Searching for the contours of the anti-corruption policy in Serbia[1]

Petrus C. van Duyne, Elena Stocco,
Miroslava Milenović, Milena Todorova[2]

Sisyphus' hard labour: Serbian corruption policy uphill?

Among (political) researchers it is common to cast policy making in elegant models consisting of a variety of rationally interacting stakeholders (Freeman, 1984). This rational approach should also apply to the fight against corruption. This phenomenon can even be assigned a 'rational' though unwanted place (Jager, 2003). One may wonder whether this reflects our desire for rational order rather than the reality of this shady form of decision making. Also the fight against corruption rarely passes a rational and orderly sequences of milestones, particularly in countries with a long history of malgovernance. There the picture is that of highly promising initiatives followed by a disorderly process of sliding back to 'normal' (for Italy, see Newell, 2004). In such political landscapes rational models do not seem to apply. Instead, the metaphor of the mythical King Sisyphus may be more appropriate. In this ancient Greek myth Sisyphus must pushed a rock up the hill which in the end rolls back again after which the attempt must be repeated. However, the metaphor does not hold fully. The wily King Sisyphus was condemned to this punishment by the Olympic Gods because he cheated them. But the reverse happens on the 'corruption hill'. The cheaters are the ones who condemn the corruption fighters to do the Sisyphus work: pushing the anti-corruption task uphill. Meanwhile the corrupters within the public administration are primarily interested in seeing the rock rolling back again even if their official role may be lending support.

---

[1] Published in: P.C. van Duyne *et al*. (eds.), *Cross-border crime inroads on integrity in Europe*. Nijmegen, Wolf Legal Publishers, 2010. Co-authors: Elena Stocco, Miroslava Milenović, Milena Todorova.This is 'research in progress'. An Earlier version of this article was published in Journal of Financial Crime, Volume 17, Issue 1, Emerald Group Publishing Limited. The first phase of the research project was initiated by the OSCE Mission in Serbia. We thank the Republican Prosecution Office for supporting this research.

[2] The first author is professor of empirical penal science at Tilburg Univeristy, Netherlands and head of the Serbian Corruption Project (Petrus@uvt.nl), Elena Stocco is senior researcher in the project and Head Operations (elena_stocco@yahoo.it) Miroslava Milenovic is certified fraud examiner and forensic accountant (k.m@eunet.rs); Milena Todorova is consultant and researcher (milena_al@yahoo.com).

Does Serbia reflect the essentials of the King Sisyphus myth: pushing up the anti-corruption rock which rolls back again? And to make it more complicated as well as most intriguing, roles are not defined: who pushes up the stone today may push it down tomorrow.

Of course, metaphors must be given substance in terms of observables. To that end in 2008 a research Serbian-Dutch project set out to reconnoitre the field by taking stock of the available material, whether from the open sources or from the institutions, in particular the data provided by the Republican Public Prosecution Office (RPPO) and Statistical Bureau. These data – even if imperfect – are the basis for the second report of the anti-corruption policy by a selection of administrative institutions and law enforcement.[3] Given the unknown territory it proved to be a true reconnaissance full of pitfalls which we will depict while describing this endeavour.

Before we give an account of this undertaking, we will first project a broader background in the following two sections, as Serbia stands neither alone nor is unique in matters of corruption.

"If left to itself": the prying eye of the EU

When Milošević fell from power (fall 2000) Serbia returned to the fold of the 'family of European states', even if political instability rendered that process somewhat haltingly. This return entailed, among other things, working towards 'good governance': fighting corruption, alongside organised crime and money-laundering. These are not isolated phenomena, particularly if one touches political and financial interests being beyond the 'usual suspects' of the rough Serbian underworld, as described by Logonder (2008). At these higher social and economic levels one is likely to find negative and positive influential stakeholders though their roles are rarely clearly recognizable. This induced us to apply the Sisyphus metaphor: attempts to fight corruption and hidden opponent forces which push the reformers downhill.

This is not a surprising observation. Similar observations have been made about the Ukraine (Osyka, 2003), Italy (Newell, 2004), Bosnia and Herzegovina (Datzer *et al.*, 2007) and Macedonia (Karadzoski, 2009). Indeed, tackling corruption can also be compared to a surgical operation which cuts very deep into a social and political tissue. And 'surgical' social operations use to be painful to those who have more to lose than to gain from an effective anti-corruption policy, particularly when corruption has become a daily aspect of personal relationships – and a financial completion to one's income.

Thinking about those who stand to lose from fighting corruption one is tempted to think of a cynical political elite, those 'on the top of the hill', who

[3] An earlier report was published in *Temida*, 2009, nr. 4

have the leverage of rolling back or slowing down the pace of reform. A well-documented example of such a push-back leverage is the Italian prime-minister Berlusconi who from the moment he came in office succeeded in rolling back the anti-corruption policy with EU Member States devoted to fight corruption raising an eyebrow (Newell, 2004, p.213; Stille, 2007). But such an elite action would be little effective without sufficient 'co-sinners' within broader layers of the population to whom a bit of corruption means a bit of extra advantage compensating the bribes they have to pay (Datzer *et al*., 2007). As a matter of fact, if left to itself, corruption can become firmly rooted in democratic society too as long as a sufficient number of people feel that profit making out-weights victimisation. One does not need sinister oligarchs to have an enduring corrupt society.

However, "If left to itself". At present, the problem of corrupt regimes is that they are no longer left to themselves (Andvig, 2003). The present economic, socio-political interconnectedness, particularly on the European continent, does not allow anymore that states are left to themselves. Depending on their political and economic power, the states in the 'European space' have to respond to the attention shown by the European Union or the Council of Europe concerning their 'state of corruption'. Of course there are differences, as not all animals in the European 'Animal Farm' are equal. A powerful or an isolated state, such as respectively Russia or Belarus, can display a sovereign indifference to what the Council of Europe or the EU think of them. This does not apply to countries closer to or more dependent on the EU or striving for EU Member State such as the successor states of Yugoslavia. After the last Balkan war these countries, Serbia not excluded, have good reasons for not wanting to be 'left to themselves', certainly not by the EU.

This political situation implies that the present image of widespread corruption in Serbia is not just an internal problem: it also affects Serbia's relationship to the EU. Two years ago, 21 October 2008, Enlargement Commissioner Olli Rehn remarked that (corporate) corruption poses a barrier to Serbia's candidacy for the EU: "Serbia may gain EU candidate status in 2009 but must crack down on corporate corruption." This has a bearing on our Sisyphus metaphor of the Serbian anti-corruption policy, because nobody wants to be branded as a 'roller-down'. Nevertheless, next to active proponents of the anti-corruption policy others may have contrary interests. They cannot demonstrate that overtly but may simply 'sit down', which may be just as effective as 'rolling down'. Or, even more confusing, they may display alternating phases of actively helping a bit and then sitting down again,

depending on what interests is at stake.[4] And the interests at stake can be big, as is elaborated in the next section.

'Owning' the state and 'sitting down'

It is usual to depict the anti-corruption policy making in terms of a moral fight of 'good against bad'. But abstracting from such a moral setting, we are actually dealing with rational conduct concerning the stakes in (public and political) decision making. This can be formulated in a formal *decision making* model or a *principal-agent-customer* model (Van Duyne, 2001; Jager, 2004). The decision making approach focuses on the illegal exchange situation in decision making. The principal-agent model concerns the balance between delegating tasks to executive agents, who may act corruptly but controlling them against this is expensive. How to balance? In both models decision making is abused for getting or retaining illegal advantages. In the public domain the spoils are mainly 'public goods' for which there are always many competing bidders. In a (democratic) rule of law bidders should have an equal chance in profiting from such decision processes. This requires transparency in decision making: "To be seen by all". This is rational, but only at an abstract, impersonal level. At individual level the converse is true: it is rather rational that every (self-) interesting participant strives for a maximum personal gain and not for the highest degree of transparency, unless it suits him.

Therefore, transparency is not self-evident but requires a constant public vigilance for maintaining it. If this is the case in most countries with a democratic heritage, the situation in countries with a different political heritage will be much more difficult. In socialist countries like former Yugoslavia, the Socialist Party was the monopolist 'owner' of the state. With the disintegration of the Socialist Yugoslavian state, Serbia became (one of) the heir(s) of this one-party state slipping into the hands of many owners. Therefore it is of importance to discuss briefly the issue of "who owns the Serbian state" in terms of dispensing spoils.

