Corruption policy in Serbia

Highlights of the report

From black box to transparent policy making

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Foreword

This report contains an account of our research on corruption in Serbia. The project was funded by the Dutch Embassy in Serbia and constituted our second attempt to shed light on the nature of corruption in Serbia and the ways it is handled by the law enforcement agencies.

Doing research is penetrating and scouting new territory, though the reader may wonder what is new in the field of corruption. Was there not always corruption and do we not regularly learn about corruption scandals in the media? That is true, but how systematic is that knowledge? What are the facts and figures of the authorities and, in particular, how reliable are these?

When we started our reconnaissance these questions were hardly addressed systematically. In short: nobody knew much two years ago at the time of our first research project, or knew when we started anew. This lack of knowledge growth is itself already a research finding. This means that while there is new legislation, a national strategy and an Anti Corruption Agency, the basic systematic knowledge on which all these efforts should be built remained absent.

In order to fill this gap this research went 'back to basic' with all the shortcomings attached to such an approach, partly in the dark. But we got help from diverse institutions (some Court and Prosecution offices, Anti Corruption Council) and the Statistic Office of the Republic Serbia. Thanks to their openness and interest we got a more precise insight into the basic law enforcement data contributing to an empirical added value.

We obtained detailed information about many cases, but true to researchers' tradition we maintained strict anonymity. Hence, in this report no names are mentioned: neither of officials, whether praised or criticised, nor of persons mentioned in files and other material, even if their deeds have been the subject of media attention.

As is the case with any other research, answers lead to new questions and otherwise there always remain open ends. Some questions could not be addressed fully due to time constraints (14 months). This implies that there is ample space for a follow-up research. We sincerely hope that our colleagues in Serbia will take over the baton and pursue the race.

Doing research on corruption is difficult in any country and the researcher is dependent on people and institutions who seriously *care* for the state of corruption and who prove to be open for cooperation. Not all institutions or civil servants were keen to help us, but those who did provided us with the empirical basis necessary for our narrative for which we are most grateful. For any interpretation which might be wrong or with which they do not agree, we are responsible.

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[1] The opinions expressed in this report do not necessarily reflect the views of the government of the Netherlands.

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Highlights of the corruption research project

The broader scope: corruption perception

Findings of population surveys showed that contrary to expectations most interviewees do not considered corruption as the most serious problem of the country.

Corruption is a seriously under reported crime. A sizeable part of the respondents (20%) is not dissatisfied with paying a bribe. The reporting rate of corruption to the police is low: 35% of the respondents having experienced bribery thought reporting to the police pointless: "*Who cares*?"

Method of research: Accessibility of data and institutions

To what extent reflect the data accessibility the high priority status of the problem? The openness of the responsible institutions for research varies widely. The ministries of Justice and Internal Affairs were non-responsive, respectively little cooperative. Courts and Prosecutions Offices in Belgrade as well as the Statistical Office were responsive and cooperative. Likewise, the Anti Corruption Council opened its doors. The Anti Corruption Agency kept aloof.

Findings: the fruits of the tree

The total figures concerning the number of reports on offences with 'an element of corruption' to the police, the indictments and convictions showed a steady decline since 2005/2006 also in relation to the general crime figures. The analysis of the Statistic Office's database 2007-2009 showed the following:

Most complaints were labelled as 'abuse of office' (62%). The second complaint category was 'violation of law by the judiciary' (16%), followed by embezzlement (11%). Bribery cases (taking or offering) were reported very infrequently (2,5%), least of all by the citizens (around 1,5% of the citizens' complaints).

The Public Prosecution dismissed 49% of the reports. Complaining citizens had the lowest chance of seeing their complaint ending in an indictment (10%). There were large unexplainable differences in indictment rates between the Prosecution Offices, ranging from 26% to 65%.

Of the cases brought to *Courts*, 61% ended in a guilty verdict. The interregional differences were large: from 42%-83%. Accused judges or prosecutors have less to fear: only three of them were convicted. In case of conviction the usual punishment is a prison term, which is in 80% under probation, particularly with shorter sentences. There were again large unexplainable differences between the Courts. The same applies to the potential correlation between the Prosecution Offices and the Courts: there was no correlation.

The judicial institution is to be considered rather as a *random box* excluding the notion of an anti corruption strategy functioning within their confines. This randomness sheds doubts on the effective functioning of the National Coordinator.

The analysis of criminal files, indictments and verdicts shows that the category of "abuse of office" is too broad: it also covers non-corruption cases. The analysis also showed to what extent the manifestations of corruption and related offences cut through all layers of society, whether it concerned serious cases handled by *the Special Prosecutor and Court for organised crime* or the 'common' cases of the Basic Courts and Prosecution Offices: the range was from high political persons, high school directors to taxi drivers. Throughout the analysis the research was hampered by "small numbers" underlining the degree of underreporting of this type of crime.

