

# CORRUPTION IN SERBIA



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# Content

Foreword 7

- I INTRODUCTION 9
  - Definition of corruption 10
  - Basic causes of corruption 13
  - Basic mechanisms of corruption 17
- II CORRUPTION AND BRIBERY IN THE SERBIAN POPULAR TRADITION 25
  - Definition of bribe and its synonyms 25
  - Relationship of popular tradition towards corruption 25
  - Causes and conditions which favour corruption 28
  - Two popular tales on corruption 29
- III RESULT OF SURVAYS ON CORRUPTION 31
  - Notion and experiences of corruption: public opinion of Serbia about the phenomenon and practice of corruption 31
  - Experiences of private entrepreneurs with corruption 53
- IV MANIFESTATION OF CORRUPTION 83
  - Corruption in the judiciary 81
  - Corruption in public administration 91
  - Corruption in health care: corruption or extortion? 117
  - Common robbery 120
- V CAUSES OF CORRUPTION 125
  - Economic causes of corruption 126
  - Political causes of corruption 131
  - Legal causes of corruption 142
  - Conclusion 148
- VI EFFECTS OF CORRUPTION 151
  - Kinds of corruption and their effects 151
  - Economic consequences of corruption 158
  - Social aspects of corruption 167
  - Conclusion 169
- VII THE ANTI-CORRUPTION STRATEGY 171
  - Basic strategies 172
  - Deregulation of economic life 179
  - Reform of the judiciary system 185
  - Reform of the fiscal system 184
  - Public administration reform 200
  - Independent anti-corruption institutions 206
  - Action plan 208



# Foreword

As a social phenomenon, corruption is as old as society and it is talked and written about only when two conditions are met. The first is that there exists enough freedom in a country that it can be written about at all. The second is met when corruption becomes massive, when it penetrates all institutions of society and state and when it distracts the normal functioning of the legal and ethical order.

Corruption would not be so old, or so hard to eliminate if it was not so closely connected to human nature. While not getting into anthropology and definitions of human nature and the discussion if man is organically good or bad, I would dare to say that human nature is in one sense susceptible to corruption and weakness in overcoming of egoism. To be selfish and aggressive it is enough for us to follow our instincts. But, to be good and moral we need to exert a greater or a lesser effort to overcome our instincts. By living in a society, a person is exposed to numerous temptations and there are few who will confess like Oscar Wilde: I can resist everything, except temptations.

These few sentences are not an attempt to make relative corruption as a social evil, nor to discourage the struggle against it, but to warn of its resistance and breadth. We are talking about a struggle against a social evil which destroys the community, annuls the role of legal and moral norms, and endangers public goods and the existence of the majority of the people. Corruption flourishes when the general or public goods are without strong protection. State finances, state property are the real targets of organized corruption and organized crime. Unstable states, societies in transition are especially exposed to corruption because of the changes of the legal and moral norms.

In certain countries of the former socialist order corruption had roots in the previous regimes. The longer the crises of these societies have lasted, the larger the scope of corruption has become. When corruption reaches enormous dimensions, when it breaches into all services, institutions, and organizations, when it enters into all pores of a society an increasing overall decaying takes place. First, the police cooperate with criminals, and then it organizes them; customs officers cooperate with smugglers, and then they themselves organize smuggling. The judiciary, medical care, education, and especially the economy fall under the influence of organized corruption. A symbiosis is created of normal and pathological phenomenon. There is no struggle against the combined forces of corruption, and everyone cooperates in the same task. This is a condition that can be conditionally called kleptocracy. All of the influential factors of a society are united in the theft of public goods, and make up one thieving oligarchy.

If the honorable citizens do not wake up, organize and fight back, the rule of thieves can go on for a long time. And even worse, it makes relative all and makes senseless both the morality and the legality and the public, annuls the struggle between good and bad, between normal and pathological, destroys social dynamics and development and promotes decay and ruin as a destiny. For this reason the first and most important step of every democratic reform has to be an uncompromising fight against corruption.

*Dragoljub Mićunović*  
*President of the House of Citizens*  
*Assembly of Yugoslavia*

# I Introduction

Corruption, or the practice of bribery, is as old as the state. Therefore the struggle for its suppression is also that old. Along with the development of economic activity, growing government intervention in business and the bureaucratization of society, corruption grew in intensity. Therefore, it became one of significant problems of the contemporary world. It is known that ancient Athenians faced this social phenomenon. This is why they had a set of rules for its suppression. The expression corruption Machiavelli takes from Poliby and is denoted as „a quality of spoiling of power“. In England the idea of corruption in the eighteenth century, besides deteriorating of authority, was identified with bribery. As corruption, today, we most often understand the illegal use of social position and power for personal gain. Concern that because of excessive power of the state, elections will be reduced to bribery was shared by David Hume. Simultaneously, Montesquieu believed that any authority is prone to misuse, and therefore has to be limited by another authority. Cited views from the history of social thought imply that where there is political power and influence there is, in a greater or lesser extent, corruption. In political theory there existed almost a commonly accepted concept that political power and influence are “not to be sold and bought”, as is not to be bought and sold or be a subject of sale a human life, marriage right, child birth, freedom of speech and association, love, religious feelings etc. The object of trade, also, should not be an official position, which derives from the understanding of politics as a common good and which has been through time codified in legislation of the civilized world. Between these generally accepted principles and practice occasionally there is significant difference, and the misuse of the official and political position is sanctioned by criminal code.

The presented principles, although generally accepted, did not deter development of corruption, its growth and developing into a widespread phenomenon in all countries of the world. This fact is supported by numerous researches on one hand, and almost daily, big or small, corruption scandals that agitate not only the undeveloped, but also the developed countries of liberal democracy.

The goal of this study is to, based on clear theoretical premises and available and processed empirical material, explain the causes and mechanisms of corruption in Serbia, and to comprehend most significant consequences of corruption. Based on that empirical knowledge, to define an anti-corruption strategy, which should then be transformed into an action plan. That long journey is to be made by making the first step, which is defining of the phenomenon of corruption.

## DEFINITION OF CORRUPTION

Corruption can be defined in several different ways. The most encompassing definition of corruption was offered by Vito Tanzi. According to him: “Corruption is the intentional non-compliance with the arm’s – length principle aimed at deriving some advantage for oneself or for related individuals from this behavior”.

The principle of arms-length demands that, in decision-making, personal or any other relationships between participants in the exchange do not have any influence. This principle is part of the functioning of a perfect market, which is, by definition, depersonalized.

Based on Tanzi’s definition, it can be concluded that there are two necessary conditions so that the violation of the arm’s length principle can be defined as corruption. First, it is necessary that an intent exists – accidental undermining of impartiality because of, for example, imperfect information, does not represent corruption. Secondly, it is necessary that as a result of the named impartiality there is the seizing of a certain benefit, or an acquirement of personal gain. Undermining of impartiality because of, for example, the color of the skin of the participant in the transaction represents racism, not corruption.

Seizing of a benefit, or an acquirement of personal gain for one who makes partial biased decisions, can have different forms. It is customary to imply corruption as accepting money (this form of corruption is most often called bribery), but similar gain can imply expensive gifts as a fee or counter services. Expensive jewelry for the wife of the person who was biased or a well-paid job (with little work) for his son surely constitutes corruption.

Seizing a benefit, or acquiring of personal gain, can be carried out simultaneously with the making of a biased decision, but those two acts can be carried out at different times. Namely, biased decision making by the one who is corrupted makes an informal, but very solid obligation to return the favor, or to repay the favor and that obligation does not grow obsolete, so that seizing of personal benefit can be moved into the future. If the counter service is a well paid job for the son, and the son has just started college, it is obvious that there is a time lapse between two acts. Furthermore, in making an agreement on corruption, the counter service is often not specified, but only an obligation is established for the corruptor to provide personal gain in the future for the corrupted.

Coleman’s theory of social capital of the individual is useful, where that capital represents the sum of claims of an individual based on services already rendered. For example, a government employee in a department for import licensing, by issuing licenses in a biased manner, does not have to ask for a counter service right away from those he issued licenses in a biased manner to, but such a counter service is assumed in the future. Every biased license that is issued represents an investment in the social capital of the government official, i.e. the increase of his claim from other individuals. The greater the social capital of an individual, the larger is its expected utility in the future.

Additionally, one must distinguish between gross and net social capital of an individual. Net social capital of an individual represents a sum of

counter services which that individual expects, decreased by the sum of counter services which the individual is to provide in the future. One should remember the relationships established in undertakings of the Corleone family (novel and film “The Godfather I”). It is clear that Don Vito Corleone is an individual with greatest net social capital in his environment. In such circumstances, net social capital is inherited, and his son, when he becomes the new Don, successfully uses that capital in establishing his position on the relevant market.

In the majority of cases, the temporal delimitation between the biased decision by the corrupted and the counter service by the corrupter is such that the counter service is subsequent. This could be called delayed payment in cases of corruption. However, in certain cases there is pre payment. For example, in some Asian countries members of parliament or government officials receive envelopes with money in advance, at the time of moving into office, without specification of what needs to be done, i.e. which biased decisions are expected from them. Only subsequently will a demand for a service or biased decision be forwarded.

The above definition of corruption represents a solid analytical framework for investigating this phenomenon. However, the use of this very definition as a criterion in judging of the observed activity, i.e. judging if corruption is present or not, is linked with certain problems.

Particularly, it is rather difficult to operationally define bias in decision-making, that is the breaking of the principle of impartiality. It is easiest to determine if a formal rule is broken. However, in many cases, formal rules do not exist and decision-making is a discretionary right of a government official. If the government official issuing import licenses has a discretionary right to choose to whom he will issue the license, having in mind the “interest for the national economy in general”, or “preservation of the public interest”, it is very difficult to determine if the rule is broken, and especially if it is broken on purpose, since there is no strict or formal rule.

Additionally, temporal delimitation between the providing of services by the corrupted party and the counter service by the corrupter, establishes analytical problems in the determination of a personal gain by the one corrupted. If the counter service is not specified (what is the counter service to be provided), i.e. if the corrupted party is investing in its social capital, it is very difficult to identify the second necessary condition for corruption, which is the acquisition of a personal gain. We are faced with a problem in defining personal gain. In most cases an individual or his family is involved. However, in certain cases counter services are provided to an organization of which the corrupted party is a member, for example a political party. In such a way the number of players in the chain is increased, additionally making it harder to identify personal gain.

In addition to the definition by Tanzi, recently an operational definition by the World Bank is often used, stating that corruption represents a misuse of public authority for the acquisition of a private gain. This definition considers the cause of corruption in public authority, and necessarily links corruption to the state, its activities, state intervention on the market and the existence of the public sector. In other words, the use of this definition excludes the possibility of corruption in the private sector, and it focuses exclusively on corruption in the public sector. This

definition is consistent with the beliefs of American Nobel prize laureate Becker that “if we abolish the state, there will be no corruption”.

In principle, Tanzi’s definition of corruption is superior. First, the World Bank definition lacks certain analytical elements (criteria) making it difficult to analyze the mechanism of corruption. Second, Tanzi’s definition should be given advantage, since it makes possible the examination of corruption in the private sector, while the World Bank definition deals exclusively with the state, or the public sector. Mechanisms of these two kinds of corruptions are somewhat different, and we will consider them later at length. Although Tanzi’s definition is superior, the World Bank definition makes it possible to focus on corruption in the public sector, which is, in its dimensions and consequences, a significantly more important phenomenon. The majority of contemporary corruption research deals with corruption in the public sector, or with corruption under the auspices of the state. Therefore research that follows deals with corruption in the public sector, which due to its spread and consequences is a far more significant phenomenon, in Serbia. An additional reason for this choice is a very widespread public sector in Serbia. It includes not only the public administration in the wider sense, but also public companies, or the so called socially-owned companies, which still make up the dominant part of the Serbian economy. Accordingly, in further text, only corruption in the public sector will be examined.

A few words on the ethical aspects in defining corruption. For a large number of people corruption represents something morally unacceptable, or an evil to be fought because it is against basic moral principles. Still, there are cases when it is difficult to morally judge one who used corruption. Let us examine this point in a hypothetical, but still plausible example. During summer of 2000 in a small town in Serbia, the police arrested a young activist of the „Otpor“ movement. The grandfather of the activist knew that chances were high that his grandson would be heavily beaten by the police. For this reason he visits the home of his neighbor, a local policeman whom he has known for 30 years. He gives him 100 German marks with a request that no harm comes to his grandchild. The policeman accepts the money. The next day, the grandson is released by the police without bruises. Therefore, there is no doubt corruption is at hand. On the moral ground can this activity be criticized? For the inquiry that follows this issue is simply not relevant. The analysis of corruption that will follow is morally neutral. In that sense the listed definition of corruption is morally neutral.

The goal of the analysis of corruption in Serbia that follows is to discover the level, causes, and mechanisms of corruption, the consequences, or effects on the well being of the society and on the distribution of that well being, a not to deal with the moral condemnation of those corrupted and corruptors. The moral position of the author of this project is that corruption, in principle, is evil and this position does not need to be contested. Additionally, we will easily agree that the best option is that police should not arrest and beat young people for protesting against the regime – any regime, and not only the former Serbian regime. Then there will be no need for corruption of this sort, be it, in the noted hypothetical case, moral or not.

## BASIC CAUSES OF CORRUPTION

In the economic world, the basic interest of all business subjects, i.e. all people who enter into economic relationships, are identical – maximizing of personal welfare. So, selfish interest is the basic motive of people who enter into mutual economic relationships. The founder of contemporary economic science Adam Smith clearly presented this concept more than two centuries ago. The baker does not supply us with bread he makes because of his altruism, or for worry that we should not go hungry, but because of the profit he makes by selling bread.

Each one of us is ready to invest something, or any resource one has (property, money, work time, work effort, etc.), only in the case when from that investment one receives greater value than the one that was invested. And each of us attempts to maximize the difference between the value of the investment and the yield from that investment. “No one can pay me as little as I can work” represents a specific, although socially destructive, form of such a maximization. In other words, people in all conditions behave economically rationally.

A special form of such maximizing is rent seeking behavior. Rent represents the overall income that is larger than the opportunity costs linked to that income. Economists would say that rent is the yield that is above the opportunity costs of investment of a certain resource (Marxist oriented economists would call the rent, extra profit). Each one of us wants to capture or maximize rent. To do so, we are ready to invest our resources, so that we can influence those decisions that will make it possible to capture rent.

Some forms of rent seeking behavior surely do not represent corruption. Although, there are certain cases of corruption that are present in situations where no rent exists, the most significant, most common and regarding their consequences most dangerous forms of corruption are linked to situations where rent is generated. Corruption then represents means for the generation or the capturing of rent.

Let us consider the relationship of corruption and rent in one hypothetical example of state intervention. The state, regardless of motives, decided to limit the import of bananas to 100 t per year. Such limitation is carried by issuing import licenses, which can be received only by ten companies and each company for import of 10 t of bananas. Let us assume that all bananas are acquired at the same purchase price and that all companies are equally efficient, i.e. have identical costs of import per unit (transport costs, distribution costs, costs of capital, etc.). For simplicity’s sake, let us assume that average costs equal marginal costs and that there are no real costs of corruption. If we assume that the function of the demand for bananas to equal:

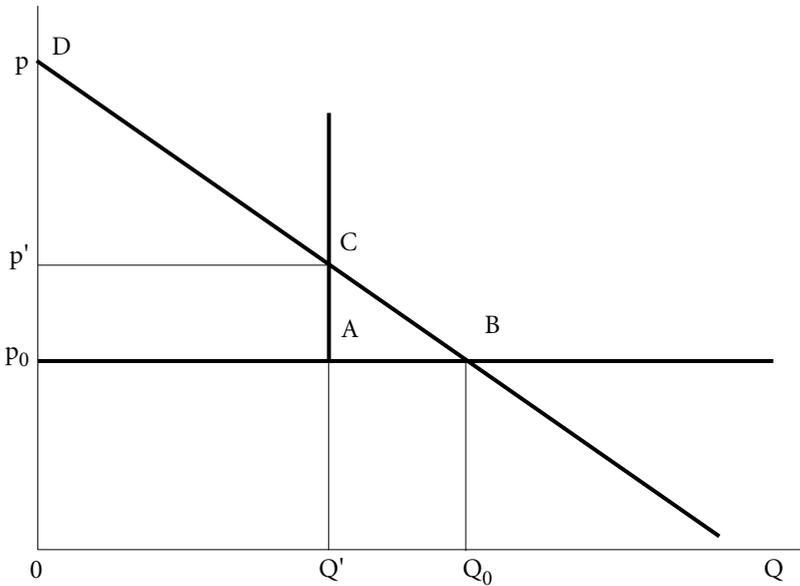
$$\text{price (p)} = 6500 - 30 \text{ quantity (q)}$$

and that average, or marginal costs are constant

$$\text{average costs} = \text{marginal costs} = 2.000 \text{ DEM per ton,}$$

we can examine effects of such a state intervention on generating of rent and on originating corruption (Picture 1.1).

**Picture 1.1.**  
**Import licenses for bananas – market equilibrium**



If there was no limitation in the import of bananas, or if there was no state intervention, the equilibrium price would be less than the price formed by limiting import via import licenses ( $p_0 < p'$ ), and the equilibrium quantity would be greater ( $Q_0 > Q'$ ). Decreasing of the supply and the increase of the equilibrium price leads to the generation of rent (area  $p_0ACp'$ ). Therefore, in this case, rent was generated by state intervention, and with the existence of rent, there is a possibility of corruption as a means for capturing rent. Namely, there is an incentive to corrupt state employees who issue import licenses for bananas and to capture at least one part of the rent generated by this type of state intervention. The values of relevant parameters for our hypothetical example are listed in Table 1.1.