In the literature on public policy making the phrase 'spoils system' has a negative connotation: 'looting the public fund'. While this is not unfounded as far as the effects can be concerned, it concerns an age old public reward

[4] At the time of finalising this chapter a telling example of 'rolling down the stone was demonstrated by Parliament concerning art. 82 of the Law on the Anti Corruption Agency. This article does not allow elected officials to hold another position. An amendment was considered allowing elected officials a dual position until the end of their mandate. This was withdrawn after media uproar. An independent MP submitted it again. This amendment was accepted in Parliament 28 june and not vetoed by the President Tadic, leaving an angry Anti Corruption Agency appealing to the Constitutional Court and conveying its concern to the EU, the Council of Europe and the UN.

system, certainly if the rewards do not consist of direct cash money. During the era of feudalism lords, usually short of money, rewarded their retainers with lands and titles, as did the kings of the *ancien régime* or the Turkish overlords during most of their rule. In Western Europe this reward system was wiped away by the French Revolution. The unfolding modern (democratic) states could dispense neither land nor titles, but for the ruling elite it remained natural to reward each other with positions, albeit checked by the emerging bureaucracy with its meritocratic rules and democratic control procedures.

However, when democratic control procedures are weak, also multi-party states tend to slide back to the feudal-like reward system in which the role of the lord is replaced by that of political parties. After getting in power a party rewards its retainers by dispensing them positions-with-income (or power) as if these were 'fiefs'. In addition, the parties themselves need funding too and may be dependent on funds from trade and industry or, rather, the leading businessmen. This happened in many ex-socialist countries, including Serbia, benefitting the business sector. This mutually beneficial dependency is strengthened by changeovers of the actors: businessmen entering parliament (immunity included) and politicians finding well-paid jobs in corporations which interests they used to take care of while being in public office. According to Pesić (2007) this is the 'feudal' socio-political situation in Serbia.

In Serbia the feudal spoils system is to a certain extent stable as from the many political parties four have regularly received sufficient electoral support for staying or returning to power. Each party leadership in a ruling coalition is given control over a part of the public 'reward pool' according to the number of 'their' Members of Parliament. This is implemented per public service column: the spoils in one column (for example, education or health) are all allotted to one party (Begović and Mijatovic, 2007) as long as that party is in power. Rewarded retainers of the previous election may find themselves ousted from their positions to be replaced by other beneficiaries. This is not a matter of some changes in the highest echelons of the political parties or the central administration. Actually, it is an exclusive right of political parties in a ruling coalition to make appointments in all public institutions resorting under the central authorities. With a potential of 40.000 positions this system reaches deep down into most services, down to local libraries or the headmaster of an elementary school in a small village (Pesić, 2007; p. 10). At local power level, the same occurs. Indeed, these positions are held as a modern 'fief', often irrespective of skills or qualifications.

Against this background it is fair to assume that the attitude of the political-entrepreneurial elite to anti-corruption policies will be at least ambiguous. Who 'owns' parts of the state will be more inclined to sit down than rolling the anti-corruption stone up-hill. The spread of interests with many

shady strings does not make it easy to indentify at what side the various actors stand. This is the more the case when the flow of information is interrupted by interested actors keen on covering their interests. Therefore, opaqueness prevails, also for researchers.

Searching in twilight

The ambiguity alluded above may correlate with an opaque information landscape which affects research of corruption: the management of facts and figures are likely to reflect this opaque state of affairs. Therefore, our account of taking stock of what can be observed contains due caveats: these concern accounts of policy making products and law enforcement data from the Republican Public Prosecution Office (RPPO), the Courts and the Statistical Bureau.

With single corruption cases we find ourselves soon at the anecdotal level of scandals which use to attract the media. Usually they are highly illustrative for certain situations, but at this stage of the project they are less suitable for a systematic investigation.[5] Therefore, we restrict ourselves to what can be observed as the outcomes of policy making and law enforcement.

In the first place, *policy making*. This encompasses anti-corruption legislation and putting into place institutions intended to combat corruption or to further public integrity. In the next section we will discuss the output of the institutions which proved to be far from clear and accessible, particular concerning their websites (if existing at the time) and statistics. The Board of the Conflict of Interest had some crude statistics and the Anti Corruption Council has an archive, which has to be sorted out by hand. We postponed this task to the second phase of the research project. Other institutions, like the National Ombudsman, operate more remote from the issue of corruption, though their reports were inspected for references to or complaints about the anti-corruption policy.

In the second place, the *law enforcement data*: there are crude statistics of reports, investigations, prosecutions and verdicts. Given the usually most restricted value and validity of such data in Western European countries with more sophisticated IT management, the research team realised to be most careful with processing and interpreting the data they could obtain. Indeed, a preceding project on money laundering in Serbia (Van Duyne and Donati, 2009), served as a serious warning of what could be expected. More detailed

[5] This does not imply that an analysis of publications in the media would not reveal important aspects of the corrupt situation within the county. For example, it is of importance to address the situation of awareness within a country: the size of the coverage (place, preference), the sectors and how they are covered. See Begović and Mijatovic (2007, chapter V)

methodological aspects concerning these law enforcement data sources will be elaborated in the sections about the criminal law findings.

Despite all the caveats, this first data stocktaking together with the research literature is intended to shed a first ray of light on the Serbian anti-corruption policy and law enforcement.

Findings from institution building

Whether or not under foreign pressure (and rarely without, like the slow unfolding Anti-Corruption Strategy suggests; Begović and Mijatovic, 2007, p. 204), anti-corruption institutions and regulations have been proposed, adopted, enacted and put into place, or at least some of them during the past decade. How did these fare?

As there are almost 20 of such regulations and their derivatives (laws, amendments, committees for implementation, commissions plus separate commissioners) which may create a confusing picture, we have 'sliced up' the anti-corruption bundle. We also 'sliced up' the time-path of these measures according to usual milestones: dates of the start of the proposals, discussion, acceptance, putting into place and last but not least, the output if any dates were available.

We begin with the cluster of the anti-corruption plans. Then we will look at some more specific measures and institutions, some dealing directly, others somewhat more remotely with corruption. Not all are presented in the summarizing table below.

a. The anti-corruption plan cluster

Interesting aspects of this summarised history of anti-corruption plans are the time-path, the output, the proposed responsible agents and powers of the proposed institutions or persons.

Table 1

Main anti-corruption clusters and milestones

Milestones	Anti-corruption National Strategy and Plan	Commission for the Implementation of the Action Plan and Strategy	Anti-Corruption Council	Anti-Corruption Agency
Beginning	2004: working group Law and Board on the Conflict of Interest	2006	Oct. 2001	2005
First date of discussion	May 2005: accepted by government, sent to Nat. Ass.			2006: Law on the Agency to fight corruption submitted.
Date accepted as plan or law	Accepted by Nat. Ass. in December 2005. Converted into an	Dec. 2005. March. 2006: the Government accepts its		Oct. 2008

	Action Plan.	necessity.		
Date fully implemented	Committee of the Agency to implement: March 2009	July 2006	2003	The Anti-corruption Agency operative January 2010.
Functions	The following fields to be covered: political, police and judiciary, public administration, territorial autonomy, self-government and public services, public finance, economic, participation of civil society and public in combating corruption Strategy implies three key factors: ▪ effective implementation of anticorruption law; ▪ prevention, what means elimination possibilities for corruption; ▪ Increase public conscience and education with the purpose of public support for implementation of anticorruption strategy	▪ To make Action Plan for implementation National Strategy ▪ Overseeing the implementation of Action Plan and suggest measures for its improvement ▪ To make sector's action plans for fight against corruption ▪ To make Action plan for implementation GRECO's recommendations; ▪ Overseeing the implementation of GRECO recommendations and suggest measures for their improvement	Governmental working body, not independent; Implementation of anti-corruption measures; Suggestion of new measures and oversight.	▪ overseeing the implementation of the national strategy; ▪ resolving conflicts of interest; ▪ incorporates the Board of the Conflict of Interest ▪ coordinating all the state bodies; ▪ performing functions related to the law of financing political parties; ▪ high degree of independence reporting directly to the National Assembly; ▪ programmed costs: start up € 4,4 ml; salaries € 11 ml, program € 100.000
Challenges as of 2010	Unrealistic time table, no priorities, too broad responsibilities with tasks for Ministries, no estimation of resources needed.	From January 2010, the authorities of Commission will pass on Anti-Corruption Agency.	The Council will remain in place, next to the Anti-Corruption Agency.	Integrating broad input: financial reports of more than 20.000 civil servants and processing data from incorporated Board of the Conflict of Interest.
Observations:	Action plan must be changed, many deadlines were passed.	No known output. No infrastructure or power. Composed of Heads and High-level representatives of state institutions. Rarely meetings, the last one: May 2008	Lacking funds or status to employ staff. No powers of enforcement; the relation with the government is sour.	Has 37 staff of the total of 60 envisaged. Elaborate organisational structure and Board of ACA have put in place. Constitutional issues.