The study of the *Anti Corruption Council* illustrates the way high-profiled cases are (not) dealt with. Persisting in launching complaints in these cases, could result in a quicker prosecution response *against* the complainant or even against the ACC. But the government or the RPO did not respond: no sense of urgency.

The research concludes by outlining a tool for monitoring the handling of corruption cases by the law enforcement institutions by using and updating the present system of information gathering: the *Integrated Criminal Data Entry Tool: ICDET* as the best cost-effective instrument.

Executive summary

This research project on corruption in Serbia, "*Intensifying anti- corruption policy in Serbia by furthering law enforcement transparency and evidence based policy making*" was supported by the Dutch Embassy. It is a follow-up of a preceding research project carried out in 2008-2010 and as such an on-going attempt to shed light on the criminal law side of corruption and related offences.

This field of research is characterised as a *camera obscura* in which lack of transparency prevails. This is illustrated by the Anti Corruption Council (ACC): its reports of corruption cases were never responded to by the Government. From a research perspective, this state of *camera obscura*, gives rise to a 'black box' research approach as far as the institutions of law enforcement are concerned..The objective of the report is to analyse what kind of corruption related cases enters the judicial institutions (Prosecution Offices, the Courts, the ACC) and what, how and when do the cases leave these institutions again (e.g. indictment or sentence)?

As no institution can be studied without its surrounding landscape, first a broader picture has been provided of the corruption situation in Serbia based on recent surveys and under the title of "*Who does it and who cares*?" Contrary to expectations from the surveys it appeared that most interviewees do not considered corruption as the most serious problem of the country. Depending on the survey carried out, the rank order of the seriousness rating of corruption is at the third or fourth place and ranges from 8,7% to 18%. Asked for direct experience with giving a bribe 15% to 20% of the respondents stated to have given a bribe in the past three/twelve months. A sizeable part of the respondents (20%) is not dissatisfied with paying a bribe given the favourable outcome of the corrupt transaction, leading to our conclusion: "*Many do and few care*".

The research is mirrored against the broader background of the views of Serbians asked about their opinion of corruption in their country in a few surveys. In various surveys, respondents can rate the country as well as its institutions for their 'corruption status'. Perceptions ratings reflecting at least the trust of the population in its institutions. With political parties at top (76,7%), followed by the health service (73,6%), the governmental institutions have generally a high corruption perception rating, with the police scoring 62,3% as the most favourable. Not surprisingly, the reporting rate of corruption to the police is low: 35% of the respondents having experienced bribery thought reporting to the police pointless: "*Who cares*?" is the response.

Method of research

The situation of the "*camera obscura*" has consequences for doing research in this field. There is no central information point for data or other knowledge, which implied that the research team had 'to knock on many doors', also because the academic involvement in research in this field has stopped after 2007. The experiences of this search process are to be considered as results too, in so far as they reflect the attitude, sense of urgency and interest of the addressed institutions. The research team addressed the following potential information sources:

- The *open sources*: the media and the websites of the Ministry of Justice, Ministry of Interior and the National Assembly. The (written) media contained a substantial number of references from which a selection has been made. The websites of the National Assembly, and the two ministries revealed no useable hits. Questions for clarification of this absence to the Assembly as well as to both ministries were left unanswered.
- *The Anti Corruption Council* provided full support from the beginning of the project and gave us insight into their database as well as the procedural history of the cases it handed over to the Republic Public Prosecutor's Office. In most cases it got no feedback.
- *The Republic Public Prosecutor's Office*, equally pledged its support, but the way this was realised was very diverse: it ranged from full cooperation by the office of the Special Prosecutor for Organised Crime to a listless, dragging and unproductive communication by the *Anti Corruption Department* of the Republic Public Prosecutor's Office. In contrast, the research team got access to the indictments of the *First Prosecutor's Office Belgrade*.
- The *Courts of Belgrade* lent the project also a mixed support. On the one hand, the Belgrade Higher Court gave full support, and on the other hand, one Basic Court claimed to have no corruption cases, though according to the national statistics the output of that court numbered 109 verdicts. In between we met a welcoming Appeal Court, but we could not retrieve its cases due to flaws in the computer programme.
- The *Statistic Office of the Republic of Serbia* (SORS) gave full and voluntary support by providing us with the full raw database of 2007-2009 which proved essential for our analysis.
- Initially the *police* showed interest in the research but, as she is hierarchically subordinated to the Ministry of Interior, the ministry had to give consent, which lasted longer than the whole project time span of 12 months: a time consuming, twisting and tortuous correspondence unfolded, producing five pages without much use. When the project neared its end, a first small '*rapprochement*' took place which could not be pursued because the project finished.
- The category 'other institutions' is of course diverse. With the exception of the Customs they declined cooperation. The Customs wanted to cooperate, but there were too few data. The Anti Corruption Agency kept the research project

at arm's length, showed no interest in whatever data on corruption, let alone that it would have anything empirically useable which could shed light on this phenomenon.