**Table 1.1.**  
**Import licenses for bananas: effects on resource allocation and distribution of well being**

	No state intervention	State intervention with no corruption	State intervention with corruption
Equilibrium price	2.000	3.500	3.500
Equilibrium quantity	150	100	100
Total costs	300.000	200.000	200.000
Social welfare	337.500	300.000	300.000
Rent	0	150.000	150.000
Level of corruption	0	0	1-149.999

It is very important to notice that in this case the overall amount of welfare is decreased due to state intervention, independent of the existence of corruption. So, state intervention in this case is multifold counterproductive. First, it decreases the overall social welfare (area  $p_0ACD$  is smaller than the area  $p_0BD$ ). Second, it forms space for corruption, by generation of rent through state intervention and an incentive to by the corrupting of state employees, capture one part of the generated rent. At that, the total level of corruption expressed in monetary terms is limited by the value of the rent. Corruption will always be a bit smaller than the total amount of the rent. Also, it is very important to notice that the change of the amount of corruption in this case does not lead to a change in allocation of resources, so that there is no change in the amount of total social welfare, but only its redistribution. It is certain that, in this case, the best solution is the elimination of state intervention, i.e. deregulation. By doing so, on one hand, social welfare would be increased, and on the other, rent would be eliminated removing the possibility of corruption. Therefore, in this case, there is no dilemma about the best anti -corruption strategy.

However, in certain cases rent is not generated because of state intervention, but because of a specific structure of the market. A typical example is a natural monopoly, where it is socially justified that certain manufacturing on a given market production is carried out by only one manufacturer. Therefore, introduction of competition in cases of natural monopoly is not socially desirable. The problem is, if there is no state intervention, i.e. economic regulation of a natural monopoly, there is monopolistic behavior that leads to a decrease of supply, increase of prices, and the formation of rent (monopoly profit). Perfect state intervention (economic regulation) can, at least in principle, lead to an equilibrium which would maximize the social welfare and abolish the existence of rent. However, the monopolist has an incentive to corrupt the regulator and to, in that manner, provide room for his own economic profit, or rent. Let us examine this mechanism of rent formation and corruption generation on a hypothetical example of water supply, as a typical example of a natural monopoly. Like in the last hypothetical example, for the sake of simplicity let us assume that average and marginal costs are equal. Additionally, if we assume that the function of the demand for water is:

$$\text{price } (p) = 702 - 7 \text{ quantity } (q)$$

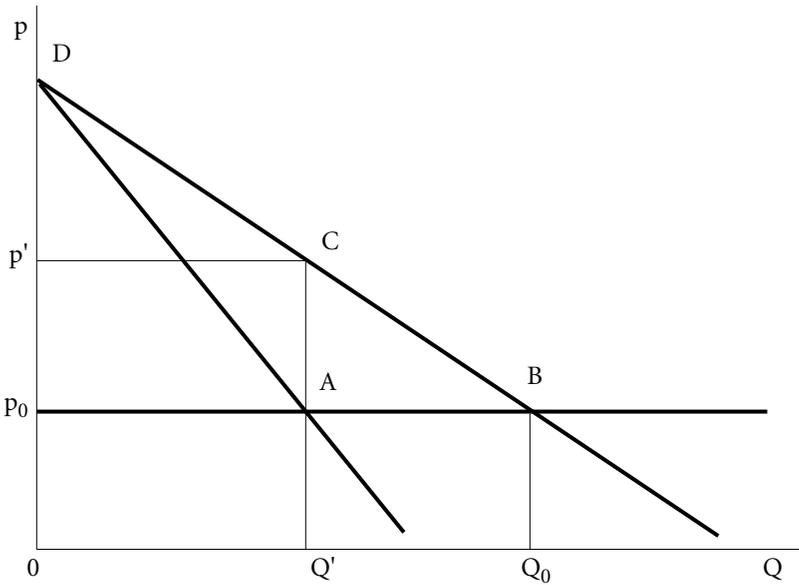
and that average or marginal costs are constant:

$$\text{average costs} = \text{marginal costs} = 2 \text{ DEM per m}^3 \text{ of water,}$$

we can examine effects of such state intervention on forming of rent and on generating corruption in a case of a natural monopoly (Picture 1.2).

If there is no state intervention the monopolist will, by decreasing of the level of supply ( $Q' < Q_0$ ), maximize the rent (economic profit) which he seizes, which (in conditions of a monopoly) necessary leads to the increase of the equilibrium price ( $p' > p_0$ ). This leads to the lowering of the overall level of social welfare ( $p_0ACD < p_0BD$ ) and to the formation of rent ( $p_0ACp'$ ). In contrast, perfect state intervention (for simplicity, while sacrificing the truth, perfect state intervention will be identified with state intervention without corruption) eliminates the rent, equalizes the price

**Picture 1.2.**  
**Regulation of natural monopoly in waterworks**



with marginal costs and maximizes social welfare. Accordingly, the monopolist has an incentive to corrupt the regulator (state employees in charge of economic regulation) and to maximize the amount of captured rent. In contrast to the previous hypothetical case, in this case the change in the level of corruption necessarily leads to the change in the allocation of resources and to the change in overall social welfare. The greater the level of corruption, the lesser will be the overall welfare in society.

In this hypothetical case, deregulation cannot be the basic anti-corruption strategy. Namely, this would equate interests of the corruptor with interests of the anti corruption strategy, or the total abolition of regulation is exactly what is in the interest of the corruptor. This would lead to allocative loss of welfare (deadweight loss), or to the minimizing of welfare in

**Table 1.2.**  
**Regulation of a natural monopoly in waterworks: allocation of resources and distribution of welfare**

	No state intervention	State intervention without corruption	State intervention with corruption
Equilibrium price	352	2	2-352
Equilibrium quantity	50	100	50-100
Total costs	100	200	100-200
Social welfare	26.250	35.000	26.250-35.000
Rent	17.500	0	1-17.500
Level of corruption	0	0	1-17.500

given circumstances, instead of its maximizing. Therefore, in this case, deregulation is not a good solution.

The previous discussion has demonstrated that, in majority of cases, rent seeking, or the desire for its usurping represents a precondition for corruption. In other words, the basic economic precondition for corruption is rational behavior of economic subjects. However, this is only a necessary, but not a sufficient condition. For corruption to occur in reality, other preconditions should be met.

The basic precondition for corruption is state intervention (either justified or not). Contemporary states frequently intervene in business. While not questioning the motives, at this juncture, or justification of state intervention, the very existence of such an intervention forms fertile grounds for corruption to flourish.

## **BASIC MECHANISMS OF CORRUPTION**

### **Types of corruption**

In examining mechanisms of corruption, the analysis of a few possible basic assumptions is needed. The first theoretical assumption is that every state intervention in business is well meaning, i.e. that we are dealing with a benevolent state, whose only goal is to maximize the welfare of its subjects. It is clear, as noted previously, that such a state can exist only in textbooks – it is yet to be found in reality.

If a state is benevolent, the basic question is: how is the practice of corruption possible? Theoretically, the answer can be sought in the principal-agent theory. Namely one can assume, the existence of asymmetry of information between the principal (the state, or the legislative authority), who defines the rules of conduct, and the agent (state employees), who enforces those rules. The agents, or civil servants, do not have the same goals as the benevolent state. The basic goal of the agent is to maximize his personal welfare. For the state to control the work of the agent it has to be perfectly informed about his job. In reality, however, there exists a natural and very significant asymmetry of information. Agents know much more about their activities, than the state, embodied in the legislative authorities. The essence of the agency theory is that, under conditions of asymmetrical information, state employees act in such a way that their personal goals (maximizing of personal well being) are realized independently from the task bestowed on them by the principal (legislative state authority). Therefore, in the framework of this theory, we are dealing with a benevolent state and wicked state employees. As defined by Leninists, we are dealing with „scoundrels within our own ranks“. In other words, corruption is consequence of asymmetric information between a benevolent state and evil state employees.

However, the question of persuasiveness of such a theoretical construction arises, at least for certain societies, namely the persuasiveness of the assumption of the benevolent state. For this reason an alternative theoretical approach was constructed, which starts from an assumption about an

evil state. It is assumed that the only goal of the state is to maximize its income, that is that the only goal of the state leadership to maximize their personal welfare. In this case we are dealing with a so-called predator state, or at it is called lately, a cleptocratic state. Very often a cleptocratic state is identified with dictatorship, or an undemocratic regime, while the benevolent state is identified with democracy. Regardless of the fact that such a proposition the represents a very harsh simplification, a cleptocratic dictatorship represents an acceptable framework for the explanation of the mechanism of corruption in many countries.

Inside the given conceptual framework, the dictator is really only a robber and he understands the dictatorship as means for maximizing of his personal welfare, that is, for maximizing his income and wealth. Corruption in this case represents only a mechanism for increasing the income of the dictator. The necessary condition for maximizing of income is that the existing dictator remains a dictator for as long as possible, so that he can succeed in plundering as much as possible. As there are candidates for taking over power, since they would want to become dictators instead of the Dictator, in order to improve their welfare. The dictator must carefully share the spoils among all members of the ruling elite, so as to curtail their incentive to realize their ambition. In other words, there exists a division of spoils. In that context, the corruption of state employees does not represent a random phenomenon, but only a well-elaborated role inside institutionalized plunder.

There is a very significant difference between centralized and decentralized corruption. The previous model of corruption (Picture 1 and table 1) was based on an assumption that for the import of bananas only one license was needed, which was issued, practically, by only one state employee, so that there is a monopoly on the market for corruption. If, technically, the mentioned import license is issued by several employees, it is assumed that they are in collusion, and form a perfect (full) cartel. According to the findings of microeconomic theory, i.e. the theory of industrial organizations, there is no difference between monopoly equilibrium and the equilibrium in the case of a perfect cartel. Such market structure, i.e. the industrialized organization of corruption, is called centralized corruption.

In contrast, it can be assumed that for import of bananas several licenses are needed, where every individual license represents a needed, but not adequate condition for the import of the named commodity (besides the basic import license, for example, licenses issued by the sanitary inspection, Health Protection Administration, Central Bank, etc). Only if all licenses are acquired, the given commodity can be imported. Every individual license is issued by a different, mutually not connected department of the state administration, or different civil servants who are not in collusion. This structure of the corruption market is called decentralized corruption.

The key question concerning industrial organizing is what are the conditions that support the forming of centralized, or decentralized corruption. To answer this question the cartel theory can be used. All of the factors that influence the formation and survival, or implementation of cartels, influence the formation and survival of centralized corruption. This pertains above all to the possibility of the breaking of a cartel and implementation of credible punishment. For this reason centralized corruption

was dominant in communist Russia. The basic institution for implementing of the cartel of centralized corruption was the KGB, which had means for detection of the breaking of centralized corruption and refined methods for punishing violators, which were implemented with haste. In that sense, the same findings hold for centralized corruption under the auspices of New York's Genovese family. The lack of such, or similar institutions causes the formation of decentralized corruption.

Therefore, a strong and unbound state (by democratic institutions, for example) enables the existence of centralized corruption. A weak state, regardless if it is bound or not, represents a necessary condition for decentralized corruption. Numerous examples of African countries confirm this. Weak African states create a room for dispersed corruption, which includes a great part of the state apparatus, or state employees. The basic reason for the flourishing of corruption in post-communist Russia is the weakening of the power of the state, which still kept a high level of intervention in the economy, leading to the transformation of centralized into decentralized corruption. Therefore, there is no paradox in the flourishing of corruption in Russia – the reason for this is to be sought in the change of its industrial organization.

It is certain that the probability is higher in case of a benevolent, or democratic state, for decentralized, and in the case of a kleptocratic state, for centralized corruption. However, this principal does not have to hold true in all cases. The key factor of industrial organization of corruption is the power of the state, or its capability to enforce rule it prescribes, regardless of character of those rules (see Box 1 for a reminder of corruption in Nazi Germany).

#### **Box1**

##### **Corruption in Nazi Germany: Living Space of Space for Plunder**

Was there corruption in Hitler's Germany? Sometimes one can hear statements that this was a state where corruption was eliminated. As proof, it is stated as a fact that not one concentration camp prisoner was able to bribe camp guards so they would set him free. While not contesting the above, it should be said that it is not proof of elimination of corruption in that country. According to credible evidence (Albert Speer, Hitler's armament minister), the most corrupt man of Nazi Germany was Hermann Goering, the number two man of that regime (in internal-political issues largely the first man). Since Goering had exceptionally great authority in allocation of resources at less than market prices, it is certain that many German corporations had an incentive to bribe him, so to receive appropriate resources (slave labor, for example), or to be granted large contracts as part of public procurement, especially for the armed forces. Indirect proof of Goering's corruption is the difference between his wealth at the time when he and his comrades took power and the time when they were removed from power. "You think that I do not know that Goering is corrupt? His example made corruption possible in our state!" confided Hitler to Speer, while Russian tanks entered suburbs of Berlin, seeking the shortest route to the bunker (Speer, 1965). Therefore, corruption in Nazi Germany was very centralized. It was not available to the concentration camp guards (punishment for such corruption was extreme, with chances that it would be implemented, a consequence of a strong, and in this case unscrupulous state), but it was available to the Nazi leadership. It can be concluded – a strong state means centralized corruption.

With all dangers of crude generalization, the following table can be used as a guide through different types of corruption.

**Table 1.3.**  
**Different types of corruption**

Type of rule	Democracy	Dictatorship
Character of the state	Benevolent	Cleptocracy
Source of corruption	Agency problem	Character of the state
Intensity of corruption	Uncertain	Great
Character of corruption	Decentralized	Centralized

### Forms of corruption

According to the mechanism of corruption, or its economic consequences, it is possible to identify several kinds (aspects) of corruption:

- a) corruption which makes possible the implementing of rules (laws);
- b) corruption which makes possible circumnavigating, or breaking of rules (laws)
- c) corruption, which leads to the change or the formulation of new, rules (laws).

The previous hypothetical case, the example of licenses for the import of bananas, can be used for explicating the listed kinds of corruption, or the differences in motives and consequences for different types of corruption. It is assumed that the state policy of limiting of banana import is based on licenses for their import. If it is assumed that import licenses are issued to

#### Frame 2

##### **State intervention dominated by private interests: Peanuts, seeds, other pastimes....**

A typical example of state intervention dominated by private interest, is peanut production in the US. Regulation of this field is based on strong administrative barriers for entry, very complicated import of this commodity, and quotas for maximum production of producers already in the field. It is assumed (Rucker and Thurman, 1990) that effects of such regulation on social well being in the period 1982-1987 were very unfavorable. Deadweight loss was around US\$ 34 million, and from consumers to manufacturers welfare was redistributed to the amount of around US\$ 255 million. Why does such counterproductive state intervention remain? The number of peanut producers in the US is relatively small (only 23.046, based on 1982 data), and economic profit (transfer of well being) that is the result of named regulation on the average equals US\$ 11.100 per producer. Therefore, peanut producers have a very strong incentive for interest-based organizing and in establishing, or maintaining the existing regulatory policy. On the other hand, peanut consumers in the US are extremely numerous (practically the complete population), which means that costs to organize this interest group are extremely large. An average loss of consumer's surplus because of this regulatory program equals only US\$ 1,23, meaning that the transfer of well being of each group member caused by the banning of such state intervention, or deregulation, would be negligible. There is no interest for consumers to organize themselves and break, from the social standpoint, counter-productive state intervention. And the common interest? No one cares about it anyway.

all interested companies that meet certain conditions, a corruption model can be formulated that makes possible the implementation of law. Namely, state employees do their job inefficiently, and issuing of licenses is delayed, which endangers business activity of those companies that seek the named import licenses. Accordingly, a rational behavior of those companies consists in their readiness to pay a certain amount of money to be issued import licenses, to speed up their issuing. In other words, they are ready to pay for the issuing of a free license for which, according to rules, they have the full right.

There are two possible reasons for the named behavior of state employees. First, there is no incentive to work efficiently. Regardless of the speed, or the efficiency of their work, their salary remains the same, and therefore the optimizing behavior of state employees is based on the minimization of effort (costs) for a given income. Secondly, since they are aware that companies are ready to pay a bribe for speeding up the issuing of licenses, state employees are acting in such a way as to increase the probability to be offered a bribe for expediting the process of license issuing. The more they stall with issuing of licenses, the greater the probability companies will offer a bribe.

Even greater room for corruption of this kind is formed if the state decides to limit the number of import licenses by issuing them in the order that applications arrive (*first come – first served*). Then every import company will have an incentive to, by corrupting the state employee issuing licenses, to get on the list of importers, or to skip the line that is being formed.

The next type of corruption is one that leads to circumnavigating, or breaking of rules. Namely, every company that is importing bananas has an interest in increasing the quantity of bananas which it is importing (for every additionally imported banana, the profit is increased, as is the rent it is seizing. This means they have an incentive to, by corrupting state employees, to increase the quantity of the allowed import of bananas for

### **Frame 3**

#### **State intervention and oblivion: Sheep are for the taking**

In late 1940s the Korean war begun. Soon the American boys in uniform discovered that Korea was a mountainous country, with a very harsh climate. Their uniforms were not up to the job. The Chiefs of Staff decided to replace all uniforms with new wool uniforms. Therefore, legislation was passed on the subvention of the production of wool, and American farmers, drawn in by such a subventions began massively growing sheep and supplying wool. Years passed, the Korean war ended, the US Army got new uniforms made of artificial fabrics, and the war moved to Vietnam, where the cold did not represent a major problem. The only thing no one remembered was to lift the rule not needed by anyone. Except, of course, by farmers who continued to receive subventions for manufacturing of wool which was not needed by anyone. Time passed, US Army waged war in Iraq and Kuwait, in very high temperatures, while farmers continued to produce wool and receive subventions from the federal budget. Only with the Clinton administration, as part of the process of reform of the public administration, someone noticed that the subject subventions were still paid. Of course, subventions were banned right away, and no one noticed any consequences. Except, of course, the farmers who lost the subventions. Question remains, who did those farmers vote for in the last US elections?