As far as the *time-path* is concerned, the Serbian authorities can correctly maintain that after the fall of Milošević they have been doing every year something on corruption. Politically that was unavoidable as the Council of Europe was watching and evaluating closely.[6] Hence, either an action-plan and strategy has been suggested, discussed, accepted, or a council, committee or agency established, a law passed and/or implemented. That looks like continually 'rolling the stone uphill'. But did the stone really move? Sometimes the passing of a law or a policy plan was postponed because of the dissolution of Parliament and new elections.

[6] See: Group of States against Corruption (GRECO), which issued in 2006 an evaluation report on the Republic of Serbia.

Looking at the *output* the picture is more difficult to interpret. Much seems to have been initiated, but the tangible outcomes are difficult to find. It looks like 'rolling up a bit and sitting down'. This may be due to lack of infrastructure, budget or power of enforcement, as is the case with the Anti Corruption Council, the Commission for the Implementation of the Action Plan and Strategy or the Law on the Financing of Political Parties (Trivunović *et al*., 2007).

The Anti Corruption Council assumed a kind of watchdog function, but it has no teeth to bite. In some letters to the government it did bark a bit, which resulted in a soured relationship (Trivunović *et al*., 2007, p. 67).[7] While the response of the government to these notifications remains unknown (or there was no response at all), an ambitious Anti-Corruption Strategy and Plan was drafted.[8] The tangible effects of this strategy are difficult to measure: some of the aims were formulated too imprecise to measure any effect (Begović *et al*., 2007, p. 143).

All hopes are set on the 'big event' of 2010: the operational start of the Anti-Corruption Agency (ACA) which has taken over wide responsibilities. This had the effect of putting some anti-corruption activities 'on hold'[9], waiting what responsibilities would be transferred to this Agency.[10] For example, the Republic Board responsible for the oversight of the Law on the Prevention of Conflict of Interests has been incorporated in the ACA. Whether this will be the breakthrough is too early to determine. At the time of writing the ACA has 37 staff, partly coming from the previous Board of the Conflict of Interest.

It should be noted that this Agency will not function as a 'super department': it must mainly monitor and report on the progress of the ant-corruption strategy and create networks of cooperation.

b. Prevention of conflict of interest

Having a law to further integrity and an institution to enforce it, does not imply that there is real progress in terms of interpretable output. A lot of activities may be going on, while it still remains unclear whether things are advancing or stagnating and for what reasons. A good example is the *Law on Prevention of Conflict of Interest in Discharge of Public Office*, which came

---

[7] On 15 September, the Council reported on irregularities during the privatisation of "Jugoremedija" Pharmaceutical Factory from Zrenjanin and concluded: "that the actions of the participants in the privatization of "Jugoremedija", both of the Government and the Buyer point to possible corruption." In another letter the same day concerning the privatisation of a Veterinary institute the Council remarked "Such decisions made by the Ministry of Economy and the Agency for Privatization imply that this is a case of either fundamental ignorance of the law, which is inadmissible for the highest state authorities, or corruption." Frank language, but not pleasing to the authorities.

[8] Official Gazette of the Republic of Serbia", No. 109/05 from 9 December 2005

[9] How the transfer of its expertise and information (particularly raw data) has taken place and how it will carry out its function within the Agency is still unclear.

[10] The president of the main board of the Agency denies any absorption of the Anti-Corruption Council.

into force 20 April 2004, one of the first steps mentioned in Table 1. Naturally, knowledge of the results of the enforcement of this law is of vital importance for obtaining insight into the state of corruption. After all, this law aims at transparency concerning the financial and material backgrounds of public servants. To this end the law specifies (summarised) that civil servants covered by this law shall declare their involvement in other enterprises as well as submit a full disclosure of moveable and unmoveable possessions of themselves as well as of their spouses and next of kin. Of course, to execute this requirement, the civil servants must fill standard forms which are processed, the results of which should be enlisted on the Property Register (art. 14). According to the same article the "information on the salary and other income received [. . .] from the budget *is public*". Interested persons can evoke the Law of Free Access to the Information of Public Importance to obtain insight in the wealth and income of the obliged civil servants. No information was available whether citizens actually used this opportunity.

As can be seen in Table 2, the number of the yearly submitted reports has increased dramatically: from 6.185 in 2005 to 7.685 in 2008 for which the Board has 13 staff for processing and checking. In total 1.253 procedures have been initiated against officials who had failed to submit a report; 108 processes were started against officials performing several public functions contrary to the Law's provisions. For 2008 the Republic Board reported on 102 measures it had pronounced against public servants ('public measures'). However, these are recommendations while compliance with these measures is a responsibility of the institutions or persons involved. The Board expressed its impression that the compliance level is still low. After the elections of 2008, in the expectation of dismissals and new appointments, the level of compliance also decreased. However, this may also be due to the expected transfer of its tasks to the Anti-Corruption Agency inducing an attitude of "let us wait and see".

Of other aspects of this law there is insufficient information. For example, "The Republic Board (its steering body) shall monthly inform the public of irregularities it determines in the course of its work." Where is that relevant information? The available statistics are neither clear nor sufficiently broken down for a proper interpretation of what it purports to cover (see Table 2). Their presentation can hardly provide insight into what kinds of breaches of integrity are countered by the responsible institutions obliged to report to the Republic Board. Likewise it is unknown whether there are 'multiple sinners' over the years, leading to multiple counts. Therefore, the Board's efficacy is difficult to determine.

Table 2
Reports to the Republican Board on the Conflict of Interest and initiated procedures

Year	Submitted reports from officials	Procedure for not submitting	Confidential cautions	Public announcement of proposed measures
2005	6.185	193	8	2
2006	6.308	476	205	88
2007	6.926	180	201	76
2008	7.685	404	213	102
Total	27.104	1.253	627	268

Source: Republican Board of the Law on the Prevention of Conflict of Interest.

As remarked, the Anti-Corruption Agency (ACA) has since January 2010 taken over all the conflict of interest issues. There is no information how the important historic records have been transferred. Safeguarding that information is essential for obtaining insight into four years of addressing conflicts of interest and the coming follow-up effects by the new Agency: it forms the null-measurement from where to start and measure later performance.

c. Protection of citizens' rights

Not all efforts to roll the anti-corruption stone up-hill met with a similar fate. Institutions which demonstrate appropriate determination to pursue their tasks of protecting the citizen's rights, and the right of information are:

- the Commissioner for Information of Public Importance and Personal data protection;
- the National Ombudsman.

These are institutions which have not been tasked to fight corruption directly, but in their task performance they have to deal continuously with the effects of corruption and lack of integrity. This is because they get complaints from citizens about dishonest or malfunctioning institutions which are allegedly keeping something behind. There may be direct corruption involved, for example if a procurement has been tampered with, or the corruption can be more indirect and indicative of foul play: for example, withholding information, postponing decisions for unclear reasons, preferential treatment etc. Providing details goes beyond the framework of this paper, but some selected observations are relevant as background, others because they are in line with other observations.

An essential citizen's right is the 'right to know': from the perspective of Transparency International a central tool against corruption. The Ombudsman cannot work without it and to protect this right Serbia has the institution of *The Commissioner for Information of Public Importance and Personal Data Protection*. This institution was established in 2004, based on the Law

on Information of Public interest, enacted in the same year. Meanwhile the Commissioner has processed many complaints:

Table 3
Complaints about the right to be informed

Year	New complaints	Unsolved in previous year	Total number of Complaints	Solved
2005			693	443
2006	1.741	106	1.847	1.188
2007	1.708	659	2.367	1.539
2008	1.517	828	2.345	1.521

Source: Commissioner for Information of Public Importance[11]

Whether this is to be rated as a success, is difficult to tell. But to the government apparently too successful: spring 2009 the government sent a draft law to the National Assembly, Law on Confidentiality of Information, intended to put restrictions on the freedom of information. This would seriously affect the work of the Commissioner (but also of the Ombudsman). In an open and not very kind letter, the Commissioner protested against this draft law: it "was prepared, without any public discussion and possibility for the public, public experts before all, to make a contribution which is doubtlessly a prerequisite for such a Draft."[12]

Is the Commissioner correct in his concern of seeing another impediment in the up-hill struggle? From his perspective there are sufficient reasons of concern for marginalisation; the office of the Commissioner is seriously understaffed. This is not because of budgetary restraints but because of office space. In spite of all requests the Ministry of Finance does not allow a larger facility in which only 15 staff can be housed.

