anti-corruption Agency (the conduct of officials holding office). Charges against political parties and responsible persons in parties due to failure to submit reports are mostly amongst the unresolved cases (16 charges).

In **2013** only ten cases were resolved, of these, four cases were decisions to terminate the proceedings due to the statute of limitations, in one case the judge passed a decision that the court was acting outside its jurisdiction, one warning was issued and four fines.

**State Audit Institution**

Since it was established in 2007, SAI faces the lack of office space, and as a result of that a lack of staff and capacities for work. Until now there has been no attempt to determine whether these facts influence the scope of sanctioning failures established in audit reports.

SAI is in a specific situation because sanctioning for the violation of a law is not its “primary activity", as representatives of DRI often emphasize, and as it has been indicated in the Progress Report of the European Commission for Serbia for 2012[[2]](#footnote-2). However, the Law on the State Audit Institution (Article 41) stipulates the obligation of the SAI to, without delay, file a request for initiating proceedings, or rather criminal charges to the competent authority, if during the audit procedure it discovers substantially significant acts that indicate the existence of elements of a misdemeanor or criminal offense. The project attempted to answer the question whether there is a need for amending the law in order to delegate this competence to another state authority or to strengthen SAI so that it can perform this duty.

During the three years observed, 83 cases have been resolved for which the **SAI** filed requests for.

Table 3: Review of resolved cases for requests the State Audit Institution filed

|  |  |  |  |
| --- | --- | --- | --- |
| **SAI** | 2011 | 2012 | 2013 |
| Fines | 11 | 16 | 28 |
| Reprimands | 0 | 0 | 1 |
| Freed | 2 | 1 | 0 |
| Suspension (termination, obsolete) | 2 | 2 | 4 |
| No jurisdiction of court | 0 | 3 | 1 |
| Rejected charges | 0 | 0 | 1 |
| Unknown | 2 | 4 | 3 |
| **Total of resolved cases** | **17** | **26** | **38** |

In **2011**, from 29 requests filed, 17 have been resolved. It can be assumed that the remaining 12 are mostly obsolete, however the court has not concluded this fact yet. In 2012, 125 requests were filed and 26 have been resolved. In 99 cases that are pending, between nine months and 21 months has elapsed from the time of filing the requests to obtaining information from the courts on the status of the case. Therefore, caution should be taken with the fact that the average handling of a case in 2012 in 26 completed cases was 10 months. Subsequent analysis, following the conclusion of these 99 cases will show, it is quite clear, that this period is actually longer. In the observed period in **2013** (until 15 December 2013) SAI filed 205 charges, and resolved 38 cases, of which 28 were concluded with decisions on fines ranging from 10,000 to 100,000, while the average penalty is 30,000 dinars.

**Commissioner for Information of Public Importance and Personal Data Protection**

The Commissioner for Information of Public Importance and Personal Data Protection, an independent state authority, is not entrusted with the competence to file misdemeanor charges for violations of the Law on Free Access to Information of Public Importance. This work is mandated by law to "the ministry responsible for public administration" (the administrative inspection within the Ministry of Justice and State Administration). On the other hand, the Commissioner has the authority to initiate proceedings for violations of the Law on Personal Data Protection (Article 56 stipulates the duty to file misdemeanor charges for the violation of the provisions of this law). The Commissioner, as well as other state authorities, may find themselves in the position of finding out about a criminal offense and may be required to inform the public prosecutor.

In the case of the Commissioner for Information of Public Importance and Personal Data Protection there seems to be a relatively large number of cases resolved by imposing fines. The problem, however, is that for the violation of the Law on Personal Data Protection the general statute of limitations of two years applies and a large number of cases in which an appeal is filed, the case is later returned for revision and results in the statute of limitations.

Table 4: Review of resolved cases for requests filed by the Commissioner for Information of Public Importance and Personal Data Protection

|  |  |  |  |
| --- | --- | --- | --- |
| **Commissioner** | 2011 | 2012 | 2013 |
| Fines | 18 | 5 | 6 |
| Reprimands | 4 | 4 | 0 |
| Freed | 0 | 1 | 1 |
| Suspension (termination, obsolete) | 1 | 6 | 5 |
| Rejected charges | 1 | 0 | 0 |
| **Total of resolved cases** | **24** | **16** | **12** |

**Criminal Charges**

The Anti-corruption Agency filed 11 criminal charges in the observed period, of which nine for failing to report assets, one for the abuse of office and one for a criminal offense against public health. Two indictments have been filed, or rather an indictment in summary procedure.

Table 5: Review of criminal charges filed by the Anti-corruption Agency

|  |  |  |  |
| --- | --- | --- | --- |
| **Anti-corruption Agency** | 2011 | 2012 | 2013 |
| Filed CC | 2 | 2 | 7 |
| Rejected | 2 | 1 | 0 |
| Indictments/indictments  in summary procedure | 0 | 1 | 1 |
| Ongoing proceedings |  |  | 5 |
| No information |  |  | 1 |

In the observedperiod, from the beginning of 2011 until the end of September 2013, **SAI** filed 20 criminal charges. No indictment or indictment in summary procedure has been filed for any of the cases, and in 3 cases the prosecutor's office reached an agreement with the defendant on rejecting the charges with a guarantee on payment of a certain amount for charity.