Results: "The fruits of the tree"

Quantitative analysis

The total figures concerning the number of reports on offences with 'an element of corruption' to the police, the indictments and convictions showed a steady decline since 2005/2006 also in relation to the general crime figures. The percentage differences in corruption case input between the Court regions proved to be large, whether in percentage of total crime (ranging from 3% to 10%) or increase or decrease of cases between 2007 and 2009 (from 40% increase to 30% decrease).

For most analyses carried out, the figures of years 2007-2009 had to be fused, because for many variables there are not sufficient cases in each year. The prosecution and the court data had to be processed separately: the two databases stem from two different forms that do not allow forming a unified database.

In the time span 2007-2009, the *Prosecution Offices* received 11.823 complaints, mostly coming from the police (45%), followed by complaints from the citizens, whether as direct victim or otherwise. Most complaints were labelled as 'abuse of office' (62%), though this qualification covers a large diversity of criminal conduct, not all of which represents corruption. The second complaint category was 'violation of law by the judiciary' (16%), followed by embezzlement (11%). A substantial part of the citizens (39%) who complained about judiciary corruption did so because of perceived law breaking by (deputy) judges and prosecutors. Bribery cases (taking or offering) were reported very infrequently (2,5%), least of all by the citizens (around 1,5% of the citizens' complaints).

Of the 'case input' 43% were indicted; 49% of the reports were dismissed. Complaining citizens had the lowest chance of seeing their complaint ending in an indictment (10%), which is due to the high dismissal rate of law breaking by the judiciary (95%), of which they mostly complained. There were again large differences in indictment rates between the Prosecution Offices, ranging from 26% to 65%. The data allowed no explanatory analysis. Otherwise the analysis was hampered by low absolute numbers that often did not allow more refined analysis.

Of the 4.543 cases handled by the *Courts*, 61% ended in a guilty verdict. The interregional differences were again large: from 42%-83%. Bribe offering and unauthorised use of assets had the highest conviction rate (82%). Trespassing judges or prosecutors has less to fear: only three of them were convicted. In case of conviction the usual punishment is a prison term, which is in 80% under probation, particularly with shorter sentences. There were differences between the Courts in the sense that some Courts could be considered as more lenient.

There was no significant correlation between the rank order of indictments and verdicts per Court district, which indicates that there is no statistical coherence between the data of the Courts and the Prosecution Offices. Within the set of Court and Prosecution data there were also many unexplained differences. For this reasons the judicial system is to be considered rather as a *random box* excluding the notion of an anti corruption strategy functioning within their confines.

Qualitative analysis

The analysis of the 26 serious corruption/abuse cases at the Special Court of Organised crime showed that these cases covered a very broad time span: from 1995 onwards. The most important offence category was the organised commitment of tax fraud in various forms: organised excise fraud, VAT fraud and trading false invoices. To categorise the broad variety of cases, a typology was designed: power abuse cases (ranging from suspects in government positions to single persons with decision making powers); corrupt services such as offering to tamper with legal evidence; and corrupt businesses, which comprises criminal undertakings within legal firms as well as criminal firms skimming the public fund. These analysed cases were projected on the two dimensions of '*leadership-executive*' and '*social prestige*'. The outcome illustrates to what extent the manifestations of corruption and related offences cut through all layers of society.

Analysing the 30 indictments of the First Basic Prosecution Office Belgrade revealed also a very heterogeneous picture of what is covered by 'abuse of office' (most often simple embezzlement). These 'common' cases, also cut through all layers of society, ranging from high school directors to taxi drivers.

'Scraping' these data together again stressed the low prevalence of corruption cases within the law enforcement institutions, whether at Basic Prosecution or at Court level or at higher instances.

The processing of the cases of the *Anti Corruption Council* has been studied in some detail, as it may illustrate the way high-profiled cases are dealt with. It appeared that persisting in launching complaints, particularly in serious economic matters, could result in a quicker prosecution response *against* the complainant or even against the ACC than an orderly criminal investigation or feedback to the ACC: usually the government or the RPO did not respond.

Integrated Criminal Data Entry Tool: ICDET

Observing the serious flaws in the databases and communication, the research team designed the outlines of an information processing tool that updates and integrates the existing information gathering systems of the Courts and the Prosecution Offices. The principles are simple. Any anti-corruption criminal law policy must be based on a transparent monitoring tool, which allows a practical case-by-case following as well as a strategic analysis. The basic requirement for such a tool is that the basic counting units (cases and suspects) can be followed throughout their whole

history in the criminal procedure: the suspects and cases must be followed from entry at the police till their finalisation at any level of the criminal law institutions. Departing from what is in use at present, the report makes suggestions for fusing the existing data entry modalities into a united one.

The report concludes with observing the aftermath of the project concerning proposals for more transparency. The tepid response of the authorities seem to underline the answer to the question of the second chapter:: "*Who does it and who cares*?" – "*Many do, but few care*."