The effects of the activities of the Commissioner are also difficult to determine. While the Commissioner's decisions are final, he has no power to enforce them. Whether decisions have any effect outside the Commissioner's office is not known. There is no information feedback to that effect, which makes it difficult to assess the rate of compliance: how often did the authorities *not* comply with the Commissioner's decision? We think this of vital importance as this reflects the real will of the authorities to comply with its own rules, which is more telling than any document on anti-corruption strategy.

Does the government has an 'attitude problem' with communication? If that is the case, it is most unambiguously formulated in the Ombudsman 2008 report. In the introduction the rapporteur was so frank as to point at a characteristic concerning a

---

[11] Reports available in Serbian, at:
http://www.poverenik.org.rs/index.php/sr/doc/izvestaji

[12] UNDP website, Public announcement, 05-08-2009

> “tendency of the executive not to react to the needs and problems in exercising human rights through more efficient application of current laws [. . .] but with a propensity to establish new institutions on paper, frequently by poor ‘copy/paste’ method. Failure to enforce current legislation cannot be continuously justified with its imperfection and the need to enact new laws.”

This is amplified by the observation that

> “a number of citizens are faced with an absurd situation – non-enforcement of judicial decisions by administrative authorities. In a high number of cases citizens complain of slow proceedings, stating as a rule corruption, disorganisation and idleness.”[13]

The ombudsman sent a clear message: all the councils, commissions, strategies, action plans or agencies deployed in the fight against corruption have not made the slightest impression on the Serbian population thus far. Malgovernance, the breeding ground of corruption, is experienced as still being widespread.[14] Even if this may be considered as merely a ‘subjective’ impression of the population, it has to be countered by a more visible output of law enforcement.

Before crossing over to the criminal law aspects of corruption, it is appropriate to come to an intermediate stock taking. Surveying the past five years it remains difficult to obtain a clear picture of the anti-corruption policy, or rather, its implementation. To reiterate our metaphor: some policy makers and institutions are “rolling the stone up-hill”. To which must be added: without adequate facilities, small pay and little help. Others sit still after some ritual stone pushing. Overall, hard evidence is difficult to obtain: if there is any success, it is difficult to know due to lack of precise information. In other words, after five years of anti-corruption policy making opacity still prevails.

The criminal law picture

When it comes to empirical knowledge of corruption – based on proven ‘hard facts’ – it appears that systematic research about its extent and nature is rare. Most research is based on the *perception* of the citizens. In some research projects, such as carried out by Begović (2004) and Datzer *et al.*,

---

[13] Republic of Serbia, Protector of Citizens, *Report, 2008*, Beograd, 13 March, 2009. Introductory address of Saša Janković, p 6 and 14.

[14] According to Transparency International in 2008 Serbia’s country score as measured by the Corruption Perception Index is 3,4, shared by Albania and Montenegro as far as the Balkans is concerned. It also has Senegal, India and Madagascar at its same ranking. www.transparency.org. Consulted 8-9-2009

(2007), and the Transparency International survey 2009[15], respondents have been interviewed about their *own experience*. For example: “When did you pay your last bribe?” As a matter of fact, police and criminal law data are scarce. This is not unique for Serbia: researching the prevalence of corruption is difficult in any jurisdiction.[16] Nevertheless, it is telling that in the survey volume of the state of corruption Europe (Bull and Newell, 2003) the chapter on corruption in ‘Central and Eastern Europe’ does not even mention Serbia (Holmes, 2003).

Apart from definitional problems, corruption is one of the most underreported offences, as it is usually a consensual crime with at least two complicit and often also with two satisfied criminal actors.[17] And even if a complaint has been filed, it is most uncertain whether the police will react or the prosecutor will prosecute. Hence, far from reflecting an underlying state of corruption, law enforcement data tell rather something of the agencies’ activities and even then it is a story with many guesses. This does not imply that we should not attempt to tell this story.

Enabling us to research and tell this ‘story’ the Republican Prosecutor allowed the team to study and analyse the criminal cases handled by the Special Anti-Corruption Unit of the Public Prosecution Office.

Entering a brand new research field requires some scouting of data of which the value in terms of reliability and validity is unknown. Therefore, in the next section we will first discuss the nature of the information sources, which did not only consist of Public Prosecution data, but also of data from the Courts and the National Statistical Bureau. There proved to be no unified penal law data management: databases which should match did not do so. This entails that questions concerning reliability and validity have to be addressed while comparing the information sources. To the extent that the outcomes of the different sources do not match, we will have difficulties in drafting an integrated ‘corruption picture’.

Data sources

The first data source consists of the data which the Republican Public Prosecution Office allowed us to inspect. These encompassed annual statistics, (lists of) ‘corruption’ cases sent by the Municipal and Districts Prosecution Offices to the Special Anti-corruption Department. However, it soon became

[15] Transparency CPI 2009 and Transparency International Global Corruption Barometer. With score of 20 % Serbia towered above all the other Yugoslavian successor states.

[16] For the comparable situation of official corruption statistics in the neighbouring Bosnia and Herzegovina, Maljević *et al*., (2006; part III)

[17] Of course, there is no satisfaction if the corruption amounts to extortion in cases when the citizen has a right to a certain service, but is pressurised to pay for it or for its timely delivery.

clear that these data had to be complemented by other sources, for which reason the research team addressed the Statistical Bureau of Serbia. In addition, at the Belgrade District Court a number of finalised cases became available and have been studied too.

a. The Republican Public Prosecution Office (RPPO)

1. The RPPO **statistical database** concerning prosecutions and convictions is based on forms sent by the Prosecution Offices to the Republican Prosecutor's Office. It covers the years 2003-2006; for each year a separate report was issued. It contains penal law categories concerning (a) criminal offences against the economy; (b) crime against official duty and (c) other criminal offences related to a breach of integrity. These are broad categories containing other subgroups the relevance of which vary. The offences taking/offering bribes and illegal mediation, are of course of direct relevance. Of other categories the relevance is less certain, like 'abuse of office' or 'fraud at service'. Whether the latter categories are of real relevance is difficult to determine: nothing is known about a potentially relevant corrupt *conduct*. Fraud can be committed by a single person or by a trespasser paying off a supervisor or a controller. The same concerns 'abuse of office' or 'abuse of authorisation in the economy'.

It is important to bear in mind that in the RPPO database the *counting unit* is the criminal *case*, or more precisely, 'reports' submitted. Individual defendants are counted, but only as 'number of accused', 'position of the accused in the damaged company', 'found guilty/not guilty' and sentences, all differentiated per crime-category. How many suspected persons occur in the *incoming* reports is not mentioned. Therefore a horizontal comparison of the number of incoming reports with the subsequent procedural phases is not possible: e.g. the rejected reports, charged, convicted and punished persons. Basically, all reported/accused persons are aggregated or 'encapsulated' within the separate columns between which there is no statistical connection in terms of an identifiable counting unit.

In essence the RPPO database is an *annual* management instrument. It tallies up the decision steps in the case handling plus a limited number of case variables and characteristics of the accused. A comparison between the years is only possible for cases/criminal acts overflowing from the previous year which together with the pending cases indicate the beginning annual case load (= 100 %). The database is inflexible in the sense that it does not allow an independent breakdown based on identified counting units: what is not mentioned in the columns cannot be known. This implies that it is only suitable for a first description, but not suitable for proper statistical analysis.

2. Corruption cases for the years 2007 and 2008. As the Republican Prosecutor was uncertain about the volume of corruption cases at the Municipal and District Prosecution Offices he ordered these offices to submit corruption cases from 2007 onwards. 50 offices complied by sending in cases. The reported cases have been inserted into an excel file, to be discussed later.

b. The Statistical Bureau

The Statistical Bureau (SB) collects data from the Republican Public Prosecution Offices and the Courts. The reporting starts with the RPPO: When at this level a decision has been made, a form is sent to the SB. This happens in case of (a) rejection of the criminal report (no procedure is initiated); (b) a request to the Investigative Judge to start an investigation (the results of which are sent back to the prosecutor); or (c) indictment without investigation.

When the cases are brought to Court they get a process number. When the case has been finalised a form is filled by the Court office and sent to the SB. An important change is made as this form concerns *single defendants, not cases*. The defendant numbers at the SB and the Courts must correspond: with defendant numbers one can find the relevant criminal files at the Courts.