#### Frame 4 State intervention in cases of natural monopoly: Was Milton right?

The Chicago Nobel prize laureate Milton Friedman back in 1962 clearly stated that regulating of natural monopolies is counterproductive and that it should be left to the market. The basic position is that social costs of such regulation are greater than the benefits. Elaborating, Friedman used two arguments. First, natural monopolies are technologically conditioned, and every technology is prone to change, so that natural monopolies are temporary phenomena - they will disappear with the change of technology. Second, when they disappear, or when competition is established, a regulatory agency will remain, and it will then regulate that which is not to be regulated - a competitive market. Was Milton right? As far as the first argument stands, we are still waiting for promises to be met. In certain fields (telecommunication, for example), technological progress will lead to the disappearance of natural monopolies in many segments of the field. For example, wireless communication practically broke the monopoly of classic land telephony in the so-called local networks. However, it is uncertain how will technological progress lead to pipeless water transport. Only then will we be able to say that Milton was right. As for the second argument - he was not right. Introducing competition or deregulation but of the change in demand), lead to the abolishing of the regulatory agency. Also, changes in the field of telecommunications lead to abolishing of economic regulation in many segments of that field. Therefore, we should not fear that once established institutions couldn't be reformed. At least not in the US.

their company. In this way they increase the overall allowed import quantity of bananas for the economy in general. Additionally, companies not on the list for receiving licenses, have an economic interest for import of bananas to be put on the list. In other words, there is a demand for additional import licenses, or supply for corruption making possible the import of an additional quantity of bananas. If new, illegal licenses are issued, rules are broken and the state is not in a position to effectively implement the rules, or laws, aimed, at least in principle, towards maximizing social welfare. In other words, this kind of corruption increases the quantity of imported bananas, or the real quantity is greater than the one determined by the state.

The two previous types of corruption are part of so called **administrative corruption** or corruption that is based on biased decisions by state employees making impossible the full and impartial implementation of state rules. However, in its consequences, the worst type of corruption is the so-called **political corruption**. This is the type of corruption that leads to the change of rules, or laws in line with partial (private) interests of corruptors. In our hypothetical case of banana import, the rational interest of importers is to limit the import even more, or to establish a new market equilibrium securing the maximizing of the overall rent, of course under the condition that they continue to have import licenses for bananas. This means that companies will have an incentive to (by joint action) influence the elected representatives of the people, i.e. the legislative branch, and to (by changing the legislation), limit the import of bananas even more. In this a way, corruption makes it possible that partial interest of a group, or

individuals be imposed as general social interest, or to even to make it official by the passing of totally biased rules.

In general terms, a certain level of corruption is unavoidable in every society. It cannot be fully eliminated, nor is it possible to construct a system fully resistant to corruption. But, it is possible to mortify it and degrade the level of corruption from high towards low. The key difference between societies with a high and low level of corruption is the issue of social priorities. In societies with low corruption the priority is forming of new value, or the increase of well being of the society. In societies with high corruption the priority is redistribution of existing values, or the redistribution of welfare, and not the creation of new value and the increasing of the social welfare. Such societies wallow in corruption and have no perspective.



## II Corruption and Bribery in the Serbian Popular Tradition

### DEFINITION OF BRIBE AND ITS SYNONYMS

**Bribe** in the Serbian language signifies *money or another valuable item as a gift, compensation by which someone* (usually one in power, who has influence) *is won over to meet the wish of the giver* (most often in an unfair, illegal way), according to the Matica Srpska Dictionary. An older word exists **discretion**, which signifies a *bribe, bribery*. The word **corruption** entered into use relatively late.

Older sources mention bribes and bribery. In records of Bishop Mojsije Petrović from the XVIII century, where financial costs are denoted, one of large columns which denoted expenditures of bishop's court were presents or discretions. The Bishop, during an official visit to Vienna in 1731, writes that everyone expected either a present or a discretion and notes they were made "at Caesar's Gate", "office of the Vice-President", "room of the gracious", and for a done discretion of certain official named Rehckron it is noted "his new summer will not die". Jakov Ignjatović in his novel *Patnica* (1888) notes the following: "Do you see this livestock. One head is slaughtered and two are brought in. You know, farmers are still good, they bring their judge discretion". Also Dositej Obradović had to give bribes: "He wondered the offices of high administrators present at the Court, seeking to influence them by discretions which jangle and tickle the palate". Vuk Stefanović Karadžić inscribed in his Dictionary a verse: For the peasants did wrong deeds / and cursed be one who taketh the bribe. This verse clearly explains the goal of those people who wish to attain a certain high position.

### RELATIONSHIP OF POPULAR TRADITION TOWARDS CORRUPTION

The Serbian popular tradition has a rather flexible position regarding bribes and bribery, but it is fully aware of its existence, as of the fact that this phenomena can hardly be exterminated.

According to popular belief, not every reward is a bribe and for this reason in everyday life a clearly defined differentiation exists between a treat, a gift, giving a gift, taking someone for a treat, and a bribe.

Habitual moral norms define ceremony and rituals and prescribe when it is mandatory to bring a gift to someone. Those customs are usually linked with the life cycle (birth, christening, wedding, newlywed celebration), and with certain great and important events for an individual or his family, which demand great financial expenditures (building of a house,

or, the so called “moving in” celebration). Giving gifts in these circumstances in any form is not considered a bribe.

Bribe is also not considered a situation where someone assisted you to finish a certain job, and you later treat him to lunch or a small present or money. That is considered a treat or appreciation. According to the habitual norm, a person is even under obligation to express his appreciation in a material way. If not, the community will think of him as of an ungrateful person.

However, if you offer someone before the service is rendered a treat in the form of a meal, gift, or money, and he accepts, and then does what you asked for, that is considered a bribe.

The popular tradition has a negative opinion about the person receiving a bribe. Condemnation by popular opinion is much harsher towards one taking a bribe, then towards the one giving the bribe. The conviction exists that the one receiving a bribe does so out of clear greed, and not out of any existential need, and therefore the condemnation is greater. It is also believed that he is using his position, authority, and power to acquire for himself that which does not belong to him, or what he does not need. The condemnation is especially great when the mentioned person arrived at the given position by unhonorable means. It is believed that the position itself of the bribe taker secures enough privileges and a good material existence, and that he does not have to take bribes. The expression “to oil a greasy goose” pertains to such cases. Receiving a bribe according to popular tradition is a every serious offense, which debases not only his own reputation, but also the reputation of his family. Accidents or sickness which can happen to anyone, if they strike one who is believed to be taking bribes are explained as God’s punishment for a bad deed. He is pursued by negative views even after his death, which is illustrated by the following story: A peasant was on his death bed, and peasants gathered around him, when he begun to pass away, someone lights a candle and places it in peasant’s hands. – Thank you for the threat!, said the peasant not opening the eyes.

Sentiments are divided about the one who is giving a bribe, and are formed on a case by case basis. If for the bribe giver this is the only way to resolve a legitimate request, then the position of the traditional community is non-condemning. Popular tradition tacitly approves and has great understanding for an individual who by bribery expedites or receives certain decisions or settlement, because it knows that the state administration or authorities, or state employees who are representatives of the authorities, can always find an excuse for not issuing a ruling. If one insists on the obligation of authorities to promptly and without any compensation carry out its duty, the authority or the state employee can become agitated and seek revenge at another time. The proverb: “the poor cannot be measured with the devilish one” depicts powerlessness of an individual and the all-powerful state or government.

Besides the force of the authorities there is also the economic motive. Since the appellant is usually from the country, and officials are in cities, it is cheaper and simpler for the appellant to bribe a clerk, then to travel to the city several times for the same reason.

This sort of giving and taking of bribes has been present on this territory for centuries and it is hard to exterminate, because it has practically become part of the folklore, an every day occurrence. The fact that author-

ities will not exemplarily punish one who is receiving a bribe, and there is always a possibility – often seen in practice – that the bribe giver will be punished much more severely, causes in the popular tradition a certain kind of apathy and loss of will to change the reality, and with the well known statement or justification: Everyone does it! For those who still have a feeling of remorse.

Regardless of how this kind of bribery seems naive and harmless, it is by forming of general acceptance and lack of condemnation or simply by making peace with destiny, in its essence dangerous for forming of a climate that certain forms of bribery are less dangerous from others. In this manner a habit is formed that every task is easier completed if the “thing is oiled”.

By accepting the concept that all will be easier if someone is bribed, we arrive at a paradox where the meaning of the habitual norms is changed. Often one can hear today: “do this for me, and I will give you a *treat*”. Word *treat*, used in this context, represents and euphemism for bribery and has a completely different meaning from the original. The word *treat*, which always demarked a virtue and was a synonym for honesty, are now becoming a label for a criminal activity. In time, if this misuse continues, a situation will arise when offsprings will be speaking the language of their ancestors, but the meaning of their words will be the opposite. The word *bribe* will be lost, as was lost the word *discretion*, but corruption will remain. Anyway, regardless of the above story about the peasant and the candle it was shown that this process lasts longer than one might think.

On the territory of the former Socialist Federal Republic of Yugoslavia, during times of the breakup and war there was a wide spread occurrence of liberating people from “occupied” cities and their transfer to “free”, or safe territories. This was called: extraction, buying out, saving, but it was in reality classic bribery.

Bribed were those who at a given time had military or political power, and givers of bribes were closest family members or friends of the person who was in the occupied settlement. In the majority of cases there were third parties present, who mediated between interested parties. Introduction of the third side, the mediator, is known in organized cases of bribery. The bribe in these cases was money, usually hard currency, or sales contracts, by which the one who is giving the bribe “sold” his property to the one receiving the bribe (infrequently).

In the Serbian national territory this form of bribery was known previously and it is to be found during all wars and occupations. (The folk verse: Takes Marko three loads of treasures, And he frees Moslem women and she captives, And pays Marko three loads of treasures, And leads free the poor folk).

The popular tradition fully supports giving and taking of bribes in such cases. Luckily, this sort of bribery is present only in war conditions. When the war ends, circumstances disappear that cause these type of bribes.

The tradition most strongly condemns, even places curses, for *giving moneys or other sort of compensation to a person in power and influence to grant the giver profit, and to cause another person loss*.

These cases can often be found in folk tradition and usually relate to giving false testimony against an innocent person for reasons of personal gain. The case would usually be initiated by a person in power, who, by bribery or blackmail of an individual, demands from that individual initiating of

litigation, false testimony, or giving of false evidence, to achieve passing of a severe sentence against a person whose property he is after. It is a bit unusual that a powerful person bribes one with no power, but numerous cases that occurred immediately after 1945, which even today are talked about with fear, give evidence to the existence of this type of bribery.

## CAUSES AND CONDITIONS WHICH FAVOR CORRUPTION

The cause of corruption, according to tradition, on the side of the bribe taker is always *greed*. Greed is an individual character trait known to all human communities, regardless of race and religion. Bribes and bribery always exist, but there are conditions which favor the development of bribery and conditions which don't.

On the general level the basic precondition for development of bribes and bribery is included in one word: *lawlessness*. At the very time when the state and its institutions begin to weaken or collapse, and power of an individual begins to ascend over them, corruption enters the picture at the speed of light. Those who hold a certain state function are in a position to be the first to notice weaknesses of state institutions, and to determine if there is a will and a way to resolve those shortcomings. If their assessment is that it cannot be done or that there is no will to do so, discipline breaks down, fear of consequences decreases or disappears, which causes character changes in the individual. The saying "*Don't tempt me*" describes the state of an individual who has the possibility to take the forbidden fruit. In such conditions one carefully follows activities of the supervisor and colleagues and tries to find out their reactions and actions. Relationships in the system begin to function according with the principle of linked vessels, and at that in the negative sense. The weaknesses of the administration are discovered and misused. The rest is a question of technique, or as is often said in Serbia – robbery begins. This is clearly defined in the popular tradition, and expressed by simple words in popular proverbs: "not until night falls for one, can it dawn for another"; "for one war – for another a brother!".

In the local environment or community few behavioral models can be differentiated:

- community with patriarchal mentality, in which are *honored accepted rules of conduct or common law norms*.
- community without patriarchal mentality, which does *not honor rules of traditional behavior*,
- community in transition, or *interim between two systems or two authorities*.

In the first case there is the smallest amount conditions for the development of corruption. The main characteristic of the patriarchal morality is *respect for work and values created by work* (moral: "there is no bread without a hoe"); *for the spoken and given word* (moral: "a man is bound by his word, while an ox by his horns"). An obligation of a patriarchal figure is also the care for the family, and for this reason he will avoid any risk-taking activity, so as not to hurt himself and his family by his actions. Since bribes and bribery are, among other things, activities which include risk, they are in collision with the concept of patriarchal morality. The reaction

of the local community is harsh and causes general condemnation and loss of reputation of the one who would break common law rules of behavior and, ultimately, make impossible his existence in the community.

In communities where patriarchal morality is brought to a minimum, or there is none, other value systems rule. The cult of work and of the given word are not key elements of this system, but are considered, a shortcoming. Hypocrisy, by which in a manner of ease and without much effort material goods are gained, is a characteristic of this type of community. The duality of morals is clearly expressed in relationship towards state and private property. Private property has an owner and it is respected. The state property is considered property without a real owner and is acted upon accordingly. If representatives of state property are real people, it is believed that they can be persuaded to close an eye to certain activities. Common practices in such persuasion are: "the state will not fail because of our small deal, it will be good for you, and good for me". Since there is no condemnation in the local community, nor serious reactions from those in charge of protecting the state and its property, persuasion is easy. Proverb: "money drills where no drill can", "one hand will wash the other hand", "crow will not poke another crow's eyes out" are popular illustrations of corruption.

Transition, as a time of the change of a system, or the time between two authorities, among people always called lawlessness, is a period which greatly supports corruption. With the collapse of authorities and the system, their symbols also collapse. The state, its values, and property are left with no one who wants to protect them. There are not even symbolic dangers of carrying out certain activities which used to be dangerous. The state becomes a free for all and many see a chance to gain profit for themselves. There are no more scruples. Moral and common norms of behavior become "old fashioned" and "obsolete" and those who follow them are called "incapable". Bribes and bribery become public, and value symbols of the old society are ridiculed. Luckily, the popular tradition has experience with these periods and describes it by following proverbs: "no one had the candle burn for him till the morning", "all that is corroded will pass".

## TWO POPULAR TALES ON CORRUPTION

1. *Does the Vezir (Turkish lord) eat?* is a very common story placed in different periods in time and in different local communities. The common theme is the change of the principal in a given environment. Before the departure of the old, the new principal is preceded by horror stories causing great fear among his subjects. A meeting is then organized by heads of families, where the wisest one poses a question: does the newly appointed one eat? When those present answer positively, the one who posed the question answers: well, then there will be no problems, we will feed him well!

2. "A certain man called Desimir, born near Pranjane appears before Archangel Michael. During worldly life Desimir has liked to look at other men's women, drink too much, play an accordion, and could not resist the cards. Bit by bit and sins piled up. For truth's sake, he did good deeds: went to church on Good Friday, regularly honored St. John, and once, after a card wining, even gave money to the church. But when all was placed on the set

of scales, sins prevail. St. Michael looks at him, looks at the scales and offers Desimir a hair to cross. Then Desimir pleads with Michael and said: 'I beg you with God and St. John, look a bit better at the scales!'. St. Michael pauses, comes to him and says that they should look together. Desimir agrees, which was what he wanted, and while the archangel tiredly placed sins and good deeds again on the scales, he saw his chance and stealthily placed a few gold coins on the side where good deeds stood. Michael begins to measure, and now the good deeds prevailed. He was surprised, took a closer look and saw what was at hand. He was swayed a bit, but pretended he saw nothing, murmured to his beard, that he was probably wrong because he was tired, and took the gold coins, and then gave Desimir a log and he crossed to heaven. Later God learned about it and dismissed Michael from the duty and named Gabriel to weigh souls, and among people, besides the story, remained the belief that with money a soul can be bought and lost”.

\* \* \*

Corruption, or bribery is a universal category present in all contemporary, civilized societies and nations. There is no civilized nation which does not know of this phenomenon. Serbs are no exception. The listed examples from daily life, and their relationship with this phenomenon, clearly indicates the long presence of bribes and bribery in this region.

A variety of habitual norms which regulate the relationships of participants, as the rapport of the local and the wider community when dealing with bribes and bribery denote the complexity of this phenomena. Yet, regardless of the delicacy of corruption itself, it is perceived in the popular tradition as a dishonorable and criminal phenomenon. No one will talk positively about it in public and all will see it as a great evil which should be exterminated, but will immediately express a doubt that this is possible. Century long experience, embodied in the system of customs, ceremonies, ritual acts and popular creation, denotes that the popular tradition clearly perceived and differentiated between different types of bribes, bribery, and corruption. It is fully aware of dangers these phenomena carry and of their strength which is so high that it can lead to destruction of all values on which a community or society is based. Through proverbs, morals, and even humor it marked the phenomenon of corruption and those who take part in it. However, the common people are also careful. They have erred numerous times in their history and experience has thought them that from every evil there is a greater one and that driving out justice can eventually hurt the one who is doing so. This is the reason why the common people don't believe everything they see and hear. It is easy to make a unison condemnation of corruption, but one has to go on with his life and he might knock on the very door against which the condemnation was directed. Here lies the reason for the lack of a strong and direct position regarding bribes, bribery, and corruption in the popular tradition; the public opinion is formed on a case by case basis.