Table 6: Review of filed criminal charges by the State Audit Institution

|  |  |  |  |
| --- | --- | --- | --- |
| **State Audit Institution** | **2011** | **2012** | **2013** |
| **Filed CC** | **3** | **11** | **6** |
| **Rejected (no el. crim. offense)** | **1** | **2** | **1** |
| **Rejected (obsolete)** | **0** | **1** | **0** |
| **Postponing crim. prosecution/Rejection** | **0** | **0** | **3** |
| **Indictments/indictments**  **in summary procedure** | **0** | **0** | **0** |
| **Ongoing proceedings** | **2** | **6** | **2** |
| **No information** | **0** | **1** | **0** |

**The Commissioner for Information of Public Importance and Personal Data Protection** filed four charges in the observed period. Two prosecutor's offices did not deliver data on handling the charges (BPP Pirot and BPP Leskovac) whilst the HPP in Belgrade answered that in one case (a charge from April 2011) the pre-trial criminal proceedings are still pending, and in another (charges from December 2012) an indictment in summary procedure has been filed and the proceedings are in the trial phase.

**Proactive Work of the Public Prosecutor's Office and the Public Attorney's Office**

Transparency Serbia also monitored how the public prosecutor’s office in Serbia works, not only regarding criminal charges filed by independent bodies, but also how they reacted to the publication of regular and irregular reports in the area of work of independent bodies.

It was concluded that the **audit report of the** **Public Prosecutor’s Office** in which numerous violations of the Public Procurement Law, the Law on the Budget System and other legislation are enumerated, **does not recognize this material as grounds for acting upon this matter,** i.e. for examining whether there is abuse of office, improper spending of budget funds or other criminal offenses.

Due to the fact that SAI filed about 30 audit reports on the enforced audits and measures it carried out itself regarding the sanctioning of irregularities, and in the period between 2011-2013 **published around 200 audit reports, it is clear that there is room and great need for the Public Prosecutor’s Office to be more proactive**.

**The reports have also been submitted to the Public Attorney's Office. The Public Attorney's Office in the greatest number of cases interprets that the SAI submits reports in order for the Public Attorney to get acquainted with them, or rather there is no obligation stipulated for initiating proceedings for determining potential damages for budgets of local self-governments, resulting from violations of legislation that were noticed in reports of the audits. This is the case even when the violations are filed for misdemeanor and criminal charges.**

**The Writing of the Media on the Work of Independent Bodies**

The writing of the printed media was analyzed in the monitoring on misdemeanor proceedings initiated on the grounds of complaints, or rather based on requests for initiating misdemeanor proceedings and criminal charges that were filed by independent bodies, primarily the Anti-corruption Agency and the State Audit Institutions.

Regarding the work of the Anti-corruption Agency, **it is** **typical for almost all media outlets to periodically transmit announcements that some of the deadlines are expiring, to ask whether an official or party fulfilled its obligation a few days prior to the expiration of a deadline, and to never ask the question of sanctioning those who did not fulfill this obligation. The media also typically reports on the SAI stating numerous irregularities, significant focus is devoted to the filed charges and reactions to the charges, however there is a very low amount of news on resolved charges or the fact that it takes too long to resolve the charges.**

**Main Recommendations**

**Regarding misdemeanor prosecution**

* + Specialization of judges who are tasked with resolving cases that are initiated on the grounds of violating anti-corruption legislation
  + Enhancing the cooperation between independent state authorities and courts, in order to improve the quality of requests for initiating misdemeanor proceedings
  + Courts handling cases more efficiently and/or extension of deadlines for the statute of limitations, particularly regarding the Law on the Anti-corruption Agency, the Law on Free Access to Information of Public Information and Law on Personal Data Protection
  + Amendments to the Law on Free Access to Information of Public Information for more efficient monitoring and initiating a higher number of proceedings for violating the law
  + Enhancing the efficiency of independent authorities in recognizing acts that have characteristics of misdemeanors and initiating misdemeanor proceedings, with possible engagement of external associates, which is allowed by the Law on the State Audit Institution and the Law on the Anti-corruption Agency
  + Introducing the practice of independent state authorities to regularly monitor how the courts handle the filed requests
  + Publishing data on the initiated misdemeanor proceedings
  + Regular reporting to the public on the status of the initiated proceedings
  + Taking into consideration the need to amend legislation, for more efficient summoning of defendants, especially when the defendants are public officials
  + Strengthening the control mechanisms in magistrate’s courts in order to determine the reasons and responsibilities for the statute of limitations, or rather, in order to establish the need for increasing capacities or other measures for systematic elimination of this problem
  + Eliminating the shortcomings of the Law on Financing Political Activities regarding cases of misdemeanor liability

**Regarding how the public prosecutor’s offices and public attorney’s office handle criminal charges and whether they work proactively:**

* Specialization/training public prosecutors for questions from the competences of the independent authorities
* Specifying the obligation of public prosecutor’s offices for proactive work, based on the recieved or published reports of independent state authorities
* Coordinating the work of independent state authorities (primarily SAI and the Agency) on one hand, and the public prosecutor, on the other hand, concerning the establishment of facts that indicate possible criminal liability
* Regular monitoring of how the authorities handle the prosecution for criminal charges filed by independent state authorities and informing the public on this matter (if the information on the filed criminal charge is published)
* Precising the obligation of the public attorney to act upon recieving a report from the State Audit Institution

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1. The project “Monitoring the Sanctioning of the Violation of Anti-corruption Legislation in Serbia“is supported by the American Agency for International Development (USAID). [↑](#footnote-ref-1)
2. <http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izve%C5%A1taj_napretku_2012.pdf> [↑](#footnote-ref-2)