The available annual SB-database output is an aggregated one, based on individual defendants/convicted persons. Its format consists of pre-fixed tables with the offences as the main variables broken down by procedural steps, a time indication and a few offender characteristics like male/female. Statistics on the relevant subjects were available until 2005. After the change of the criminal law 2006, new statistics have been made available.[18] These will be analysed in the next phase of research.

c. The Beograd District Court

In addition to these aggregate databases, the team was enabled to study *12 finalised cases* at the district Court of Beograd. The dates of the reports range from 1995 to 2005. They were sentenced between 2002 and 2007. During a meeting it has been mentioned that more cases would be made available, but during the reporting phase these have not been produced thus far.

The databases of the Statistical Bureau nor that of the RPPO were available in a version suitable for automated processing. Further data processing had

[18] It is not yet clear how this gap will be bridged. The authors have not been informed of any conversion of transit from the statistics under the old to the new law. The execution of this task is still 'pending'.

to be done by hand. Looking 'behind' the available paper material in terms of studying and processing raw data was impossible.

Main findings

a. Statistical Bureau and Prosecutor data

As remarked before, it must not be taken for granted that the databases of the Statistical Bureau and the RPPO reflect reality in the same way. As a matter of fact, there appeared to be unexplainable, but systematic differences between the statistical output of two sources. They may differ as their (unknown) data processing may different, though no explanation could be obtained. Table 4 presents the differences per relevant crime category for the years 2004 and 2005.

Table 4
Comparison Statistical Bureau (SB) and Republican Public Prosecution Office (RPPO) 2004-2005: reports and charges

	2004				2005			
	Rejected reports		Charged persons		Rejected reports		Charged persons	
Offence	**SB**	**RPPO**	**SB**	**RPPO**	**SB**	**RPPO**	**SB**	**RPPO**
Abuse off.	1.477	2.190	1.283	1.766	1.414	2.153	976	1.585
Embezz.	105	152	462	556	123	177	440	527
Unconsc. Service	165	191	85	62	145	234	139	43
Fraud	21	25	9	19	5	13	7	9
False. doc	88	1	264	1	125	8	216	0
Crim.off. Civ.serv.	14	18	43	59	18	22	39	78
Taking bribe	20	15	41	50	28	39	49	83
Giving bribe	8	26	24	34	12	35	40	77
Other off.	621	258	47	62	714	382	58	84
Total	2519	2876	2258	2609	2572	3063	1964	2486
Difference	357		351		491		522	

The comparison of the outcomes of the two data sources demonstrates a systematic difference: the RPPO has systematically higher numbers with some exceptions. One difference is really remarkable: the PPPO had no charges for fraudulent documents in 2005 against 216 for the SB and only one such charge in 2004.

The difference cannot be explained from the 'case' (RPPO) versus 'perpetrator' (SB) registration, because then the SB would have higher figures assuming that a certain portion of the 'cases' have more suspects. Moreover, that difference should disappear when we compare the categories 'charged *persons*', which should be the same.

When we look at the number of convictions we also find differences between the figures of the SB and those of the RPPO, even though both receive data from the same source.

Table 5
Comparison of the Statistical Bureau and the Republican Public Prosecution Office: 2004-2005: convictions

	Convictions 2004		Convictions 2005	
Offence categories	**SB**	**RPPO**	**SB**	**RPPO**
Abuse office	461	691	459	687
Embezzlement	314	370	331	398
Unconsc. Service	28	13	36	20
Fraud in service	21	8	16	1
False document	215	0	172	0
Crim.off. Civil. serv.	64	43	66	43
Taking bribe	26	43	22	46
Giving bribe	32	24	34	36
Other offences	9	52	7	63
Total	1170	1244	1143	1294
Difference	74		151	

For both years the PPO reports more convictions than the SB, though the differences are less striking – with the exception of 'falsification of official documents' for which the PPO reports no convictions at all.

As in research the validity of databases has to be assessed, we have to conclude that both do not match on any crime category or procedural decision variable. Without further in-depth research the validity of both official Serbian databases on corruption remains indeterminable. But apart from this validity question, in both databases the figures for giving or taking bribes appear to be very low. Even if we take the highest numbers from either database in each year the percentage remains about 3.

b. Data from the Public Prosecution Office

The third information source is the Special anti-corruption Unit of the Republican Public Prosecution Office. In 2007, this anti-corruption department decided to monitor corruption cases for which reason it informed all local Prosecutor's Offices about their obligation to notify this Department of all relevant cases covered by the relevant articles. In principle this should constitute a full database of (potential) corruption cases from 2007 onwards. The results of the compliance to this regulation until August 2008 by 138 municipal and 30 prosecution offices at the District Courts are presented in Table 6.

The table raises doubts as to the compliance to this regulation: only 50 of the 138 municipal and 30 districts offices sent in reports (30 %). Assuming that a proper compliance would reflect the size of the Municipal and District Courts in terms of the number of reports, the outcomes do not correspond to this expectation. The largest district like Beograd submitted only 37 reports in 2007 and 25 in 2008: this represents respectively 6% and 8% of the returned reports. This contrasts with the much smaller provincial district Jagodina, which in 2007 submitted 39 reports: 9%. This score did not last, however, because the following year Jagodina's share sunk back to 4%. Now the small district Vranje scored highest: 13% with 42 reports. Only Kraljevo (two times 39 reports) and Pirot (41 and 31 reports) were somewhat steady in their reporting. However, steady of what? Statistically we do not know what the 100% could be: there was no cross-referencing with the Statistical Bureau.

Table 6
Corruption reports sent to the Republican Public Prosecution Office 2007-2008

District/ municipality	**2007**	**2008** (till August)	**District/ municipality**	**2007**	**2008** (till August)
Beograd	37	25	Novi Pazar	1	0
B.Basta	3	2	Novi Sad	2	0
B. Crkva	8	1	Obrenovac	7	0
Bogatic	11	1	Odzaci	1	2
Boljevac	0	7	Pancevo	0	4
Bor	0	13	Paracin	11	20
B.Topola	8	2	Pirot	43	31
Cacak	9	9	Pozarevac	35	4
Cuprija	1	0	Prijepolje	3	10
Despotovac	4	1	Prokuplje	18	8
Ivanjica	6	2	Raska	11	14
Jagodina	51	13	Sabac	42	2
Kladovo	9	0	Smederevo	7	20
Koceljevo	2	0	S.Mitrovica	36	5
Kragujevac	0	1	Sokobanja	6	3
Kraljevo	39	39	Sombor	1	0
Krusevac	9	3	Subotica	5	0
Kucevo	4	2	Tutin	1	2
Kursumlija	1	0	Uzice	13	1
Lajkovac	3	0	Velika plana	0	0
Lazarevac	12	1	Vladimirci	3	4
Leskovac	3	8	Vranje	16	42
Loznica	14	2	Zajecar	54	6
Majdanpek	5	0	Zrenjanin	6	0
Negotin	8	5			
Nis	4	0	**Total**	573	313

The RPPO did notice some underreporting, indeed, and therefore stimulated the prosecution offices to report broadly. This did not improve compliance,

but resulted in over-reporting of cases with little substantial relevance to the corruption issue. This is demonstrated if we break down the input by offence. If we add the two years (2007 + 2008 till August) and look at the most frequently reported offence categories, we obtain the following picture:

Table 7
Crime categories reported 2007-2008

	Abuse of office	**Abuse of auth. Economy**	**Bribe taking**	**Bribe giving**	**Judge & PP corruption**	**other**	**Total**
2007	278	32	25	8	136	94	573
2008	160	20	22	4	57	50	313
Total	438	52	47	12	193	144	886
%	49,4	5,9	5,3	1,4	21,8	16,3	100

Almost half the reports concerns abuse of office, while the content analysis of many reports hardly reveals corruption (content analysis still in progress). A second category which scores highly consists of complaints about alleged corruption/abuse of office at the *Courts*. However, this is mainly accounted for by the reports of *five* offices, from which 153 of these 193 complaints originated (Jagodina, Pozarevac, Sabac, S.Mitrovica, Zajecar). The suggested explanation is that disgruntled litigants and/or their attorneys almost blindly file such complaints. This could not be verified. Whether (and why) this phenomenon is limited to just a few regions is difficult to tell in view of the irregular compliance.

As far as 'hard-core' bribery is concerned – giving and taking bribes – these categories are hardly represented. Are there so few complaints about bribery? We will address this question later.