The popular tradition has inscribed and in the collective popular memory saved century long experience of life with corruption and struggle with it. No one is happy over the existence of corruption. Everyone would like if there was none, but it still exists. The common people are aware of this, as are aware of the struggle against it.

### III Results of Surveys on Corruption

#### NOTION AND EXPERIENCES OF CORRUPTION: PUBLIC OPINION OF SERBIA ABOUT THE PHENOMENON AND PRACTICE OF CORRUPTION

##### Introduction

Although it is believed that corruption is an all present phenomenon of contemporary era, its widespread and great deep-rootedness in a certain society are linked, by the nature of things, with the state of the overall moral (value) climate in it. The societies which are in a process of systemic transformation (like is the case today in all East European countries, including Yugoslavia) are especially sensitive in this regard. Periods of great and rapid political and economic changes, are followed by processes of social disintegration, which means not only the implosion of institutions and severing of social links, but also crises of the existing system of values, of the ruling moral norms and standards. Institutional changes, as a rule, follow or condition the process of disintegration of the system of values that in the *past* did make up the bases of social consensus and integration. Since the new value system has not yet been fully established, the transition from the old into the new political and economic order, in reality, is characterized by a harsh conflict of values, that is a state of social anomy and moral deregulation. Comparative studies conducted in countries of East and South East Europe in the post-communist period clearly demonstrate that they all share a state of significant prevailing anomy, both on the level of social consciousness and on the individual level.

Different forms of *deviant* behavior often develop as a reaction by people to an anomic social situation, either as means of adaptation or an attempt to overcome this state (Merton). Some of these reactions (feeling of helplessness, hopelessness, and disorientation and, in drastic forms, suicidal tendencies) represent *passive* forms of adaptation, since they are in a sense a psychological *retreat* regarding a given social situation. A very widespread manner of subjective response to given circumstances can be *conforming* to such a situation in society, getting used to and accepting of the newly established rules of conduct even if they are in contrast with one's own moral and value codes. However, a significant *active* reaction to the social situation of anomy can be acceptance (internalization) of positions and different "innovative" types of behavior,

often of a criminal category. Basically deviant types of behavior which have been socially tolerated in a longer period of time, become standards of “normal” or “adequate” behavior in a given situation. Most often, these are actions where it is hard to draw a line between socially acceptable “bypassing” of the rules, the very ones, which portray the full relativization of moral and legislative rules and the open practices of immorality and crime. Many phenomena characteristic for the period of “transition” in these societies – “gray economy”, irregular economic and business transactions, smuggling, unacceptable money trading, stealing from one’s own company, unauthorized premises development and, among others, *bribery and corruption* – for many people do not represent any more a serious moral (and in view of a lack of serious laws) or serious legal offences. The outspread practice of the breaking of moral and legal norms, lose the meaning of being prohibited, but is accepted as something customary and “normal” – is a clear sign of the existence of anomy in a society. This kind of *psychological adaptation by citizens* forms a certain *moral climate*, which then favors the further deepening of anomicity of the society, social deregulation and social debacle. Certain analysts of today’s post-communist systems therefore consider – it seems with validity – that probably much more time will be needed to, in the framework of these societies, strengthen social norms and establish broken social links, then to advance the economic situation (Andorka).

The disintegration processes and the state of anomy essentially marked the Serbian society during the last ten years, although symptoms can be pursued further in the past, through the period which preceded the beginning of the political and economic transformation. Circumstances which caused and reproduced them are well known: unresolved issues of statehood and the constitution, economic depression (made worse by international economic sanctions), the experience of hyperinflation, drastic pauperization and differentiation of the populace, rising rate of unemployment, war psychoses, refugees, internal political trouble and infighting. Empirical research of notions, positions, and experiences of citizens regarding the phenomenon and practice of corruption, the findings of which we are presenting here, is based within this social and psychological context. Although subjective assessment made by people only partially represents the current reality – they can, namely, be under the influence of widespread stereotypes, ideological and political preconceptions and the like – the subjective “construction of reality” strongly influences the behavior of people and thus itself becomes a relevant *social fact* (Berger and Luckman, 1960). If we wish to understand the roots of the origin, conditions for spreading, and the best methods of combating corruption in a society, this *fact* must be respected.

### The sample

The public opinion survey on corruption was carried out from **January 23 to 31, 2001** on a sample of 1.632 (planned 1.640), on the territory of Serbia excluding Kosovo and Metohija. The sample was made up of adults

and was realized on 82 points, or 82 community offices in 60 municipalities. The survey was carried out on a sample of the quota type with respect to six criteria: sex, age, education, urban-rural status, nationality, and belonging to wider demographic regions.

The structure of the sample was the following in regards to sex: male 50,2% and female 49,8%. Age structure of those polled: age 18-29 years 24,9%, 30-39 years 20,1%, 40-49 years 19,7%, 50-59 years 15,9% and 60 and older 19,4%.

According to education the structure of the sample was the following: completed 4 years of elementary school and less 11,7%, eight year primary school 33,1%, secondary 38,8% and higher school and university 16,1%. The structure according to profession consisted of: farmer 20,2%, non qualified/semi-qualified laborer 13,9%, qualified laborer/highly qualified laborer 19,7%, employees 16,5%, private entrepreneurs 3,9%, experts 12,0% no profession 13,9%. According to work status: employed in social/state company 32,8%, private company 12,4%, self employed 5,6%, retired 12,3%, not employed 14,5%, homemaker 13,5%, student 6,9% and unknown 2,0%.

## **Perception of the phenomena of corruption**

### ***Corruption as a significant social and/or personal problem***

Citizens of Serbia believe that the phenomenon of corruption is *one of most serious problems* facing the Serbian society today. When answers of those polled are analyzed concerning the issue of most serious social problem at this time, the problem of corruption (12%) stands out parallel with such social problems as poverty (26% of answers), political instability (22%) and crime (15%). Every tenth citizen believes that the issues of corruption are the *priority* problem, judging from the level of social danger or damage (while another 14% places it in second place according to importance). It should be noted that, at this time, corruption is seen as a serious social problem even when compared with the “poor economic situation”, “unemployment”, “poor health care and education”, “polluted environment” and “poor inter-ethnic relations”.

Although corruption is listed among the most important problems on the social level, more seldom is it pointed out as the most important *individual* problem (only 7%). In this sense, problems of low living standard, or of poverty, have a priority for the majority of citizens (48%), and are followed by phenomena seen as their cause of following effects – “poor economic situation” (9%) and “unemployment” (9%). Judging the harm of corruption on the individual level, a somewhat larger percentage of citizens (9%) places corruption on the second most important position, but it is still perceived as a less important problem than poverty, crime, unemployment, and poor health care services.

When a list of major social problems is prepared, based on overall answers (sum for first and second place of importance), the findings confirm that corruption is on the high, fourth, place – behind poverty, political instability, and crime (Table 3.1.).

**Table 3.1.**  
**Major problems for the society and the individual (sum for first and second place of importance) in %**

Phenomena	Social problem	Personal problem
Political instability	16	8
Poor inter-ethnic relations	6	3
Corruption	12	7
Poor economic situation	10	9
Crime	17	10
Unemployment	7	12
Polluted environment	2	3
Poor health care	3	9
Problems in education	1	3
Poverty, low living standard	24	33
Something else	1	1
Don't know / No answer	1	2
Total	100	100

Based on the given table, it is possible to conclude again that corruption is perceived to a somewhat greater extent as a serious social, then as a serious personal problem: altogether, 12% of citizens perceive it as one of the most serious (most harmful) phenomenon for society as a whole (among the four most important), and 7% of citizens are personally affected by corruption (seventh according to importance). The order is, also, changed, because numerous other problems (unemployment, poor health care protection, political instability) have a greater significance for an individual. Indirectly, this data can signify the existence of relative “habitation” (“getting used to it”) of the individual to the occurrence of “small” corruption in which he himself participates and which brings him certain gain.

### ***The notion of corruption***

Partial verification of the thesis of existence of certain “habitation” of citizens to certain manifestations of corruption in our society is seen by data on what citizens, in general, understand under the concept of corruption. Corruption is considered a *harmful social phenomena* by somewhat more than 60% of those polled; a significant percent (28%) believe that it is a common phenomena (“something that has always and in every society existed and it will always exist”); 7% believe that corruption is a “necessary evil”, or something not proper, but can be useful; and 2% more see in corruption a means for a faster and a more successful solution to certain problems in society. In conclusion, the majority of citizens consider corruption a social problem “which should be fought by all means”.

### ***Which actions make up “corruption”?***

The absence of a clear *condemnation* of corruption can be, in part, due to a lack of clear understanding by citizens of this phenomenon, or the relative confusion in what can be considered or included in the phenomenon of corruption. Although there is a well-established understanding that “corruption” is basically something that is socially unwanted and “condemned” – there is no consensus regarding which actions make up this phenomenon. Confusion regarding moral condemnation of certain types of corruption exists, most often, when dealing with the following practices: “giving pre election donations to political parties”, “personally contacting a municipal representative in an attempt to acquire a development permit”, “giving a gift to a doctor” and “additional compensation to a lawyer for aiding the accused before a court”. In all of the above more than one third of those polled believe that we are not talking about “real corruption”. A significant number, also, does not believe corruption is “offering a counter service aimed at acquiring a leave of absence from work” (28%), “intervention with a high official to obtain employment for a family member” (27%), or “use of a personal connection to free someone from military duty” (19%).

Obviously, the activity which assumes reciprocity in granting certain services, giving concessions, make privileges possible– among close acquaintances – i.e. what is customary considered as “using contacts and relationships”, which makes up a part of *traditional morals* – are exempt from the phenomena of corruption. In contrast, citizens are prone to call corruption all forms of acquiring privileges linked with giving and receiving of cash. Implicitly, the concept of corruption is linked with in the consciousness of citizens, primarily, with *giving of cash or the realization of a financial gain* (for example: “giving money to a state employee for decreasing taxes”, “offering money to a traffic policeman so he would not take away your driving license”). Such perception of corruption is linked, on one hand, with still prevailing forms of traditional morality; and on the other hand, it represents a kind of vindication of one’s own participation in the widespread practice of using relationships and contacts as a way to acquire a privileged position in effectuating civic rights and obligations.

### ***Basic causes of corruption***

Citizens believe that the *overall “crises of morality” of the society, overall growing poverty of the society, and the lack of the rule of law*, are the basic (and almost equally important) causes of corruption in our circumstances. The following table illustrates the distribution of the overall number of answers to the question about basic causes of widespread corruption in the society (three answers were offered, Table 3.2).

If we, (conditionally and for the purpose of this analyses), divide corruption causes into *systemic, objective, and subjective factors*, we can conclude that, in the perception of citizens the formation of corruption is mostly influenced by the perception of the weakness of the system (no rule of law, inefficiency of the judiciary system, bad legislation, the nature of the political and economic system, etc.), and that the responsibility is less often bestowed to objective

**Table 3.2.**  
**Basic causes of corruption (cumulative)**

Causes	%	rank
Overall poverty	15	2-3
Immorality and lack of fairness in the society, crises of morality	17	1
Inefficiency of the judiciary system	8	4
Inheritance of the previous communist system	5	7-8-9
Bad legislation in this field	6	5-6
War and international sanctions	5	7-8-9
Political system	4	10-11
Economic system	3	12-13
Lack of clear administrative control	4	10-11
Low salaries of state employees	6	5-6
Lawlessness, no rule of law	15	2-3
Government intervention in the market	1	14
Human nature, people are like that everywhere	5	7-8-9
Something else	0	15
Don't know / No answer	3	12-13

circumstances (war, sanctions, overall poverty) and to subjective characteristics of the society itself and of the people as individuals.

Only 1% of those polled believe that corruption is contributed to by government intervention in the market, which demonstrates that the Serbian public opinion does not have a clear apprehension of the consequences of state intervention. In contrast, in the first position as a cause of corruption, the moral crises of the society is perceived, which directly illustrates that our public still believes in morals as a mechanism for the establishing of order in a society, or an obstacle to the formation and expansion of corruption.

### ***The most important cause of corruption***

The opinion of citizens about the **most important** cause of widespread corruption in our society, confirm the above conclusions and, also, additionally sheds light on the reasons why corruption is not in public, in the moral sense, a univocally condemned phenomenon. A belief prevails in the public that corruption is, yet, a “*derived phenomena*”, and that the basic problem lies *in the nonexistence of the system of the “rule of law”* – meaning, mostly, in “lawlessness”, or not respecting laws (23%), and then, in bad legislation in this field (6%), an inefficient judiciary system (6%), and lack of clear administrative control (2%). The reasons for generation of corruption which citizens point out can be ranked above all, in the field of (more general) *systemic causes* (for example: “inheritance of the previous communist system”, “political system”, “economic system”,

“government intervention in the market”). As in the previous case, evaluating in general, the essence of the causes is in most part seen in weaknesses inherent to the “system” itself (almost one half of answers). Externally, *objectively unfavorable circumstances* (“overall poverty” – 17%, “was and sanctions” – 6% and “small salaries of employees – 4%) are basic reasons for the widespread corruption in our society are listed by somewhat more than one quarter of citizens. *Bestowing of the responsibility to the “society” itself* (“immorality and dishonesty in the society, morality crises” – 20% and “human nature, people are like that everywhere” – 5%) is characteristic, also, for somewhat less than one quarter of those polled.

Although they admit that an important cause for spreading of corruption can be found in the overall state of morality in the society – in the overall moral crises – the society (citizens), obviously, aspire, in the final consequence, to *reject the burden of their own moral responsibility* by transferring it to the system (systemic weaknesses) and to objective circumstances (overall poverty).

## Perception of the phenomena of corruption in our society

### Appraisal of the widespread of corruption

Citizens believe that corruption is, both in the most recent past and in the present, an *extremely widespread phenomenon in society* (the mark “very high” and “high” are given by almost 80%). The perception of the scope of the widespread ness of corruption in Serbian society, at that, are obviously influenced by general, positive, expectations of the population regarding the performance of the new authorities, which were noted in other surveys (Table 3.3).

**Table 3.3.**  
General widespread of corruption (in %)

Period	very low	low	moderate	high	very high	don't know	average
Five years ago	2	2	15	37	40	4	4,16
Today	1	3	15	40	36	5	4,14
In five years	6	15	24	10	6	39	2,93

A general conclusion based on acquired data can be made that there are no significant differences in the perception of the widespread ness of corruption in the past (five years ago) and today, when one observes the *average perception of the widespread ness of corruption* which those polled gave for these two periods (on a scale 1 to 5, from “very low” to “very high”). The present (4,14) is, in this sense, only a bit more positive from the past (4,16). However, there are rather widespread *expectations that the scope of corruption will significantly be decreased in the future* (and those positive expectations are linked with the change of power in Serbia). Generally, a positive attitude towards new authorities influences the assessment and anticipation of the widespread ness of negative phenomena in society.

## *Fields in which corruption is most widespread*

Perception of the widespread of corruption in general, as in individual fields of social life, as part of certain social institutions cannot be considered as a reliable indicator of reality. To a great extent they depend on personal experiences of individuals, as from “exposure” of certain segments of the population to important sources of information and susceptibility regarding relevant messages. Such assessments, also, depend on the general attitude towards the political system and/or regime, which is attributed with the responsibility for the state of the society in general. Our survey of the attitude of citizens towards corruption was carried out at the very time of the change of authorities in Serbia and Yugoslavia, which made it impossible to form with certainty a “referent framework” which influenced the perception and subjective judgment of citizens. Researchers assume that this factor of the undefined referent framework had a lesser influence on the appraisal of corruption in certain fields, since perceptions were already formed in a longer period of time, and a somewhat greater problem exists with appraisal of institutions. Our belief is, still however, that since the institutions of the President and of the Government (of Yugoslavia and Serbia) in the consciousness of citizens appear as personalized notions, their appraisals pertain, mostly, to current holders of these posts. Still, in the interpretation of findings one should be reserved.

Having in mind the previously stated reservations, we can conclude that, according to the citizens, corruption represents an extremely widespread phenomenon in all fields of our society: between 50% and 85% of those polled assess that corruption is represented “much” and “very much” in all listed fields (excluding somewhat education, for which one third of those polled state the same). Based on the average marks by citizens, it can be concluded that this phenomena is present to a greatest extent in the customs administration (4,47), judiciary (4,18) and police (4,16) (Table 3.4.).

Average index of evaluated widespread of corruption (by which are summarized assessments of the widespread of this phenomenon in all of the listed fields together) – equals:  $W = 7,1$ <sup>1</sup>. For comparison, this index in similar surveys in Bulgaria had a value of 5,9.<sup>2</sup> When assessment of the widespread of corruption was carried out on the basis of an extended list of institutions, a very similar ranking of answers was arrived at (Table A1. in the annex).

