



## **JUDICIARY IN FIGHT AGAINST CORRUPTION**

**Small-scale comparative research on anticorruption practices and role and status of judges in fight against corruption**

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

The project "Judiciary in fight against corruption" will monitor and assess results of Serbian Judiciary in fight against corruption and overall implementation of anti-corruption legislation. The project is directly linked with judicial reform conducted on the basis of Judicial reform strategy in 2009, with the National strategy for fight against corruption (the new one is expected to be adopted in 2012, while the one in force is from December 2005), and indirectly with the achievement of EU integration efforts of Republic of Serbia and fulfilment of Copenhagen political and public sector capacity criteria. Furthermore, based on assesment and monitoring conducted, the project would serve to identify weaknesses in the system, to suggest actions to be made in order to overcome these weknesses. Within its advocacy component, the project would seek to sensitize all stakeholders in order to ensure that recommandations are accepted and improvements in the system made.

**Working group of Judges' Association of Serbia chose 4 representative countries on which to conduct comparative research in order to get basic overview of systematic legal anticorruption solutions in which will stand in comparison also with the final findings and analysis of the project on Serbian judiciary. The methodology for this research was the appropriate questionnaire with questions indicative to the goals of the analysis of the legal system in Serbia. Each country was chosen for the specific characteristics:**

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

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

From the gathered answers we could conclude among others that the variety of definitions of corruption exists in various legal systems, that national strategies for fight against corruption are common among European countries, that there are different legislative solutions, both in procedural codes and criminal codes in order to address the needs of different legal systems, that in more developed countries the difference of corruption in private and public sector are more accentuated, although there are specialised units for fight against corruption there are no specialised treatment or benefits for those individuals, etc... The more detailed answers to the questions were summarised in the following table:

QUESTION	COUNTRY
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	Germany	Italy	Poland	Romania
What is the legal framework for the fight against corruption? What laws do you apply for crimes of corruption?	<ul style="list-style-type: none"> <li>- EU law and Penal Code (Strafgesetzbuch, StGB),</li> <li>- Art 299-302 for private economy</li> <li>- Art 331-335 StGB for public service members</li> </ul>	Corruption is a crime punished by Italian criminal law. Italy's anti-corruption laws are codified in the Criminal Code ('CC').	<ol style="list-style-type: none"> <li>1. Criminal Code</li> <li>2. Criminal Procedure Code</li> <li>3. Law on the Central Anti-Corruption Bureau</li> </ol>	LAW No. 78 of 8 May 2000 on preventing, discovering and sanctioning of corruption acts published in: the Official gazette of romania no. 219 of 18 may 2000 (with subsequent changes)

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Does your country have National strategy for fight against corruption? Does	Yes, Germany has anticorruption agencies in several Ländern (regions).	Italy doesn't have yet a National strategy for the fight against corruption.	Poland has the National Strategy for Fight against Corruption. Now the second stage of it is being realized for	Romania has National Strategy. <a href="http://www.just.ro/LinkClick.aspx?fileticket=O2wgayyzCXs%3D">http://www.just.ro/LinkClick.aspx?fileticket=O2wgayyzCXs%3D</a>