It is difficult to attach any specific meaning to these statistics. The compliance rate is low, also due to the fact that non-compliance is not sanctioned. The prosecutors are urged to report and some offices do so abundantly, but if other fail to do so there are no consequences. Perhaps these figures are more interesting for what they fail to tell: a low frequency of corruption cases entering the judicial system despite widespread complaints. In addition, this set of cases contained none of the high profile corruption cases high-lighted in the media: e.g. no politically exposed persons were mentioned.[19]

Does this also apply to the Special Prosecutor's Office for Organised Crime (SPO)? Given the likely connection of organised crime and corruption, an input from the SPO should be expected. However, it appeared that the Anti-corruption Department of the RPPO has no informative connections

[19] It may be that some of the cases with politically exposed persons are processed by the Special Court for Organised crime. But as these cases are not finalised yet, we could not access the criminal files.

with the SPO and no reports have been forwarded. Nevertheless, the SPO indicted 115 defendants for abuse of office, while in 2006, it indicted 16 defendants of bribery (15 taking and 1 giving a bribe). All cases are still pending.

During the process of information gathering and analysis the team could not but conclude that an orderly and disciplined data management in the Anti-corruption Department is lacking. In general, it took the team a disproportional amount of time (failed appointments and inconclusive meetings), to move forward, reflecting anything but a sense of urgency to get insight into the own information base on corruption.

c. The Beograd District Court

The team also analysed 12 criminal files of finalised corruption cases at the District Court of Beograd. It goes without saying that this was not a representative sample: it was just what the Court had in stock at the time and subsequently analysed by the team as a try-out for further investigation. The following table summarises the main findings.

Table 8
Finalised cases at the Beograd District Court

No/year report		Length proc. yr	(not) guilty	No of-fenders	Sen-tence	Proba-tion	Nature of facts	Profits in dinars
1	1995	10	guilty	1	1 yr		Embezzlement	5.000.000
2	1999	7,75	not guilty	6			Embezzlement	5.000.000
3	2000	7,25	not guilty	2			false doc	12.700
4	2001	3,5	guilty	1	6 m	2 yr	demand false rep.	6.000
5	2002	3,25	not guilty	1			demand goods	2.100.000
6	2002	1,25	guilty	1	10 m	3 yr	demand surgery	36.000
7	2002	4,58	guilty	1	2 yr	5 yr	demand tax off.	40.000
8	2002	4,08	guilty	1	10 m	4 yr	demand smuggler	24.000
9	2002	2,16	not guilty	2			demand transp ill	unknown
10	2003	0,75	guilty	1	2 yr		demand goods	50.000
11	2004	2,17	guilty	1	6 m	3 yr	demand delivery	2.000
12	2005	1,33	guilty	1	8 m	2 yr	demand traff. off.	500

Far from representing a picture of the actual state of affairs in the Beograd district, the reported cases covered nevertheless a whole decade, during which after years of procedures they struggled to a final verdict. The average process time was well over 4 years (mean, 4,14; median 3,33).

Four cases ended in a not-guilty verdict. In case 5, against a police inspector, this happened after all the 12 witnesses withdrew their statements in appeal: their statements “would have been obtained under pressure”. The other two police officers did not fare so well: in cases 7 and 12 the extortion of a simple traffic offender (for 500 dinar) and a smuggler (for a larger fee of

24.000 dinars) ended in a prison sentence of 8 and 10 months prison, but on probation. This sentence modality – probation – appeared to be the most usual punishment: only two custodial sentences were imposed unconditionally. We will return to the issue of sentencing in a later section.

As was the case with the three police officers, most cases concern civil servants demanding or extorting money or goods for services, or neglecting their duty, like the tax officer towards his tax evader. Medical staff also tried to enrich themselves at the expense of the needy patients: refusal of surgery or transport, unless . . . (cases 6 and 9).

What kind of perpetrators do we meet here? While realising the danger of undue generalisation from a small sample, the offender picture is that of 'Joe Average': 'married with children', no criminal record and higher education (high school and beyond). And of course, a valuable job, which is the very basis for extorting fellow citizens. Though the criminal files are too few and contain insufficient information to make 'reasoned speculations', the image of the better-off profiting from those who need their services urges itself.

Trends, and what they do (not) tell

The findings thus far are sobering as far as the reliability and validity are concerned: at best the validity is indeterminable. None of the databases match with each other and none can be used as a useful approximation of the corruption situation or a corresponding criminal policy in Serbia. Does this observation entail that the figures of either the SB, the RPPO or the reports from the prosecution offices do not reflect any reality? That depends with what 'reality' one wants to compare them: the 'reality of corruption out-there' or the 'reality of decision making' within law enforcement. For both it may be useful to look at some trend-lines first and compare them with other data.

In the first place we have a rather long nine years time series of the SB concerning the broad category 'crime against official duty', as represented in Table 6 and figure 1. On the one hand, we have the trend of the reporting to the authorities, which – with hesitations – may be interpreted as the citizens' readiness to file a complaint. On the other hand, we have the penal law system response. The two do not appear to correlate: whatever the variation in the reporting rate, the law enforcement system continues to process within comparatively narrow margins.

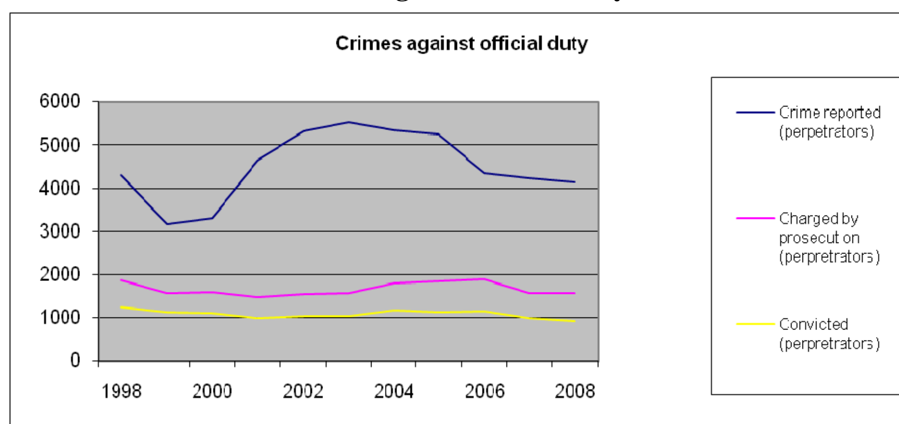
Table 9
Reports, charges and convictions of offenders against official duty, 1998-2006

Crime against official duty	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Mean
Perpetrators reported	4.303	3.169	3.312	4.640	5.312	5.535	5.356	5.253	4.343	4.244	4.140	4.509
Perpetrators charged	1.860	1.566	1.583	1.473	1.553	1.566	1.796	1.839	1.896	1.564	1.578	1.661
Convicted	1.242	1.133	1.101	983	1.031	1.038	1.170	1.126	1.147	994	913	1.079
%	%	%	%	%	%	%	%	%	%	%	%	%
Charged/reported	43	49	48	32	29	28	33	35	44	37	38	37
Convicted/charged	67	72	70	67	66	66	65	61	60	64	58	65
Convicted/reported	29	36	33	21	21	19	22	21	26	23	22	24

Source: Statistical Yearbook of Serbia, 2008: p. 404-405

Looking at the reporting line one observes a clear 'bump' upwards after the Milošević era, which sinks down again after 2004. The line for the charges moves slightly in opposite direction, while the figures of the RPPO and the Courts hardly vary around their arithmetic average. Of course, these figures cannot be interpreted without speculations, but it is fair to hypothesize that the reporting of crime may have been discouraged by lack of response of the judicial system. Already before the decline of reporting in 2004 the ratio of reports versus charges and conviction had decreased sharply. To what extent is this interaction between reporting informants and the judicial system a plausible hypothesis?

Figure 1
Trends in reporting, charges and convictions of crime against official duty



When we project the findings concerning bribery – giving and asking or receiving bribes – one observes a dismal proportion, irrespective whether one takes the figures of the RPPO or the SB for real. According to the SB on

average 90 cases of bribe taking/asking and 48 bribe giving are reported (2003-2005). This dwindles into insignificance compared to the total reported crimes against official duty.

Maybe the low reporting frequency in specific categories is due to the fact that the category *abuse of office* 'absorbs' these specific corruption modalities, which are then hidden in the large reporting increase after 2001. That uncertainty has to be investigated. But this is not reflected in the stable trends of charges and convictions over the years (Figure 1).

To find more tokens of corruption the team sifted through the statistics of other crime categories. For the category '*corruption in* [. . .] ' we have the figures of only two years, represented in the following table.