*Judging by average findings of the widespread of corruption given by citizens, fields or institutions with which this phenomenon is most often linked in this country are the customs administration (4,35), the tax administration (4,12), the judiciary (4,11) and police (4,06). The presidency of Yugoslavia (2,42), statistical bureau (2,58), and the Army (2,73) are institutions in which, according to assessment of citizens, corruption is found to be the least.*

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1 Index W is calculated as a sum of individual indexes or scores for every field individually = Q, divided by the number of individual indexes or scores = n – meaning:  $W = Q / n$  and it is projected in span from 1 to 10, where 1 represents the smallest, and 10 the greatest intensity of the phenomenon.

2 According to: Coalition 2000; Corruption Indexes

**Table 3.4.**  
**Fields of society in which corruption is widespread the most (in %)**

Field	Average	Very little	Little	Medium	Much	Very much	Don't know
Health care	3,96	2	4	18	43	30	2
Education	3,20	15	17	35	26	10	6
Municipal administration	3,78	1	5	28	36	22	6
Customs	4,47	1	1	7	29	55	7
Courts	4,18	1	4	13	35	40	7
Police	4,16	2	4	13	34	42	5
Social (state) companies	3,96	1	4	21	35	30	8
Private companies	3,69	4	10	23	28	25	11
Public companies	3,77	2	7	25	27	25	13
Republican (Serbian) administration	3,84	1	5	23	32	24	14
Local administration	3,83	1	6	24	32	25	11
Political parties	3,78	2	7	24	28	24	16
State leadership	3,79	5	11	14	21	33	16

If we exclude the statistical bureau as an institution the citizens are not well informed about, the findings where corruption is most rarely linked with the Army and the current President of the federal state, indirectly support the thesis (and confirm findings of certain previous surveys) that those institutions have the greatest trust of citizens and greatest legitimacy. Part of the perception of the current Yugoslav president (including “the President’s men”) kept an “aura of honesty”, with which Vojislav Koštunica won the elections.

**Average index of the evaluated widespread of corruption for all fields** (calculated as in previous case) amounts to: **W = 6,0.**

A similar structure is arrived at when one analyzes the perception of citizens in which of these fields corruption is *the most, or the least* widespread. Also this time, more then one half of citizens point to the customs administration (1/3 of answers), police and judiciary – as the basic “centers” of corruption; the FRY presidency (30%), Army (21%) and statistical bureau are, on the other hand, seen as institutions where corruption is present the least.

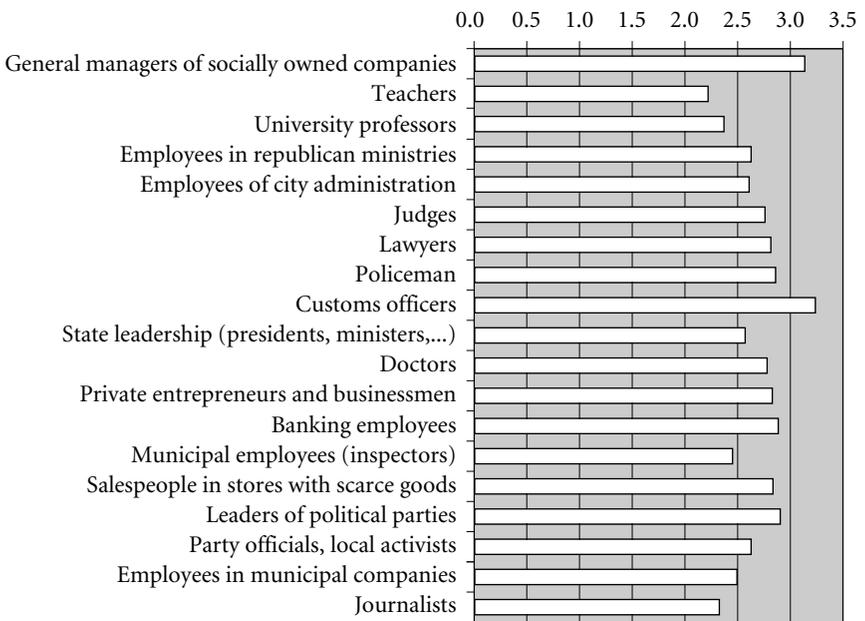
### ***Professions (groups) seen as “bearers” of corruption***

Citizens think that the majority of public servants, both on the local and republican level of the executive branch of government, participate in corruption. Similarly as with the assessing of widespread of corruption in certain fields and institutions, it is believed that more then three fourths of *all state employees* participate in corruption.

At that, there is no difference in assessing the widespread of corruption on the republican (average 2,98), or local (2,90) level. Corruption is perceived not only as widespread, but also as common phenomena.

Specification of professions and social groups that are perceived as basic participants in the practice of corruption demonstrate that the *customs service* is again in first place. More than two thirds of citizens think that “all” or the “majority” of customs officials participate in corruption (average 3,17). According to the level of assessed corruption they are followed by *general managers of state companies* (average 3,11), but all other listed professions are also to a great extent “stigmatized” as prone to corruption (Table A2 in annex). The average index of the rating of the widespread of corruption for all professions together (scale 1 to 10) is:  $W = 5,5$ .

**Picture 3.1. Professions according to the level of participation in corruption**



The extremely high criticism by citizens in this sense is, essentially, non-discriminating; and we can, therefore, with a high level of probability assign it to the *general tendency of radicalism* which overtook the society which is in a state of political changes and upheaval.

### ***Corruption in public procurement***

It is a general belief of people that corruption is an unavoidable side effect of public (state) procurement. This specially pertains to certain fields, like *public works for the reconstruction of the country* (average for outspread of corruption 4,14), *education* (4,11) and *police* (4,04). Pertaining to health care one can notice that the average for outspread of corruption for tenders is seen higher then, a high average for this field in general

(4,11: 3,96), which means that the citizens believe that this is the “epicenter” of corruption in this field. (Table 3.5.)

The least corruption in public procurement, according to those polled, is to be found in the army (3,20) although it is significant. In general, the average findings show that the public generally believes that corruption during public procurement is **exceptionally extensive**. The average index of existence of corruption in public procurement, in all listed fields, is **W = 9,2**

**Table 3.5.**  
**Assessment of outspread of corruption in public (state) procurement<sup>3</sup>**

Field	Average	Very	Somewhat	Medium	Some	None	Don't know
Health care	4,11	35	36	15	3	1	9
Education	3,26	10	27	32	18	2	11
Public companies	3,81	21	33	28	4	0,5	13
State administration	3,86	25	30	26	4	1	13
Police	4,04	34	33	13	7	1	2
Army	3,20	14	23	19	2	17	15
Public works (reconstruction of the country)	4,16	38	24	12	5	1	19

### ***Most frequent forms of corruption and their social consequences***

According to the views of the majority of citizens (46%) corruption in our society is most often used in *circumnavigating* legal obligations and norms; then, in an attempt to *change* the existing legal norms for someone's gain and interest (24%); and only then in an attempt of the people to *realize* certain rights, which are guaranteed by existing legal norms (20%). Such answers could be explained in light of previously listed results that the basic causes of corruption, according to the citizens, are *inherent to the system*. Corruption is, therefore, perceived as the “adequate response” by individuals to “the faults” of that system – a way and an attempt to bypass or change norms that do not enable the appropriate protection and realization of rights. However, this explanation has discrepancies in findings in the attitude of citizens regarding the *dangers* that certain mentioned types of corruption might have for the entire society. As the socially most dangerous type of corruption, according to citizens of Serbia, is the one used with a goal to change existing laws for personal interests and benefit (44%), and then corruption in the circumnavigating

3 Note: The average was calculated vice versa – from 1 (least corrupted) to 5 (most corrupted); meaning, the higher the average –higher the perceived corruption.

of laws (31%). Corruption used to effectuate guaranteed rights of citizens is rarely seen as a significant social danger (only 9%), and one part of those questioned (7%) believe that this type of corruption can even be beneficial for society (Table 3.6.).

**Table 3.6.**  
**Outspread, perceived danger, and benefit of certain types of corruption for the entire society (in %)**

Type of corruption	Outspread	Social danger	Social benefit
To attain rights	20	9	7
To circumnavigate laws	46	31	1
To change laws	24	44	1
Not beneficial	–	–	75
Don't know	10	17	17

Although corruption is generally condemned, one part of citizens has a tendency to *justify its use, under certain circumstances*: when it contributes to the realization of rights guaranteed by law, and which in a way prescribed by the law cannot be realized. This confirms Merton's belief that different types of socially deviant behavior – among others corruption – often originate as a reaction to an anomic social situation: i.e. a situation in which a significant discrepancy exists between accepted social goals and means an individual has at his disposal to realize them.

### ***Bases of the given assessment of the extent of corruption***

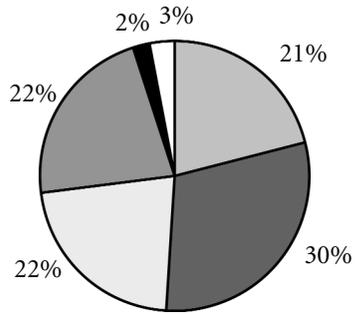
As mentioned, the assessment of citizens about the extent of corruption in a society, are but subjective reflections of the reality. Their authenticity can, however, at least partially be verified if one knows the experiential bases on which they were formed: are they based on personal experience, positions based on beliefs and information of referent groups, or the influence of mass media. Knowledge of the basis for perception of the attitude on corruption is also necessary as a precondition for planning measures of “immunization” of the populace against this sort of deviant behavior.

More than 50% of citizens base their judgment on direct experience, or the experience of their environment– a close circle of people. From that number *one fifth* of those polled states that they have participated in the practice of corruption, which adds validity to given subjective assessment by citizens about the widespread ness of corruption. At the same time, however, these statements can be used as an approximate measure of the real extent of *susceptibility* of citizens of Serbia to in participation and in the practice of corruption, which is, as it can be seen, very great. The other half of responses pertains to indirect deduction, either based on information from media, or based on perception of existing differences between the income and the living standard of public servants (Picture 3.2.).

**Picture 3.2**

**What is the basis for the assessment of the extent of corruption (%)**

- Personal experience (personally had to give money, gifts, services) 21%
- Conversation with family and friends 30%
- Information provided by newspapers and other media 22%
- The fact that the standard of living of public servants is much greater from their salaries 22%
- Other 2%
- Don't know/no answer 3%



### 1.5. Attitudes of citizens towards corruption

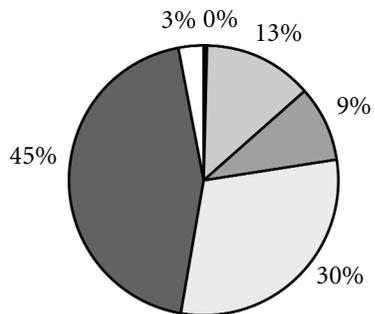
The principle position of citizens towards corruption is predominantly **negative**<sup>4</sup>. by the majority of the population perceives corruption, as a social evil. However, survey findings point out that even at the level of principle there are striking “undertones” of attitudes, which can justify a conclusion of the existence of a significant level of anomy and moral crises in society.

When attitudes of citizens towards corruption are examined directly, i.e. when based on an individual question, one analyzes the scope and conditions for the justification of corruption, it is possible to conclude that in the population in this regards there exists a fair amount of consensus regarding *condemnation* of corruption *in principle*: a somewhat less

**Picture 3.3.**

**Position on justifying corruption as means for attaining a goal**

- Is always justified 0%
- Is sometimes justified 13%
- Undecided 9%
- Most often is not justified 30%
- Is never justified 45%
- Don't know 3%



4 A scale that included ten statements and based on direct questions examined attitudes of citizens towards corruption.

then one half (44%) believe that it “is never justified”, and another one third that “most often is not justified”, as a means for the attainment of a certain goal or interest. More than one fifth of citizens, however, not even at the level of principal, do not discard corruption fully as a means for the attainment of personal goals. One part demonstrates an *ambivalent* position (9%), somewhat above one tenth believes that this practice is *justified under certain conditions* (13%), and an insignificant percentage unconditionally justifies it (under 1%).

When those polled were offered individual descriptive statements based on which attitudes towards corruption were judged the following distribution of answers was obtained:

**Table 3.7.**  
**Acceptability of corruption in principal (in %)**

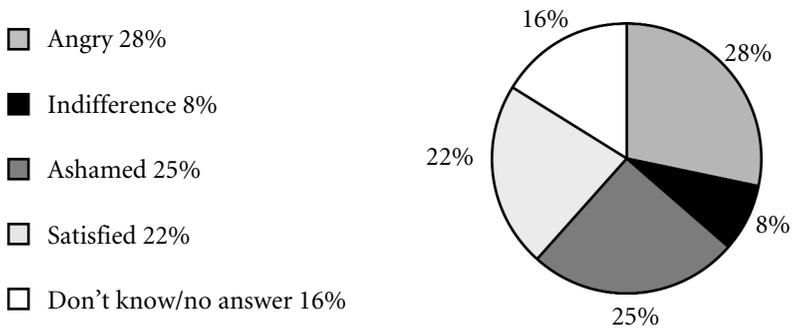
Positions	It is acceptable that Assembly representatives and members of the Government accept money, gifts or services from different individuals or organizations	To solve a problem successfully a person should offer money or a gift to clerk/official he is in contact with	If a clerk/official asks for money to solve my problem, I would pay him	It is acceptable that employees of ministries, municipal and city administration accept money, gifts, or services from various individuals or organizations
Fully acceptable	3	4	4	3
Partially acceptable	5	8	9	4
Undecided	9	13	20	7
Partial rejection	15	16	17	15
Total rejection	63	55	41	67
Don't know	4	4	8	5
Average	1,65	1,84	2,09	1,54

The above distribution of answers shows, also, that at the principal level, corruption is more often than not, rejected – both as a general phenomenon and as means for resolving personal problems. However, there is a difference in the scope of acceptance of corruptive practice depending on the main actors and the one who benefits. Citizens are more prone to accept, also at the level of principle, such practices if they see themselves in the role of the person who is solving a problem, then in the case when they are taking a position regarding the behavior of others (public servants). In other words, they are *more prone towards compromise in situations in which corruption is used for the accomplishment of their own goals and interests*.

When based on these statements from the applied scale the **average index of acceptability of corruption in principal is calculated**, it can be seen it is relatively low and equals  $W=4,1^5$ . Although it is difficult to make a sound comparison in this sense, it should be mentioned that a similar index of acceptance of corruption in Bulgaria has a value of  $W= 1,5^6$ .

The position towards corruption, i.e. the existence or lack of existence of moral condemnation of this phenomenon was also examined based on a projected question (projected feelings of a person who is in a position to corrupt). The question was: “How does, most likely, a citizen feel when he has given money or a gift to a clerk and gotten what he wanted?” Answers follow:

**Picture 3.4**  
**How does the one who has paid a bribe feel?**



The most common emotional response of citizens who were forced to pay a bribe, according to answers of those polled, is anger (28%). The feeling of *shame*, which would represent an indicator of an interior moral norm or an “internal sanction”, is characteristic only for one quarter of answers. Indifference or even satisfaction connected to this act, is expressed by one third of those polled, and a significant number of those who refused to answer this question – are a significant sign that in the society there is a significant level of “getting used” to this phenomenon, that it is becoming something normal, everyday, which does not cause moral revolt, condemnation or aversion.

### **Susceptibility for participating in corruption**

The above listed data signify a general problem of inconsistency between the principal position of moral intolerance regarding corruption and the position and behavior in an actual situation, when there is a real need of satisfying personal interest. Therefore the expressed intolerance of citizens towards the phenomenon of corruption (i.e. given statements on the impermissible phenomenon of corrupting) can be accepted only as an

5 Average index of the position towards corruption is calculated based on questions from the scale of positions of the Likertov type that included 10 statements.

6 According to: “Clean Future”, Anti-Corruption action plan for Bulgaria, Coalition 2000, p. 68.

approximate measure of its real social acceptance, or of the real susceptibility and readiness of members of a society to participate themselves in the processes of corruption. The research made an attempt to quantify this susceptibility, i.e. the predisposition to participate in corruption.

### ***Efficiency of corruption as means to accomplish goals***

The readiness of citizens to participate themselves in the practice of corruption, regardless of moral positions, greatly depends on whether it is perceived as a mean that can *efficiently* resolve or ease the solving of problems of an individual in this society. The appraisal of citizens regarding the efficiency or instrumentalization of corruption was examined on the basis of the following, projected question: “If they wanted to successfully resolve a certain problem how probable is it, in your judgment, that those people in this society would have to do one of following things?”.

Corruption is, obviously, perceived as a very efficient mean for attaining individual goals: according to those polled, 75% of people in our society would “most probably” or “probably” give money, 81% – a gift, and the same percent a service, in an attempt to *successfully* resolve their problem (Table 3. 8.). The average index of perceived efficiency (instrumentality) of corruption (in all three forms) is:  $W = 7,3$ .

**Table 3. 8.**  
**How probably would people do one of the following things (in %)**

	Very probably	Probably	Fairly improbably	Not probably at all	Don't know
Offer cash to a clerk	28	47	14	4	7
Give a present to a clerk	36	45	9	3	6
Do a favor for a clerk	37	44	9	2	7

### ***Personal readiness to participate in corruption***

Corruption is an exchange process and it includes both the giving, and the taking of a bribe. The examination of personal readiness of citizens to participate in corruption includes both sides. Would citizens pay a bribe is asked? Findings show that the majority of citizens (even those who have a principle position that corruption is unjustified) are prone – under pressure of circumstances and in a situation where they have no other method to solve their problem – to take part in corruption by paying a bribe. Only 1/5 would never pay a bribe; more from one half would not pay a bribe only if there is another way to solve their problem; 1/5 would pay if they had money and 3% would pay in any case. This means, that more them  $\frac{3}{4}$  of those polled are ready to take part in corruption, i.e. that they demonstrate readiness for compromise and deviation from

their own beliefs in this regard, under certain conditions and for lack of an alternative.