<p>the law or strategy define corruption and if so what is the definition?</p>	<p><b>Definition : Misuse of entrusted power for illegitimate private advantage</b></p>	<p>The law (CC) defines corruption as follows: Articles 318-320 criminalise passive bribery of public officials and of persons in charge of a public service, and Articles 321-322 criminalise active bribery of public officials or of persons in charge of a public service and instigation to corruption. Article 322-bis extends the offences under the articles above to include bribery of officials of EU institutions and public officials of foreign countries or members of international organizations. Italian law makes a distinction between so-called improper bribery (or bribery relating to lawful acts) and proper bribery (which relates to unlawful acts, i.e. the omission or delaying of acts relating to office, or acts in breach of official duties). Article 319-ter criminalizes corruption in judicial activities. Article 317 also provides for the offence of “<i>concussione</i>”. Such provision criminalizes the conduct of a public official abusing his or her functions or power to oblige or induce an individual to unduly give, or promise to give money or other assets to that official or a third party. The individual</p>	<p>period 2012 - 2016.</p> <p>The definition of corruption is included in the Law on the Central Anti – corruption Bureau (is very long and quite complicated) that describes it as an act:</p> <ul style="list-style-type: none"> <li>-of promising, offering or handling by anyone , directly or indirectly, any undue advantages to a person serving as a public officer for him/herself or for another person in return of acting or failure to act as a public,</li> <li>-of requiring or accepting by a person serving as a public officer , directly or indirectly, any undue advantages for him/herself or for another person, accepting offers or proposals of such advantages in return of acting or failure to act as a public,</li> <li>-committed while acting as an entrepreneur, connected with performance of obligations towards public (authorities, institutions) involving promising, offering or handling, directly or indirectly, any undue advantages to a person being a head of a public office for him/herself or for another person in return of acting or failure to act as a</li> </ul>	<p><a href="#">&amp;tabid=2079</a></p> <p>LAW No. 78 of 8 May 2000 defines:</p> <p>Art. 5 - (1) In the meaning of the present law, corruption offences are those offences provided in art. 254 - 257 from the Criminal Code, in art. 61 and 82 from the present law, as well as offences stipulated in special laws, as specific modalities of the offences provided in art. 254 - 257 of the Criminal Code, and in art. 61and 82 from the present law.</p> <p>.....</p> <p>Categories of offences:</p> <ul style="list-style-type: none"> <li>• Corruption offences</li> <li>• Offences assimilated to corruption offences</li> <li>• Offences directly connected to corruption offences</li> <li>• Offences against the financial interests of the European Communities</li> </ul>
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		induced to provide the bribe is treated as a victim (Article 317, CC).	public, if his/her act or failure to act breaches his duties and is socially detrimental; committed while acting as an entrepreneur, connected with performance of obligations towards public (authorities, institutions) involving promising, offering or handling, directly or indirectly, any undue advantages to a person being a head of an institution that does not belong to a sector of public finances for him/herself or for another person in return of acting or failure to act, if his/her act or failure to act breaches his duties and is socially detrimental.	
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	<b>Germany</b>	<b>Italy</b>	<b>Poland</b>	<b>Romania</b>
<b>Does your Criminal Procedural Code provide with any specific provisions for criminal proceedings that deal with corruption cases?</b>	No, there are no specific provisions for criminal proceedings that deal with corruption cases.	The Italian Criminal Procedure Code (CPC) doesn't envisage specific provisions for criminal proceedings related with corruption cases. As for other serious crimes, according to the sanctions provided for by the law, arrest, coercive measures, special investigative means may be applied to such proceedings.	Specific provisions for criminal proceedings that deal with corruption cases are included in the Law on the Central Anti-Corruption Bureau as the officers of it have wider rights to act. They are f.e. allowed to use provocation against the person if there is justified suspicion that he/she is engaged in corruption	No, there are no specific provisions for criminal proceedings that deal with corruption cases.

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Are there different provisions for the crimes of corruption coming out of private or public sector?	<p>Yes</p> <ul style="list-style-type: none"> <li>- 299-302 of Penal Code for private economy</li> <li>- 331-335 StGB for public service members But not in the procedure code.</li> </ul>	<p>Some provisions related to criminalisation of corruption within the private sector are provided for by Article 2635 of the civil code</p>	<p>Generally corruption under Polish law refers to public sector.</p>	<p>There are different provisions in law for private and public sector. For private sector: Art. 11 - (1) The deed of a person who, by virtue of his position, of the duty or of the task received, has the obligation to supervise, to control or to liquidate a private economic agent, to carry out for it any task, to mediate or facilitate the carrying on of certain commercial or financial operations by the private economic agent or to participate with capital to such economic agent, if the deed is of such nature as to bring him directly or indirectly undue advantages, shall be punished by imprisonment from 2 to 7 years.</p>

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What are the sanctions for the crimes of corruption?	<p>in private economy up to 3 years prison or pecuniary penalties (if not qualified facts defined by law)</p>	<p>Proper bribery (active and passive): imprisonment from 2 to 5 years. Improper bribery (active and passive): imprisonment from 6 months to 3 years.</p>	<p>Sanctions start from 6 months to 10 years imprisonment. Next to it a fine may be imposed (in daily rates min. 10, max. 540, the value of a rate: min. 10 PLN, max. 2000 PLN)</p>	<p>Sanctions differ in different provisions: For corruption offences Art. 6 (1) Promising, offering or giving money, gifts and other benefits, directly or indirectly,</p>