Table 10
Reports, charges and convictions of various corruption categories 2003-2004

	2003			2004		
	Report	**Charge**	**Conv.**	**Report**	**Charge**	**Conv.**
corruption in state administration	18	1	1	17	1	1
Unintentional free use of state funds	1	0	0	4	0	0
corruption in public procurement	0	0	0	12	0	0
corruption in privatisation operations	0	0	0	0	0	0
corruption in administration of justice	11	0	0	12	0	0
corruption in health-care	13	0	0	5	0	0
Corruption in education system	2	0	0	1	4	4

Source: Statistical Yearbook of Serbia, 2005

It is obvious that these unimpressive figures hardly square with the various corruption perception surveys which have been published during the last years, in particular concerning customs, health care, police and the judicial system. Indeed, the low reporting rate and the subsequently even lower frequencies (or absence) of charges and convictions do not tell us much about corruption in society, but rather about the relevant criminal policy implementation.

If we measure criminal policy making by its outcomes, the present data and the long term 'flat' trends at the prosecution offices and the Courts do not allow any identification of a specific corruption policy. Rather, the picture presented here confirms another story, mentioned in the UNDP report: a "witnesses' lack of readiness to cooperate fully with the police".[20] Clearly, for very good reasons.

[20] UNDP Serbia, *The Fight Against Corruption in Serbia: An Institutional Framework Overview*, April 2008, pp. 22,

The citizen would feel reinforced in this attitude if he would be informed of the length of the procedures in these cases. According to the SB statistics of 2003 and 2004 the procedure of respectively 77 % and 80 % of the cases lasted 'over one year'. However, the SB way of presenting the processing time by a simple month classification under one year and the rest 'over one year' does no justice to the actual processing times. The newest SB data for 2007, which we are in the process of analysing, provides the proper measures: mean and median. In this database the process phases are properly identified so that they allow some comparison of these central tendencies. The preliminary analysis demonstrates again very long processing times (minimum and maximum were not provided):

- *Total time* (report – verdict): mean = 3,8 years; median = 3,3 years
- *Trial time* (indictment – verdict): mean = 2,7 years; median = 2,1 years

The range between and within the districts is enormous. For the *total* processing time the range is from a median of 443 day in the district of Zrenjanin to a median of 1938 days in the district of Sremska Mitrovica. This spread is not only due to the pre-trial investigation time: the variation of the median time needed for court processing is equally broad: from 175 days in Zrenjanin (55 cases) to 1092 days in Pirot (29 cases). There appears to be little correlation between the processing time and the number of corruption cases. This reinforces the image of lack of policy in which there is little priority or system in handling corruption cases timely.

From the perspective of measuring policy making by its outcomes sentencing is an important aspect. When after diligent reporting and police investigation cases keep dragging on for years, one cannot expect that witnesses will step forward again, while the police will direct its detective capacity to other priorities. If in addition, the sentences meted out are also lenient, the impression will thrust itself on the public that "they can get away with it". Therefore we inspected the available sentencing data. Though sentencing analysis requires a longer time series we had only the years 2004 and 2005. This does not allow a temporal comparison. To obtain a larger total and to simplify the presentation we put the two years together and calculated the relative frequencies of sentencing modalities and severity.

Interpreting sentencing data is a delicate matter as one cannot deduce causal connections between determining variables and the sentencing outcome, certainly not from the aggregate tables of the SB. Nevertheless, such aggregate statistics do convey a general picture of sentencing.

When we first look at the main categories in Table 11, conditional and unconditional punishments, we observe that most offenders, 70 %, are pun-

---

Available at: http://europeandcis.undp.org/anticorruption/show/05788DCA-F203-1EE9-B164C824E7DA18D7

ished with a conditional sentence. 'Unconscientious services' ('criminal dereliction of duty') and taking bribes appear to be punished most often with unconditional sentences. But while unconscientious services are most often punished with fines, those convicted for taking bribes have a high chance of finding themselves in prison: 77 %. In two cases prison terms of 2-10 years were imposed. Granted, with a national conviction score of 48 over *two* years this may not look as an impressive deterrence. The counterpart – giving a bribe – seems to be dealt with more leniently: 57 % conditional sentence and most prison terms below six months.

Table 11

Sentencing of various crime against official duty: 2004-2005

	< 30 days %	1-6 Month %	6-12 month %	1-2 year %	2-5 year %	5-10 year %	Fine %	Condi. Prison %	Condi. fine %	Sen-tences= 100%
Abuse office	0,4	20,7	4,5	1,2	0,7	0	0	72,1	0,4	921
Embezzlement	0,6	20,2	6,2	1,9	0,9	0	0	69,6	0,6	644
Unconsc. Service	0	10,9	23,4	9,3	10,9	0	20,3	25,0	0	64
Fraud in service	5,3	21,1	0	0	0	0	0	73,7	0	38
False document	0,5	13,7	1,6	0,3	0	0	0	81,7	2,3	387
Crim.off.Civ.serv.	0,8	20,8	2,3	0	0,8	0	0	70,8	4,6	130
Taking bribe	0	37,5	25,0	10,4	2,1	2,1	0	22,9	0	48
Giving bribe	1,5	36,9	3,1	0	0	0	1,5	56,9	0	65
Total %	0,6	19,9	5,2	1,5	0,9	0,04	0,6	70,2	0,1	2297

Source: Statistical Bureau, 2004-2005

As follows from the previous sections, it is impossible to deduce conclusions concerning anti-corruption prosecution and sentencing *policy*, if there is anything like that. Apart from offence/offender variables, which determine mainly the seriousness of the case, sentencing may be strongly influenced by the variable 'length of procedure'. And with 77-80 % of the procedures lasting more than one year, the likelihood that unconditional prison sentences will be imposed diminishes too. It is a plausible hypothesis that this time variable mainly reflects the (lack of) 'sense of urgency' in this field, which influences again the (declining) reporting rate: see Table 9 and figure 1.

Even if this hypothesis is plausible, to substantiate it we must get deeper into the empirical material. For this we are dependent on the information holders: the SB and the Courts which will be dealt with in the follow-up project.

Present and future: Sisyphus wrapped in clouds or reaching the top?

Surveying the bits and pieces of evidence of the anti-corruption policy in Serbia the picture is that of a silhouette and, returning to our initial metaphor, the silhouette of Sisyphus, but wrapped in clouds. This cloudy image concerns the efforts of the Serbian authorities to fight corruption with specific laws and institutions as well as the outcomes of the efforts of the law enforcement agencies. It proved difficult to assess what and how the administrative institutions as well as the RPPO and Courts process their 'corruption input' to a final output. Neither the uncertainty of the input and processing nor the meagre output convince as a reflexion of a highly prioritised anti-corruption policy of the previous years.

At the criminal law side we started with the uncertainty concerning the nature and quantity of the input. There are differences between the figures of the RPPO and the Statistical Bureau. However, this does not only pertain to corruption cases: this concerns a broader, systematic statistical 'inconvenience'. When Van Duyne and Donati (2008) did research on money laundering in Serbia, they ran into the same problem of unsatisfactory data management. Of course, flaws within such a system are not mended overnight, but even the first step was not visible: showing a minimum of interest or even some curiosity.[21] Naturally, we must take into account that database (in)compatibilities are complex and designing a system for point-to-point comparisons is time-consuming. But given the seriousness of this social problem one would expect more awareness and an accompanying attempt to lift the veils shrouding the anti-corruption policy. Apart from the support by the Republican Public Prosecution Office and the Ministry of Interior, no initiatives to lift these veils have been observed.

The analysis of the criminal database revealed three aspects which have to be researched in-depth.

- The *processing time* in view of the many old cases in our database. But such findings must be projected against the general processing times in the PPOs and the Courts; see the observation of the Ombudsman concerning general lack of 'reasonable time' to see one's case finalized.
- The *sentencing.* Of course, we cannot conclude anything about the severity of the sentencing, which is an evaluative task. Sentencing must be projected against a timeline and the general sentencing level in Serbia and against the third aspect;

[21] Although this is regrettable for the Serbian criminal data management, it is not unique in this regard. Surveying research and data about organised crime and money-laundering in most EU jurisdictions the data management proved to be ramshackle too (Van Duyne, 2007). The chapter of Verhage in this volume provides an account of the poor data management in Belgium concerning money laundering.

- The *nature* and the *seriousness* of the cases. We have the impression that the database does not contain really serious cases, or the kinds of corruption of which the common people complain: corruption in the law enforcement agencies, top officials and health care. This bias towards ‘small fry’ may be reflected in the seemingly leniency of the sentencing, also influenced by the amount of time which has passed since the offence.