Situations or problems listed by citizens as justification for personal participation in corruption, most often are linked with the fields of health care and employment. (Table 3.9.)

**Table 3.9.**  
**In which situations would you pay a bribe? (in %)**

Service	Yes	No	Don't know
Not to pay customs duty on the border	35	48	17
To get a full-time job (or for someone else)	41	42	17
To pay less taxes	18	71	10
So your child would get a better grade in school (pass an annual exam)	9	83	7
To receive an building permit for a house	27	58	15
To win a certain case before a court	21	63	16
To receive better medical treatment	51	34	15
Not to pay a misdemeanor fine	16	68	16
To acquire a certain public utility service (telephone, power, water)	29	54	16
Other	2	10	88

The greatest readiness to pay a bribe exists in attempts to acquire better health care services (51%), or to solve the problem of employment (41%). It is, also, significant when dealing with customs (35%), public utilities (27%), and securing building permits. Readiness to corrupt is the smallest when dealing with problems in the field of education (9%).

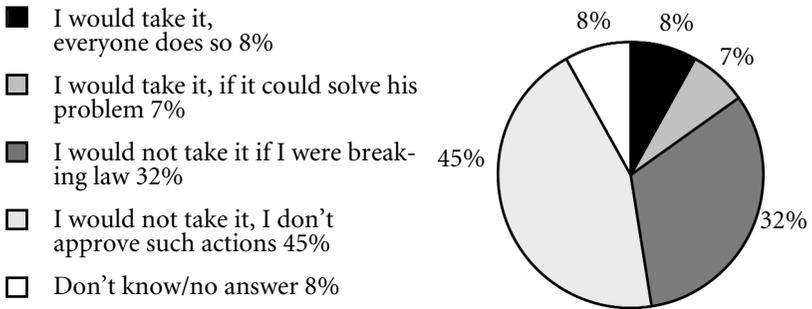
Generally speaking, there is a high level of readiness for corruption. The average index of **readiness to participate in the practice of corrupting** (in all listed forms), on a 1 to 10 scale, is:  $W = 6,9$ .

### ***1.6.3. Readiness to accept a bribe***

The second aspect of the readiness of citizens to participate in corruption is the attitude towards the acceptance of a bribe. It is, also, significantly widespread. Citizens demonstrate a similar inconsistency (deviation from the principal condemnation of this phenomenon) in this case too. Almost one half is ready to, in a hypothetical situation<sup>7</sup>, take an offered bribe, out of which 8% unconditionally. The fear from sanctions would, eventually, deter one third of people from this practice, and 44% unconditionally condemn and reject such a practice.

<sup>7</sup> The question was: When you imagine yourself in a role of a badly paid clerk to whom someone offers money, a gift, or a counter service to solve him a given problem, what would you do?

**Picture 3.5.**  
**Would you take a bribe?**



## Experiences with corruption

### *Mutual corruption pressure*

The experience of citizens regarding the practice of corruption includes a certain pressure from state employees to have bribes offered, or pressure exerted on state employees to accept a bribe. Findings demonstrate that, in general, the corruption pressure between citizens and public servants is moderate and more often implied than direct.

**Table 3.10.**  
**In the past year when you were in contact with public servants, how often did it happen that:**

	Always	In majority of cases	Only exceptionally	Never	Don't know
They directly ask for money, gift, or a favor	3	14	32	39	13
They do not ask directly but demonstrate that they expect to be given money, gift, or a favor	10	37	22	18	12
They do not ask directly nor demonstrate that they expect to be given money, gift, or a favor, but you indicate that such agreement is possible	5	15	20	45	14

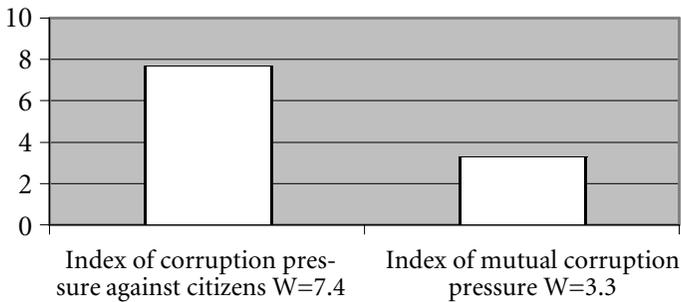
Judging from answers of those polled only in a small number of cases public servants overtly sought from them cash, gifts, or favors (17%), but in a greater number of cases they demonstrated that they expect something like that (47%). Only 1/5 of citizens are ready to admit that they personally have initiated behavior that can be considered corruption, i.e. that they exerted pressure aimed at corrupting.

Therefore, the average index of overall corruption pressure is significantly lower from the index of susceptibility to corruption –  $W = 3,3$ . Corruption being performed by citizens, therefore, is not so much a result of overt imposition, but of willing acceptance, motivated by an understanding that this is the most efficient way for accomplishing of their interests and needs.

### Openness to corruption pressure

A significantly different picture is arrived at when citizens assess their own (one way) openness to pressure to pay a bribe, in a concrete situation. In these cases, among others, auto censorship is significantly lower depending on social desirability, or undesirability of the answer. The assessment of being exposed to pressure to give a bribe in different situations points out that this pressure is most to be found in the field of health care, or from doctors and other medical staff (26% of citizens says that they had experiences of this kind lately). Policemen (19%), customs officers (17%) and sales people (16%), also have a tendency to apply pressure on citizens in this regard, more often than other professions (Table A3. in annex and Picture 3.6).

**Picture 3.6.**  
Indexes of corruption pressure

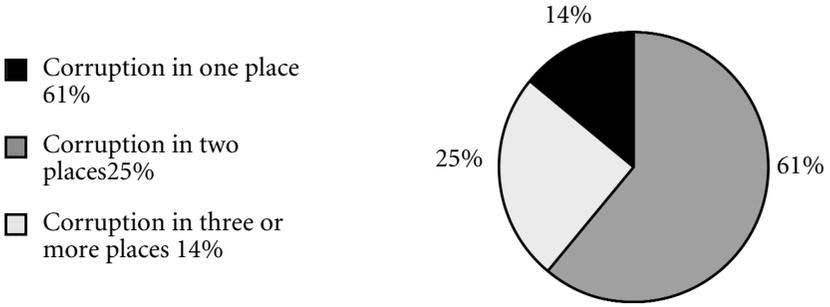


The index of corruption pressure which public servants exert against citizens (for all professions together) is high and equals  $W = 7,4$  (scale 1 to 10).

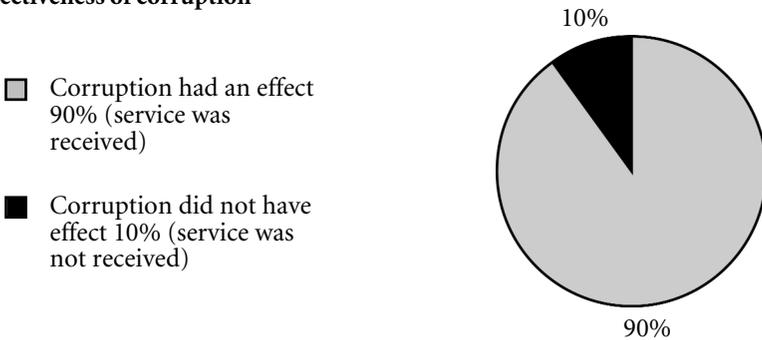
### *Specific experiences with corruption*

The majority of citizens (65%) do not openly admit that they were in a position to give a bribe, while approximately 30% admit to doing so. From that figure 27% said that bribery was successful (they received the service which they have expected). Around 19% of citizens who were in a position to give a bribe, gave a bribe only “in one place”, 5% in two, and 3% in three and more places. In cases of multiple bribery, according to answers of those who participated in the practice of corruption, public servants who they gave bribes to were more often of different rank (7%), than of the same rank (1%).

**Picture 3.7.**  
**Level of decentralization of corruption**



**Picture 3.8.**  
**Effectiveness of corruption**



A “tariff” for determining the amount of the bribe, judging from given answers, is most often “known” (21% said that an already established norm exists); in 9% of cases the amount was stated “on the spot”; 5% of citizens asked what the amount is, and 3% found out “in another way”. Examining of specific experiences with determining of the amount of the bribe was used as a test question, which uncovered that one number of those polled, conceals their real experiences with the practice of corruption.

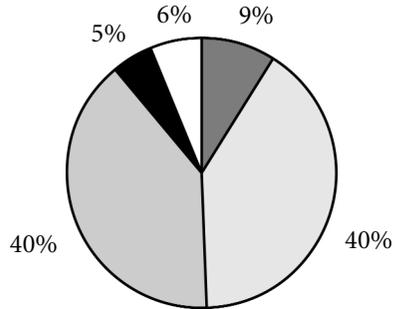
### **Battling corruption**

#### ***Possibility of suppression of corruption in our society***

Citizens’ beliefs concerning the possibility that society can resolve the problem of corruption are divided: more than one half believe that corruption is an ever present phenomenon, or that it can only somewhat be decreased; somewhat less than one half believe that that the widespreadness of this phenomenon can be significantly decreased, or that it is possible to suppress it fully.

**Picture 3.9.**  
**Can corruption be suppressed?**

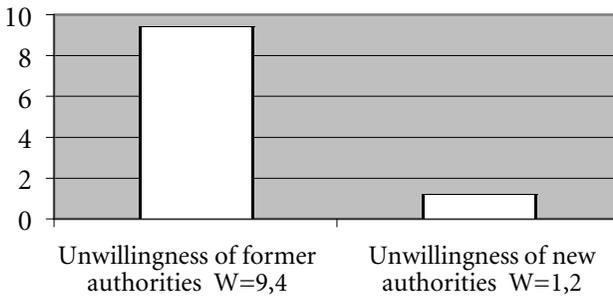
- Corruption in our society can in no way be suppressed 9%
- There will always be corruption here, although it can be somewhat decreased 40%
- Corruption in our society can be significantly decreased 40%
- Corruption in Serbia can be fully suppressed 5%
- Don't know/no answer 6%



### *Expectations of citizens*

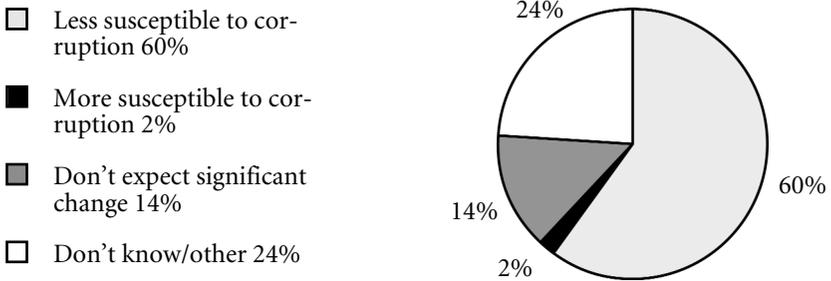
A great majority of citizens thinks that the “old authorities” did not put in any serious effort to eliminate corruption. On the other hand, expectations from the new authorities to undertake significant steps in this direction are great. The average index of assessed **unwillingness** of former authorities to fight corruption is high,  $W = 9,4$ ; while the same index of **unwillingness** for the new authorities to fight this phenomenon in the future is only  $W = 1,2$ .

**Picture 3.10.**  
**Unwillingness of authorities to fight against corruption**



Expectations regarding the activities and efficiency of the new authorities in this field are extremely optimistic not only with the issue of fighting corruption but also regarding the assessment of their eventual *susceptibility* to corruption. Almost 60% of citizens expect that representatives of new authorities will be “significantly less” or “less” susceptible to be corrupted from their predecessors. Only 2% believe that they will be susceptible to corruption, and 14% do not expect any significant difference.

**Picture 3.11.**  
**Expectations from new authorities**



### **Basic conclusions**

The analysis of data from the empirical research on perceptions, attitudes, and experiences of citizens regarding the phenomenon of corruption lead to certain general conclusions.

First, the majority of citizens demonstrate that they are aware that corruption is a reality of this society and that it represents a social problem. Corruption is seen as one of the four most important social problems. Citizens perceive this deviant phenomenon to a lesser extent as their own problem (seventh place according to importance), having probably in mind “small” corruption in which they participate themselves and which brings them gain. Namely, their perception of corruption relates to the “large” corruption in which they do not participate and about which they have only indirect knowledge.

Secondly, there is no unified opinion about corruption as an extremely harmful social problem “which should be fought by all means”. Relativizing the dangers it represents for society in general represents a sign that the society, at least in part, has grown used to the phenomenon of corruption and that it is ready, at least in part, to tolerate it. However, still a majority of those polled have a complete negative value attitude towards corruption, i.e. sees it as an evil, which should be fought in any way.

Thirdly, no singular idea of corruption exists in the populace. This phenomenon is linked, above all, to giving cash or realizing a monetary profit, while many activities in granting reciprocal obligation of giving (services, gifts, concessions), which make up a part of the traditional morality – are excluded. Identification of a significant part of corruption practice with obligations, which have roots in norms of the traditional moral, represents psychological bases not only for tolerating, but also for justifying this phenomenon.

Fourthly, citizens have a tendency to see the causes of corruption, above all, in weaknesses of the (legal) system. Placing the focus on systemic weaknesses, and partly on objective circumstances, in the final analysis, has a meaning of rejection of the burden of moral responsibility of the society itself. Citizens do not see state intervention as a factor of corruption in Serbia.

Fifthly, there exists a general agreement among citizens that corruption is an *extremely* outspread phenomenon in the society. At that, corruption is perceived not only as an outspread, but also as a *general* phenomenon. Insufficient differentiation of judgments and perceptions, in this respect, regarding certain social fields, institutions, and professions, can be explained as a result of political radicalization and of an extreme increase of criticism in the society in general towards the former regime, following the September and October events in Serbia. Simultaneously, there exist rather widespread expectations that the scope of corruption in the future will significantly decrease and those positive expectations are linked to changes of the regime.

Sixthly, in the framework of the general and insufficiently differentiated perception of the outspread of corruption in the society, certain fields still stand out: citizens believe that this phenomenon is most represented in the customs service, judiciary, and police, and the least in the presidency of Yugoslavia and the army. When we talk about professions or social groups which are perceived as basic centers of corruption the first place is taken by customs services and directors of state companies, but all other professions and groups are significantly perceived as open to corruption.

Seventhly, public procurement (tenders) is perceived as the center of the so-called large corruption. This especially holds true for state procurement in the field of public works in the reconstruction of the country, in health care and the police.

Eighthly, the principal position of citizens towards corruption is predominantly *negative* and it is perceived by the majority of the populace as a social evil. Yet, it can be concluded that corruption is not generally and unconditionally a condemned phenomenon. One part of the citizens expresses an ambivalent position that represents a reaction to a long-term anomic social situation, in which corruption has shown itself as efficient means in solving the most important problems of individuals. Also, this position is a consequence of (universally perceived) tendency of people to deviate from their own principles in situations when corruption serves in the realization of their own goals and interests.

Ninthly, there exists a high level of readiness of citizens to take part in corruption, i.e. readiness for compromise and deviation from their own principles under certain conditions and when without an alternative. Such readiness is especially present in situations when dealing with key problems above all, the problem of medical treatment and employment.

Tenthly, while the views of citizens are divided concerning realistic possibilities that society can resolve the problem of corruption, their expectations from the future and new authorities regarding the effort to decrease this deviant social phenomenon – are extremely optimistic.

## EXPERIENCES OF PRIVATE ENTREPRENEURS WITH CORRUPTION

### Introduction

The goal of this survey is, above all, to examine, based on available empirical data, the state of corruption linked to private entrepreneurs in

Serbia. And to, based on that knowledge, determine a set of rules for its repression. Before interpreting the available empirical data it is necessary to, shortly, note the specific conditions, which are not present in other countries, and which have encouraged the growth of corruption in Serbia. They are, above all, certain specific issues not characteristic for other countries in transition.

Firstly, the breakup, or disintegration of Yugoslavia caused, besides its physical disintegration, also the disintegration of the political, legal, and economic system. Besides the disintegration of the economic space there was a disintegration, or transformation of the then present system of values. The breakup of the country caused a war on its territory. And as a consequence of the breakup of the country and of the war there was a decrease of economic activity, increasing flows of refugees, and an overall growth of poverty of the general population.

Secondly, as a consequence of war, Serbia was for a period of full ten years under political and economic sanctions of the international community. In such circumstances, those in power at the time systematically displaced the flow of commodities and capital from the legal into the illegal market. The accepted political doctrine of the ruling elite was supported by many individuals, both those close to the authorities, and those not so close, because one part saw in it the survival of the national economy, and others saw their own chance for a quick and illegal profit. This decreased the already small public control, characteristic for communist regimes, on one hand, and increased the possibility of various speculations, on the other hand. The semi-legal manner of doing business was not widely condemned by the public, but was, most often, graciously accepted, because this was a way to acquire different, often scarce goods. Sanctions, which decreased economic activity, caused the loss of employment for many and caused the decrease of the standard of living for the majority of the population. A consequence of this was, additionally, a forced departure of hundreds of thousands of people into gray economy and into small-time smuggling that made it possible for them literally to survive.