	<p>for public servants min. 6 months up to 5 years (aside the disciplinary action)</p> <p>for judges and arbiters min. 1 year to 10 years (i.e. severe crime, loss of profession is consequence)</p>	<p>Corruption in judicial activities: imprisonment from 3 to 8 years (may raise to 20 years maximum if an unlawful sentence to long imprisonment is the result of such bribery)</p> <p>Concussione: imprisonment from 4 to 12 years.</p> <p>In addition, confiscation of profit or price of the bribe applies</p> <p>Criminal liability also applies to legal persons, i.e. companies and associations, pursuant to Legislative Decree 231/2001.</p>	<p>In minor cases it is a financial penalty (the method of calculating it mentioned above), or limitation of freedom (f.e duty to work for a society) or max. 2 years imprisonment.</p> <p>Besides in all cases the court should decide on confiscation of a value of undue advantage that had been obtained.</p>	<p>to a person who has influence or induces the believe that has influence over an official, in order to determine that specific official to do or not to do an activity that is in its competences is punished with imprisonment from 2 to 10 years.,</p> <p>For Offences assimilated to corruption offences</p> <p>Art. 10 - The following deeds shall be punished by imprisonment from 5 to 15 years and the interdiction of certain rights, if committed for the purpose of obtaining for himself or for other person, money, goods or other undue advantages;....</p> <p>For offences against the financial interests of the European Communities</p> <p>Art. 18(1) Using of presenting of false, inexact or incomplete documents or declarations, which has as result the illegitimate obtaining funds from the general budget of the European Communities or from the budget administrated by them or on their behalf, shall be punished with imprisonment from 3 to 15 years and retaining certain rights.</p>
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	<b>Germany</b>	<b>Italy</b>	<b>Poland</b>	<b>Romania</b>
<b>Is there a specialized prosecutor or unit within prosecutors' office for corruption cases?</b>	<p>Yes in private economy (Wirtschaftsstaatsanwälte, Wirtschaftsstrafkammer)</p> <p>No in public service (it is the same office inquiring as in the private economy sector, they have often not enough specialists)</p>	Prosecutors' offices in main towns include specialised units for so-called crimes against public administration, which include corruption cases.	the Central Anti-Corruption Bureau (CBA) is a special service, created as a government administration office in order to combat corruption in public and economic life, particularly in public and local government institutions as well as to fight against activities detrimental to the State's economic interests. It was established by the Act of 9 June 2006 on the Central Anti-Corruption Bureau, which entered into force on 24 July 2006. There are no special prosecutors to deal with corruption cases.	DNA carries out criminal investigation activities in cases of offences assimilated to corruption and in direct connection with corruption. Successive legislative amendments were adopted in order for this specialized structure to investigate only high and medium level corruption offences. Moreover, DNA investigates offences committed against the financial interests of the European Communities as well as certain categories of serious offences of economical-financial criminality.

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



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

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Is there a special training program for judges dealing with corruption cases (within a body in charge for training of judges)?	Yes, there is. At the national judges academy and training measures on the job.	Special training is provided for by the Italian High Council for Judiciary, which is so far responsible for in-service training of judges and prosecutors.	No, there is no special course. The National School for Judiciary and Prosecutors sometimes organizes seminars on this topic, but it happens rarely and is limited to a small number of judges.	There is, according to National Institute for Training Magistrates (NIM) curricula and programme budgeted from EU/private Funds

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If possible, could you provide the information on the number of finalized corruption cases in previous year(s)?	<p>2010 wurden 6.141 cases of competition-, corruptions- und public servants crimes were registered, this is an increase of 4,4 Prozent compared to 2009.(amongst them two very big that influence on the statistics)</p> <p>Statistics 2011 show 5.241 cases of competition-,</p>	<p>In 2011 the Italian Supreme Court defined 2092 criminal proceedings on so-called crimes against public administration, which include corruption.</p> <p>Other data are available for single Tribunals or Courts of Appeal</p>	<p>About 2000 acts of indictments a year are filed by the prosecutors to courts. I am not able to answer precisely the question how many of them are finalized. I think it may be about 70 % as most of them finish with a kind of a <i>plea bargaining</i>.</p>	<p>In 2011 the number of cases dealt increased by 13.52% ( 6615 to 5827 in 2010), with 12.03% of the settled ( 3313 to 2957 in 2010) and resolved on 12.71 % ( 2.270 to 2.014 in 2010). In the 1043 case was ordered to the jurisdiction or to join cases ( 943 in 2010).</p> <p>Remained unsolved 3302 case,</p>

	<p>corruptions- und public servants crimes. This is a decrease of 14,7 % compared to 2010 (but be aware that the two very big cases in 2010 influence on the numbers).</p> <p>The unknown cases are estimated to be much more (dark field, Dunkelfeld).</p>			<p>in which 10 of unknown author ( 2870 cases, of which 5 with unknown author in 2010), the increase being objectively justified by a significant proportion of cases new entrants, representing 56.61% of the total to be solved ( 3745 new 6615 to settle).</p>
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<p>If possible, could you provide the information on the average duration of the proceedings before criminal court in cases dealing with corruption?</p>	<p>Duration is long (3-5 years can be).</p> <p>Further materials (in german language) see <a href="http://www.stgb">www.stgb</a> or <a href="http://www.korruptionsrichtlinien">www.korruptionsrichtlinien</a>, <a href="http://www.polizeilichekriminalstatistik">www.polizeilichekriminalstatistik</a> 2010, 2011</p>	<p>Average duration of criminal proceedings (in general, not only related to corruption) in Italy in 2011 was approx. 1 year in Prosecutors' offices, approx. 1 year before Tribunals, approx. 2 and ½ years before Courts of Appeal, approx. 7 months before the Supreme Court.</p>	<p>It is difficult to answer to this question as there are no special statistics referring just to them. Generally it can be said that if the person accused of corruption denies committing the crime the proceedings last about 2 years (1<sup>st</sup> and 2<sup>nd</sup> instance). Often it lasts even longer as in this kind of cases there is a visible tendency to return it many times to the 1<sup>st</sup> instance court. If there is a plea bargaining a court proceeding takes about 3 months.</p>	<p>There are no specific indicators of average duration.</p>