There may be reasons for this state of affairs, but these have to be researched. In *Politika*, 7-5-2009, the spokesperson Ivana Ramic referred to the 595 suspects awaiting trial at the Belgrade Court for abuse of public function, among them three former managers of the football club *Crvena Zvezda (Red Star)*. Ramic hinted at the time consuming complexity of the cases, particularly if financial constructions are involved and also at the increased workload of the Belgrade Court. These assertions have to be verified. They underline that to obtain clarity the (follow-up) research must be extended to a basic file analysis of a sufficiently large number of cases, in addition to a precise statistical analysis. If Ramic’ claims are correct, the research questions are ten: what is the nature of the case input in terms of seriousness and complexity, what is the time variable and what is the sentencing output? This broadening and in-depth analysis will shed light on correlation between the nature of the corruption offences, the (local) sentencing policy and the time constraint. To achieve this, the Courts as well as the Statistical Bureau will have to open up.

At this point we must again stress the limitations of this pioneering phase of the research project: we could analyse only as much as the RPPO and the Courts allowed us to see, and these were finalised cases, which as we have seen, could be very old. Pending cases remained barred for us, even if there were no investigative interests at stake or not the slightest threat to the privacy of the defendants: scientific research must aggregate and anonymise such that no connections between the analysis and concrete (legal) persons can be made. These research principles found little response.

It is a generally correct observation that the penal law system functions as a kind of sag wagon and that the real gain is to be made by preventing corruption. This has been the philosophy behind the many commissions and agencies which have been established after 2002. Even if it is difficult to assess exactly their functioning (the all pervasive ‘clouds’), it became clear that most were meagrely equipped and maybe were not even really wanted. Did the authorities ‘sit down’ again? It is most uncertain that the authorities complied with the many decisions or recommendations they received from the organs the government installed itself, which annulled their preventive value. Materially, the government did not display a favourable attitude either. Until the present, the administrative institutions’ effectiveness appeared

to be not only hampered by lack of staff and infrastructure, but also because the enforcement of their decisions depended on the authorities under their supervision. This implies that the preventive effects of these institutions are low or indeterminable and that the criminal law sag wagon is still badly needed. This underlines the need to make that sag wagon workable. One of the pre-conditions is a proper information management.

It is assumed that the Anti-Corruption Agency will mend much of these defects. As a matter of fact, the coming into force of this body in January 2010 should mean a watershed. Not only because it aims to make the old Law on the Conflict of Interests, which it absorbs, workable, but also because it has two important provisions: (a) it has a criminal law 'tail' in cases of non-compliance (section X Penal Provisions) containing stiff penalties and (b) it solemnly declares to undo the defects of transparency highlighted in this report.

Art 66 of the new law declares:

> "The Agency shall organise research on the state of corruption and combating corruption, monitor and analyze statistical data, carry out other analyses and research and suggest changes in the procedure for collection and processing of statistical data that are relevant for monitoring of the state of corruption."

This is a firm endorsement of the principles of the present research project, or preferably, its intended continuation and cooperation with the new agency. ACA has established a unit for research, though it is still too early to predict future developments: the organisation is still in the state of construction. It should be remarked that the surrounding research community in Serbia is weak: academic research output is extremely scarce which could make ACA's research unit an isolated one.

Thus far, to a large extent the anti-corruption legislation has been 'externally motivated', mainly due to pressure from the EU and the Council of Europe. Without *internal* motivation it is to be feared that the anti-corruption policy proclaimed during election times fades away as soon as the ballot has been cast. But if there is an internal motivation it must be sustained by a feedback of outcomes: facts and figures. The present laws may be fine, but they are like cooking recipes: they may look good and may have been written with the best intentions, but "the truth of the pudding is in the eating". That is an outcome that has to be seen and knowable. Then the Sisyphus metaphor will no longer be relevant.

Literature

Andvig, J.C., International corruption. In: Bull, M.J. and J.L. Newell (eds.), *Corruption in contemporary politics*. New York, Palgrave-Macmillan, 2003

Begović, B., *Corruption in judiciary*. Beograd, Center for Liberal Democratic Studies, 2004

Begović, B. and Mijatović, B. (eds), *Corruption in Serbia; five years later*. Beograd, Center for Liberal Democratic Studies, 2007

Bull, M.J. and J.L. Newell (eds.), *Corruption in contemporary politics*. New York, Palgrave-Macmillan, 2003

Datzer D., A. Maljevic, M. Budimlic, E. Muratbegovic, Police Corruption through Eyes of Bribers: the Ambivalence of Sinners. In: P.C. van Duyne, A. Maljevic, M. van Dijck, K. von Lampe and J. Harvey (eds.), *Crime business and crime money in Europe. The dirty linen of illicit enterprise*. Nijmegen, Wolf Legal Publishers, 2007

Duyne, P.C. van, Will 'Caligula go transparent?' Corruption in acts and attitude. *Forum on Crime and Society*, 2001, vol. 1, *nr. 2*, 73-98

Duyne, P.C. van, Criminal finances and state of the art. Case for concern? In: P.C. van Duyne, A. Maljevic, M. van Dijck, K. von Lampe and J. Harvey (eds.), *Crime business and crime money in Europe. The dirty linen of illicit enterprise*. Nijmegen, Wolf Legal Publishers, 2007

Duyne, P.C. van and S. Donati, In search of crime-money management in Serbia. In: P.C. van Duyne, J. Harvey, A. Maljevic, K. von Lampe and M. Scheinost (eds.), *European crime-markets at cross-roads. Extended and extending criminal Europe*. Nijmegen, Wolf Legal Publishers, 2008

Freeman, R. E., *Strategic management: a stakeholder approach.* Boston, Pitman, 1984

Holmes, L., Political corruption in Central and Eastern Europe. In: Bull, M.J. and J.L. Newell (eds.), *Corruption in contemporary politics*. New York, Palgrave-Macmillan, 2003

Jager, M., The market and criminal law: the case of corruption. In: P.C. van Duyne, K. Von Lampe and J. Newell (eds.), *Criminal finances and organising crime in Europe*. Nijmegen, Wolf Legal Productions, 2003

Jager, M., In quest for essence: the principal-agent-client model of corruption. In: P. C. van Duyne, M. Jager, K. von Lampe en J.L. Newell (eds.), *Threats and phantoms of organised crime, corruption and terrorism.* Nijmegen, Wolf Legal Publishers, 2004

Karadzoski, M., Discrepancies between anti-corruption legislation and practice in Macedonia. In: P.C. van Duyne, S. Donati, Am Maljevic, J. Har-

vey and K. von Lampe (eds.), *Crime, money and criminal mobility in Europe*, Nijmegen, Wolf Legal Publishers, 2009

Logonder, A., Who is 'Yugo' in 'Yugo-mafia'. A comparative analysis of the Serbian and Slovene offenders. In: P.C. van Duyne, J. Harvey, A. Maljevic, K. von Lampe and M. Scheinost (eds.), *European crime-markets at cross-roads. Extended and extending criminal Europe*. Nijmegen, Wolf Legal Publishers, 2008

Maljević, A., D. Datzer, E. Muratbegović and M. Budimlić, *Overtly about police corruption*. Sajarevo, Association of Criminalists in Bosnia and Herzegovina, 2006

Newell, J.L., Institutional reforms and attempts to fight corruption: the Italian case. In: P. C. van Duyne, M. Jager, K. von Lampe en J.L. Newell (eds.), *Threats and phantoms of organised crime, corruption and terrorism.* Nijmegen, Wolf Legal Publishers, 2004

Osyka, I., Anti corruption policies in the Ukraine. In: P.C. van Duyne, K. Von Lampe and J. Newell (eds.), *Criminal finances and organising crime in Europe*. Nijmegen, Wolf Legal Productions, 2003

Pesić, V., *State capture and widespread corruption in Serbia*. Centre For European Policy Studies, 2007. Available at: http://www.ceps.be

Statistical Yearbook of Serbia, 2008

Statistical Yearbook of Serbia, 2005

Stille, A., *The sack of Rome. Media + money + celebrity = power = Silvio Berlusconi.* London, Penguin Books, 2007

Trivunović, M., V. Devine, H. Mathisen, Corruption in Serbia 2007. Overview of problems and status of reforms. Bergen, Chr. Michelsen Institute, 2007

UNDP Serbia, *The Fight Against Corruption in Serbia: An Institutional Framework Overview*, April 2008