Thirdly, by introducing limited political pluralism and growth of the private sector, a number of generally accepted social norms ceased to exist. Business deals between the private and social/state sectors suddenly were freed from yearlong political and legal limitations. In reality, business deals were freed from strong party control. Simultaneously, political authority could not decide between a market economy and a type of half-market and half-command economy. For this reason there was no clear political will to construct a legal framework adjusted to new conditions. Business activity fell into chaos. A large number of predominantly trading companies were formed. A desire for quick wealth, following the example of representatives of the political-economic elite, becomes a widely accepted credo for the majority of businessmen. This made possible the making of generally shady deals between owners of private companies and communist managers of social/state companies. Because for a long time the social/state property was perceived as no one's – no one was held responsible for unfavorable contracts of these companies. Political and economic elites were part of the same nomenclature and for this reason they could cooperate with no legal consequences. The privatization of the social/state

property was postponed so it could be quietly transformed into private property. Actors of this illegal privatization are representatives of the former (communist) and previous (socialist) political-economic elites. By delaying, traces of plunder were hidden. It should be born in mind that many individuals who did not belong to the authorities used the new situation for illicit activity. The consequence of such a policy can be reflected in the fact that owners of two thirds of private companies with over 30 employees in Serbia are members of the communist nomenclature or their children (Vuković).

The listed cases (noted as briefly as possible) were extremely favorable for the development of corruption. Specially if we have in mind, and we will examine this at length later, that the legal system of the country was completely squandered, in which we see one of the key causes of corruption. In the squandering of the limited legal system the political authority that held power at that time participated the most. In the name of higher interests, first they turned a blind eye, and then, representatives of the authorities went gradually into “business”. This gave a negative example to everyone else who participated in business transactions. The described social changes, also, lead to the conflict of social values and to a crises of morality, on one hand, and to the increase of poverty of society at large, on the other hand. Poverty, as a potential cause of corruption was investigated by Aristotle. In *Politics* he points out that poor people, who are part of the system of judicial and executive power, are because of their poverty corruptible (Aristotle). This position is in full accord with Weber, who points out that a responsible and professional bureaucracy must be adequately remunerated. Almost in a similar way react the citizens of Serbia. They see the main causes of corruption in the functioning of the judiciary system, crises of morality, and overall poverty.

As far as the judiciary system is concerned, one can start from the classic position that the dividing line between a legal and police state, or as in our case, between rule of law and a corrupted state is the point that law has to be applied to those who hold the executive power in their hands, and therefore the physical power to use physical coercion (Shevillie). A precondition is the respect for procedure because law-abiding societies or the rule of law is based on justice, because just procedure in general assumes equal behavior towards all. In contrast, unjust procedure grants a preference to one of the participants, and not the other (Perelman). More concisely, rule of law implies a state in which the executive branch is subject to a set of rules that are “imposed in a forced manner, and simultaneously make up the basis, framework, and borders of its power” (Shevillie). Therefore, rule of law should deter public servants from acting arbitrarily and should secure equal application of law in identical or similar situations, regardless of participants. Equal treatment of all participants in legal proceedings, respect for basic individual rights of citizens, regardless of religion, race, physical characteristics, wealth, status in society, membership in political organizations, personal or family ties with arbitrators of justice, place in the hierarchy of power etc., are its basic characteristics. To carry out these principles in practice it is necessary to satisfy another condition for an independent judiciary: and that is an independent class of “juridical honorats”

(Weber). The class of judges must be aware of its social role, whose “professional honor” includes also “readiness to carry out the legal craft” which must be the “bearer of their own legitimacy of legal form” (Radbruch). Finally, and especially important, every state with a rule of law, to be called that, must secure a wide accord of acceptance of “law as a special value in all spheres of life” (Albrecht), and also widely held beliefs must exist that power, and therefore its misuse, can and must be limited exclusively by law. Finally, we can conclude, the more accomplished this, briefly presented theoretical model is, the less corruption in a given society. The greater the deviation from the model, the level of corruption will be greater.

## Sample

The survey of corruption among private entrepreneurs was carried out in **the first half of February 2001** on a sample of 327 private stores and companies on the territory of Serbia, excluding Kosovo and Metohija, in 40 municipalities. A combination of a stratified and quota sample was used. Survey covers 21,1% manufacturing workshops, 42,9% non-manufacturing stores, 11,9% manufacturing and 21,1% non-manufacturing companies. The ownership structure of surveyed companies and stores is as follows: private, full responsibility, one owner 78,0%; private, partnership 7,3%; company with limited liability, one owner 9,5%; company with unlimited liability, several owners 4,0%; stock company, private 0,3%; stock company, mixed ownership 0,6% and unknown 0,3%. The size of the company according to the number of full time employees was as follows: less than 5 employees 69,7%, 6 to 20 employees 24,8%, 21 and more employees 5,2%; while the size of companies according to the total number of employees (full and part time) was as follows: less than 5 employees 56,3%, 6 to 20 employees 33,9% and 21 and more employees 9,4%. Unknown in both cases amounts to 0,3%. Interviews were conducted in 73,1% of cases with the owner, in 10,1% with the general manager or president of the board, in 4,9% with a partner, 6,1% with a manager, and 3,3% of cases with other employees of the company or a shop. It is interesting that 83,3% of the sample have owners as sole shareholders, 13,2% two shareholders, and only 3,0% three and more shareholders. Additionally, according to statements of those polled, the majority owner is in 60,6% an individual, 34,9% a family, and 4,5% others. The majority owner has not changed from the founding of the business entity in 91,1% of the cases, in 3,7% of cases it was changed, and in 5,2% is unknown. Also, in 96% of cases companies are private from their founding, the remaining number are privatized social companies, private branches of social companies, or privatized “mixed” social-foreign companies.

## Corruption in the judiciary

Having in mind the thesis stated in the introduction, the analysis of scope and outspread of corruption must start from the analysis of the legal system. One of the key points of such an analysis is how the citizens perceive it, and how do business subjects evaluate it. An earlier survey

(Argument, 1997) gives an unfavorable view of the judiciary by Yugoslav citizens. Trust in courts as an institution is expressed by less than one third (30,9%) of citizens. In contrast, almost one half (45,6%) has no trust in them. The remaining (23,5%) is neutral or cannot make a judgment. In answering a question, from that survey, “courts in Yugoslavia guarantee a fair court process”, only less than one quarter (23,6%) of citizens said they agree in full. Disagreement with this statement is above one half (51,8%), and the rest (24,3%) cannot say. Another survey (Institute of Social Sciences, 1997) shows that, when we exclude those who did not give an answer, that only a small part (4,3%) of citizens of Serbia trust the institution of the court, and less than one quarter (23,0%) has an average amount of trust. In contrast, almost two fifths (39,6%) of citizens who expressed their view have no trust in the institution of the court, and those who have a small amount of trust is one third (33,1%).

Our most recent survey, results of which are presented in table 3.11, demonstrate that citizens have an extremely bad perception of the judiciary system of the country.

**Table 3.11.**  
**Assessment of the court system; according to the public opinion, courts are:**

	Always	Mostly	Rarely	Never	Don't know	Index (1-5)	Place
Just	5,1	23,3	37,9	22,4	11,3	3,59	4
Fair	4,6	18,5	40,0	25,8	11,0	3,72	3
Fast	3,6	11,4	40,1	34,2	10,7	3,96	1
Accessible	7,7	21,6	33,0	24,5	13,2	3,57	5
Reliable	4,0	14,5	40,4	26,6	14,3	3,81	2
Capable	6,9	19,7	39,7	18,4	15,3	3,56	6

Only in a little more than one quarter (28,4%) of cases believe that courts are just and unbiased, and three fifths (60,3%) that this is only rarely or never true. This means that the citizens of Serbia deny the courts justice and impartiality, as they, also, deny their fairness (65,8%), speed and efficiency (74,3%), accessibility (57,5%), and reliability (67,1%) and ability to carry out their own decisions (58,1%). The listed empirical data, above all, demonstrates that citizens assess the judiciary, as an arbiter in any conflict, as not trustworthy. Control by authorities over the courts is direct and citizens can feel it directly. It can be felt, generally speaking, that every court decision because it is tangible, can be a cause of manipulation and of placement of a citizen or an economic subject in an unequal position. Additionally, the decisions are felt right away; it is not necessary for time to pass, as in certain other situations, so that the influence of authorities on a certain institution can be felt.

The court, as an unavoidable institution in resolving of eventual business disputes, got even worse marks in our survey, carried out among private entrepreneurs. We evaluated the court system by a six level scale in the laid out battery of questions. Table 3.12 includes, in addition to a concise distribution of answers, the arithmetic mean values, and an

“index” of the assessment of certain characteristics of courts as seen by private entrepreneurs.

Almost one fifth of those polled said ( always, through, usually, often) that courts are fast, reliable, just, fair, and capable, and fewer than one quarter that they are accessible. More concisely, with a three quarter majority the private entrepreneurs deny courts in Serbia the necessary speed in decision making, then, its reliability, passing of decisions in an honest manner, lack corruption, unbiased ness and the ability to implement their own decisions. Also, with a two-thirds majority they deny that it is, accessible in an equal manner to all. The stated assessment of courts, institutions, is almost identical for private entrepreneurs in regard to the type of company, or shop (e = 0,082 to 0,184). At the same time, owners of private shops are harsher in assessing the fairness of courts than owners of private companies (e = 0,210). The presented data demonstrates, also, that the worst marks were given for speediness, or efficiency of courts, in the resolving of business disputes, then reliability, while conditionally speaking, best marks were given for accessibility. This can mean: courts are not accessible, and when they are accessible, then they are slow, unreliable, and unfair.

**Table 3.12.**  
**Assessment of the court system; according to private entrepreneurs, courts are:**

	Always	Usually and often	Sometimes and rarely	Never	Don't know	Index (1-5)	Rank
Just	1,51	8,45	7,81	5,6	6,7	3,60	4
Fair	1,81	2,86	0,91	6,5	8,0	3,79	3
Fast	1,5	6,85	1,63	5,2	4,9	4,10	1
Accessible	5,81	7,15	0,11	7,4	9,5	3,51	6
Reliable	1,51	1,06	1,21	8,0	8,3	3,80	2
Capable	4,01	4,95	6,91	6,8	7,3	3,56	5

Comparative analysis of these two tables tells us that there is almost no difference between the perception of the judiciary system by citizens of Serbia and its assessment by private entrepreneurs (the indexes are also equal). Both point out slowness in first place, then unreliability, unfairness, and lack of justice. The only, almost insignificant difference, is that accessibility and capability, according to private entrepreneurs in comparison with citizens, have switched places. All this means that the support of courts in securing equal conditions on the market of goods, labor, and capital is not reliable. It follows that the competition between different economic actors is also unequal. Violate this equality with the aid of personal and political party contacts, and others will attempt the same, when their interests are endangered, to use corruption, which generates a demand for corruption. Public servants, for their private

8 Let us remember that corruption in essence represents violation of the rules of the game in market transactions.

interests, are taking bribes and are undermining the mentioned equality, which generates the supply of corruption.<sup>8</sup> As a consequence, participants in the market feel insecure. They cannot predict the moves of their potential competition and cannot plan their own future business activities.

Private entrepreneurs are consistent in assessing the quality of the work of courts. Namely, in the same survey, in which the quality of services provided by public servants was assessed, they have almost identically answered regarding the quality of work of courts. Almost three quarters (73,4%) based on their experience have assessed court authorities and the judiciary as poor (poor to a certain extent, poor, and very poor) in carrying out services, which they provide (index 3,9). The bad marks entrepreneurs gave to the institution of courts, which represents one of the pillars of a democratic systems, i.e. the division of power, is of key importance for understanding the overall social phenomena in Serbian society, and therefore one of the main keys for understanding corruption, not only here, but in general. Low marks for the work of courts at the same time is a sign of a lack of confidence in the legal order. This means that the division of power among the legislative, executive, and judiciary branch is present in words only. Private entrepreneurs in this survey, as do citizens, state clearly: on one hand the judiciary is under the direct control of the executive branch or, more precisely, of one political party, and on the other hand, it is corruptible, and for these reasons we have no confidence in it, because year long experience teaches us so.

In contrast to this position, the private entrepreneurs expect from the new, democratic authorities, changes in the judiciary system. Namely, almost two thirds (65,2%) believes that now (after changes) the legal system of the country should back them in business disputes. On the other hand, more than one fifth (22,3%) state that it would not back them. When dealing with the past times, for example, three years ago, the situation was diametrically opposite, only 15,3% had said that more or less they had the support of the legal system, and almost three fourths (73,1%), also, more or less, that they did not have it. The presented results state that private entrepreneurs have very high confidence in new authorities. They expect the new authorities to resolve the current problem of the Serbian society: the judiciary system. Thus, the private entrepreneurs expect that the authorities will free the courts from the strong hold of the executive branch and establish autonomy of all members of the repressive apparatus: the police, prosecutors, courts, and correctional institutions.

Based on the presented and interpreted empirical data it can be concluded that without the confidence of citizens in the institution of the courts, there is no psychological security of individuals in securing his rights before a court. If there is no such security, an individual, either a businessperson or a citizen, is forced to use various, most often non-institutionalized channels for the realization of his rights. One is corruption. A citizen or a private entrepreneur who lost trust in the institution of the court, when he finds himself before a court, will more often be interested if his legal representative has personal contacts with the court, then, for example, what is the

legal status of his process, how long will it last, or what the professional capabilities of his legal representative are. A small step remains to formulating the following questions often posed to the legal representative “Do you have a contact in the court?” and “How much will it cost me?”

### **Inefficiency of public services as a precondition of corruption**

Before conducting an analysis of magnitude and outspread of corruption in Serbia it is necessary to analyze obtained empirical data concerning the assessment of the quality and efficiency of services provided to private entrepreneurs by public services. One of the key conditions for every business activity is the quality and adaptation of legal regulations to market conditions. In addition to the named regulations, additionally of extreme importance is the quality of services provided by public services; from the quality of the road network, telephone and health care services, to services of the executive branch, or, from municipal to republican and federal ministries. They form a social climate, or the environment that we most often assess as mostly favorable or mostly unfavorable to the development of entrepreneurship. Quality, for many of them, besides efficiency and promptness, also implies impartiality. Public services seen in this light, represent logistic support for every business subject. Without this support it is almost impossible to carry out modern business activity.

In table 3.13. we have shown the assessment of public services as given by private entrepreneurs. The distribution of answers – arithmetic mean, index, and ranking by every service according to assessments of private entrepreneurs – is given.

The displayed results of the empirical study clearly demonstrate that private entrepreneurs give very bad marks<sup>9</sup> to quality and efficiency of public services. At the top of the list are road maintenance, courts, parliament and health care. In contrast, the army, post office, the telecommunications company, the national bank, heating plants, and the water company received somewhat better average marks. We have here three types of services and we have conditionally named them the “state”, “public” and “local” spheres. From the three the “state” sphere; or the state and its institutions received the worst marks. A more detailed analysis shows that from all public services from the “state” sphere, as suggested in previous pages, the worst marks were given to the court authorities and the judiciary, then the parliament, and the customs service. For the “public” sphere, worst marks were given to road maintenance, health care, and education. Since for these three services significant financial means are necessary, the quality of their services is in direct correlation with the overall financial situation of society. And since that overall material situation of society is extremely poor, it is logical that services, provided by these public entities, are at a low level. The quality of many of these services is also influenced by factors that they cannot control easily, especially services in the domain of infrastructure. From the “local” sphere, the worst marks were given to services, which are an extension of the executive branch of the republican government – tax collection, and inspection services.

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9 Value 1 means very good, and value 5 very bad.

**Table 3.13.**  
**Quality and efficiency of services provided by public administration**

	Very good	To a certain extent good	To a certain extent bad and bad	Very bad	Don't know	Index (1-5)	Rank
Customs service	1,51	5,92	3,91	4,43	4,3	3,71	5
Federal government and ministries	0,92	1,43	0,61	1,03	6,1	3,42	11
Federal ministry for foreign trade	0,61	4,42	6,61	1,64	6,8	3,62	7
Republican government	1,22	0,53	5,51	1,03	1,8	3,39	12
National (central) bank	4,03	5,52	9,1	9,52	2,0	3,02	17
Local authorities	2,43	8,33	9,51	5,3	4,6	3,26	14
Health care	2,11	9,95	0,42	3,2	4,3	3,7	24
Education	2,13	3,04	2,81	6,2	5,8	3,47	9
Police	3,12	7,04	3,72	1,4	4,6	3,32	13
Army	5,84	8,62	4,4	8,91	3,2	2,72	20
Tax administration	2,12	4,84	0,72	6,9	5,5	3,63	6
Inspection service	2,42	4,83	9,82	7,2	5,8	3,62	8
Post office	2,85	7,82	7,8	6,7	4,9	2,77	19
Telecommunications company	2,15	3,93	0,2	8,3	5,5	2,85	18
Electric power company	1,23	3,94	2,81	9,6	2,4	3,44	10
Water company	4,35	2,02	6,31	2,8	4,6	3,16	15
Heating plants	2,83	5,52	4,81	1,02	6,0	3,07	16
Road maintenance	0,31	1,73	2,45	2,3	4,3	4,37	1
Judiciary	0,31	4,74	7,12	6,31	1,6	3,90	2
Parliament	0,61	9,02	9,62	2,62	8,1	3,72	3

The assessments of private entrepreneurs are in line with facts known from political philosophy stating that the success or failure of each individual, in this case entrepreneur, significantly depends from the success or lack of success of not only the narrow (community) but also of the social community which they belong to – or the state (Dworkin). When this point is interpreted a bit more loosely, we can see that its success, and therefore the quality of services offered by public services, depends to a great extent not only on the municipal and state authorities as such, but also on the general social and inherited socio-historical conditions. We believe that many of inherited social-historic conditions can be, by deliberate activities of political authorities, changed or corrected, or their influence be somewhat neutralized. All of this, above all, by the construction of an adequate system of regulation to be carried out by social institutions.

Countries in transition, including Serbia, are faced with numerous problems, including the diverse problem in the functioning of public services. They were, above all, conceptualized as a service of the ruling nomenclature. Since it was a one party nomenclature, the key for placement and advancement of employee cadre was obedience and nepotism, and not expertise and quality of work. Due to the non-ownership model, social peace and nepotism, all of these services, without exception, became the means of taking care of the surplus of the workforce. This process of granting jobs was carried out most often according to special criteria. Along with the long expected political changes in Serbia a fear concerning job security grew among employees. This fear was especially induced by recession, due to which hundreds of thousands of other workers were dismissed or sent on forced leave. Simultaneously, within society a small group grew rich very quickly. This wealth was attained most often through economic transactions between the newly formed private and social/state sectors. The key actors of these "business arrangements" were members of the political nomenclature. The unpunished accumulation of wealth in an illegal manner by people close to authorities applied pressure on the system of moral attitudes of every individual. This caused the erosion of business ethics and corrosion of the system of social values.

On the other hand, with a rapid growth of poverty there was a rapid fall of salaries of public servants and, as a consequence, the decrease of work discipline. The decrease of salaries, low job security, implosion of overall social responsibility, and the real fear that many of them will lose their job with the change of political authorities, constituted the motivation for the rapid increase of desire to exploit the time remaining in their positions to the full extent. In reality, all of this motivated them to cash in on their services as much as possible; and since this could not be done legally, their leaning towards corruption increased. Self-justification was easy: if others can do it, why not me, especially since I am paid so poorly.

Making professionals out of the public servants is one of the preconditions for the increase of quality and efficiency of services rendered by public administration. This means their de-politization, and therefore their protection from political changes, better remuneration and guaranteed promotions based on competence and knowledge, and not on basis of obedience. Additionally, it is necessary to establish a system of both internal and external control against eventual misuse of office. It is also necessary to codify the work of public servants as much as possible and thus limit their discretionary right in decision making. At the same time one should limit the role of the state and the bureaucracy in economic transactions. In other words, the more of a market in a society and the greater the seriousness of the state, the possibilities for the development of corruption are more limited. In other words, less state intervention breeds less corruption.

### **Public servants and outspread of corruption**

In the introduction we mentioned that corruption is more or less developed in almost all societies. The rich and legally regulated countries with a long democratic tradition are not immune to corruption. Besides, a legal system and a cultural-historic heritage, state intervention is one of the key

causes of corruption. As specific causes of corruption, especially the small scale, since not all countries are exposed to them, we can name poverty. With its increase the extent of corruption grows. It is known that the increase of state intervention influences the development of corruption, or that where economic relations are regulated by a large number of rules, which are to be interpreted or implemented the possibility for the sale of those services by public servants is much greater. The illegal sale of these services leads to the strengthening of the hierarchical structure of power, because in this way the higher layers keep the lower layers obedient, regardless of the amount of their salaries, since one part of the earnings are compensated by the illegal collection for services. The price of the “weight” of an individual position in the hierarchy is not measured only by the salary, but also by the possibility of the illegal collection for “services”. This of course increases their attractiveness, on one hand, and discretion, on the other. This is why it is very customary that in almost all transactions where the state is present, from when it is an employer, an investor, all the way to being a secondary participant in an economic transaction, corruption is present to a greater or a lesser extent. On the power of the state the extent of corruption and its very existence depend.

Simultaneously, with the increase of state economic activity, the probability that a significant percentage of the funds, which change hands, will be taken as a bribe increases. Therefore, costs are increased due to bribery and often the quality of the provided service or transaction is lowered. Various services can be subject to bribery, starting with investment deals and public procurement, through granting favorable loans, and of import quotas for scarce commodities, all the way to the issuing of different licenses, even the smallest ones. One of the basic principles of every bureaucracy, on which it bases its social power, is the fabrication of new rules and duties and the growth of its competence. It becomes an exclusive interpreter of them. Therefore, its importance is increased and position made more secure. The additional motive toward administrating, and thus forming of different barriers for private entrepreneurs, is the possibility that those services can be, illegally, paid for. The price of a “service” is always proportional to the size of the deal. Accordingly, not only is the demand increased, but also the readiness of the interested parties to pay a bribe with the increase of the value of the deal.

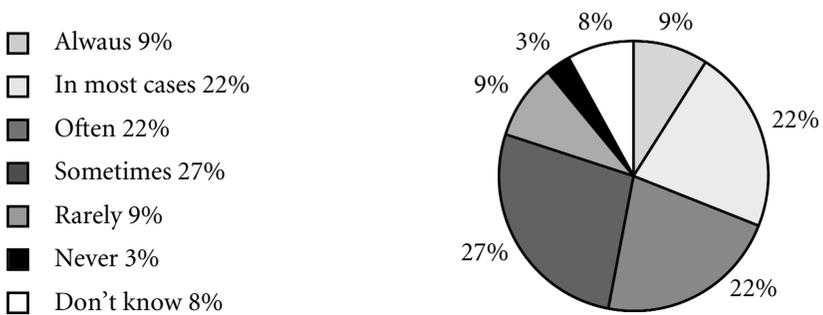
Investigating the reach of corruption is an unthankful job because of the lack of valid statistical data regarding its scope. Coercion (seeking) and offering of bribes is most often done in private – without witnesses; because it is an illegal activity done between participants in an economic transaction. For this reason its scope can be investigated only by reconstructing cases which become public by way of courts or news media, on one hand, or by systematic surveys, on the other hand.

This methodological procedure has its limitations and is unsound not only in societies in transition, but also in developed ones, because they include a high “dark figure” of crime (and corruption as well). The situation grows even more complicated in societies experiencing great and impulsive social-economic changes and societies with no independent courts and free press. We are left with the second methodological procedure that is surveys, as the only, somewhat sound procedure for identifying

the scope and outspread of bribes. Its limitation is in the fact that it cannot reach the highest political authorities and their participation in bribery. The second problem lies in the fact that surveys do not measure the real level of corruption in a society, but above all, the perception of citizens about the scope and outspread of this phenomenon.

Survey results demonstrate that private entrepreneurs, based on their experience, with an above half majority (52,9%) state that it is customary that companies and stores, which do “this kind of thing”, give bribes (always, in majority of cases, or often) to state employees for “completing certain things”. Also, more then one third (36,1%) said that giving bribes for “those things” to state employees is somewhat rare. Only 3,1% of cases never give bribes, and 8,0% don’t know. This means that almost nine tenths (88,9%) of private entrepreneurs, according to their statements, have had at least at one time, given a bribe to a state employee for a certain service. The presented data tells us that giving a bribe to state employees is a necessary condition for the carrying out of economic activity. It is so outspread that it has become a common practice. There is no significant difference in regard to the type of company (Cramer’s  $v = 0,142$ ) or its size.

**Picture 3.12.**  
**Frequency of corruption in cases of private entrepreneurs**

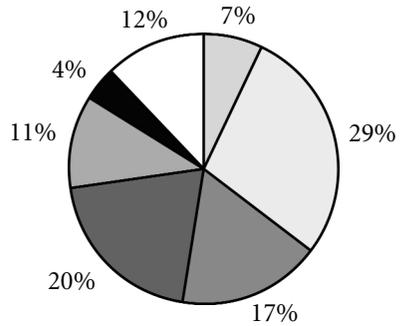


Experiences from the field shows that if a bribe is not given to a public servant at the time of registration of a business, you will be visited by sanitary or tax inspectors. The same holds true for the customs service and for departments that issue import and export licenses, or for local administrations that issue work permits or building permits for attractive locations. One can conclude that corruption is a widely outspread practice among state employees judging by data that over one half (52,3%) of private entrepreneurs said that they always know in advance (always, usually, and often) the amount of “additional payment” for various services. At the same time, almost one third (30,9%) knows the amount to be paid for corruption (bribe) only sometimes and rarely. Only 4,3% of private entrepreneur know, but not the exact amount and kind of services to be rendered for the bribe to be paid. It is most probable that they know about this social phenomenon only indirectly – through someone else’s experience.

The key data on corruption in a given country is linked to its industrial organization, or the “market structure” – in other words, is corruption

**Picture 3.13.**  
**Do you know in advance the amount of a bribe to be paid?**

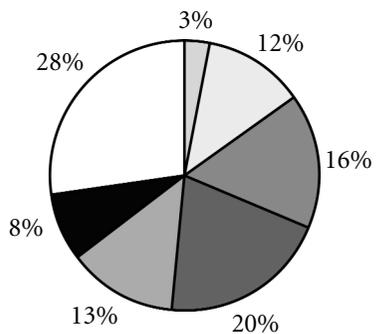
- Always 7%
- Usually 29%
- Often 17%
- Sometimes 20%
- Rarely 11%
- Never 4%
- Don't know 12%



centralized or decentralized. This can best be seen based on information if one service performed by a corrupt state employees has to be paid one or more times. Multiple payments for the same service depicts decentralized corruption. According to survey results almost every third (31,8%) private entrepreneur was forced, according to his own statements, to pay for the same “service” again (always, usually, and often); and additional one in five (20,2%) sometimes, and one in seven (13,1%) rarely. This, also, means that that almost two thirds (65,1%) for the same service, had to pay two or more times. The distribution of answers regarding the type of the company tells us that owners of stores more often, but statistically insignificantly (Cramer’s  $v = 0,190$ ), paid two or more times then owners of companies.

**Picture 3.14**  
**Frequency of multiple payments for service**

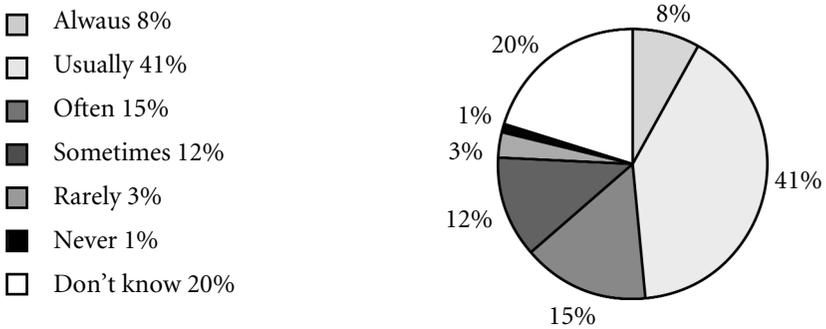
- Always 3%
- Usually 12%
- Often 16%
- Sometimes 20%
- Rarely 13%
- Never 8%
- Don't know 28%



A special problem arises if the corruptor, in spite of a paid bribe, does not receive the agreed service. Then we have inefficient corruption, or corruption with very high transaction costs, since it is necessary to form an oversight mechanism for the implementation of corruption. Survey results show that after the “additional payment” the agreed on service is

received: always in 8,3% of cases, usually in 40,1%, often in 15,0%, sometimes in 11,9%, rarely in 3,4% and never in 1,5% of cases. Those who don't know are 19,9%. The mean arithmetic value is 3. Based on the presented data it is clear that there is a great possibility that the paid "service" will be provided. More precisely, the bribe giver has only relative certainty that he will receive the paid "service". This can mean that certain public servants, especially of lower rank, occasionally, wishing to acquire additional income, promise and collect for services outside their influence and competence. The agreed on service somewhat more often, but not of statistical significance, is received by owners of stores than by owners of companies (Cramer's  $v = 0,203$ ). Storeowners are more often faced with lower level employees, or employees on lower levels of power, and therefore the somewhat higher possibility that they will receive the paid service. On the other hand, company owners deal with higher-level employees, because competences for sought services are on a higher level, or out of necessity seek lower level employees, who sometimes cannot carry out undertaken "obligations". This is the reason why the agreed on "service" is not always received. This confirms the thesis that lower level employees occasionally sell a service outside the sphere of their influence.

**Picture 3.15.**  
**If a state employee is corrupted, is the service really received?**



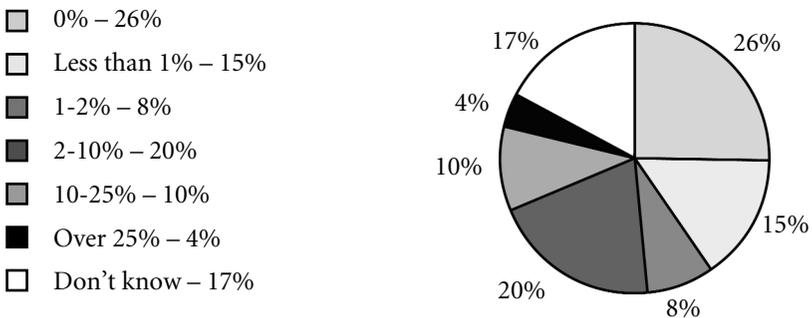
Private entrepreneurs, based on experience, do not believe they can find protection from corruption in the framework of the existing bureaucratic apparatus. To avoid the "unavoidable additional payment" by seeking another government employee, or his boss, is absolutely refused by 13,5% of private entrepreneurs. This activity can save them sometimes or rarely, said over one half (51,3%). In contrast 7,3% of private entrepreneurs believe that by going to see the boss or another employee they can always avoid bribery, and additional 14,4% think this "mostly" or "often". In general, entrepreneurs state they do not have significant protection from corrupt public servants in going to their superiors, or in "escaping" to another employee. Obviously, there is collusion in the state service, sometimes overt, sometimes covert, or passive.

This confirms another reference found in the survey. Namely, above one half (52,2%) states that for the provided favor (from always to in

individual cases) they were directly asked for money, gifts, or a counter favor (for example, a paid winter vacation). Those who do not ask directly, then expect to receive “just” compensation for provided services. Private entrepreneurs in more than two fifths (43,4%) of cases said that public servants clearly demonstrated that they expect money, gifts, or a counter service. At the same time, more than one third (37,6%) demonstrates readiness to take a bribe in individual cases, and only 11% ever expects so. Therefore, bribery has become not only an outspread phenomenon but also almost a public occurrence. Such public display was influenced by the lack of fear from eventual sanctions, on one hand, and from moral condemnation of the wider social community, on the other. The lack of fear from sanctions derives from the fact that deeply corrupted are not only public servants but also political authorities. For personal protection from eventual sanctions, political authorities have corroded the legal order of the country, a fact now exploited by the lower structures. Wide moral condemnation from the social community is nonexistent, because numerous individuals, even if they do not agree, relativise condemnation, because in most cases for some it is the only way to survive, and for others a way to “get certain things done”. At the same time, corruption becomes a widely prevailing rule of conduct, especially between the state and its citizens.

Finally we arrive at the key question: how much do private entrepreneurs, from their annual income, pay for bribes to public servants? Through this question we received the most reliable data regarding how many of them have to pay for various additional services. Simply put, one quarter (24,8%) does not pay bribes. Above one half (57,8%) does so and states how much in regard to their income, while a significant part (17,4%) cannot say. The most frequent rate of “taxation” of private entrepreneurs from public servants is between 1 and 10%. There is no significant difference between private companies and stores. Since the local private entrepreneurs reluctantly talk about their income, their answers regarding the participation of paid bribes in the overall income should be taken with significant reservations. What is partially known is that the amount for the bribe depends on the type of activity, or its attractiveness and the scope of business being under consideration. Experiences of surveyors in the field

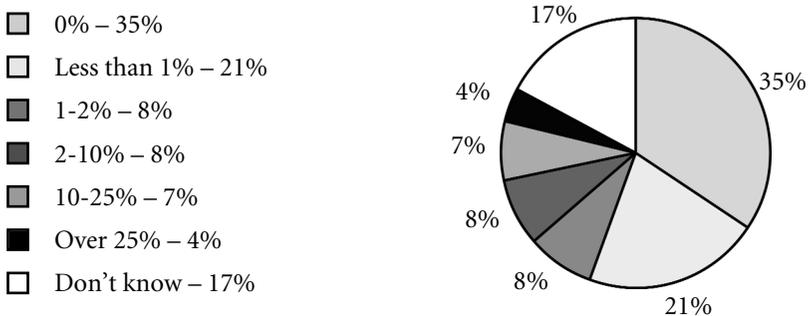
**Picture 3.16.**  
**Percentage of the overall income which is used for bribery**



state that most often money changes hands for locations permits for shops and restaurants and for various building permits in attractive large city zones. In the same rank are, of course, import licenses and customs clearances, especially for commodities on a limited regime of import. Things that a survey cannot reach are organized crime, or the import of oil, oil derivatives, cigarettes, and alcoholic beverages.

Unavoidably a question is posed of how much of their work time, and thus work energy, or resources, private entrepreneurs lose in bribing different state or para-state employees. One third (33,9%) said they do not lose time or, as one person said: “You take out your wallet, hand it over and it ends there”. At the same time, one fifth (20,8%) states that it is less then 1% of their time. However, almost one quarter (23,8%) state that on the average, for bribing of public servants, or managers of public/state companies they lose between 1 and 25% of their time, and additional 4,3% that the percentage is higher. One part (17,1%) cannot evaluate. A question is unavoidably put forward: why some private entrepreneurs lose so much time to carry out their “obligations” towards public servants? Time is lost, because they are attempting to, by using various resources as they say themselves, avoid the “additional payment”, or, they pay only when they have no other choice.

**Picture 3.17.**  
**Percentage of work time of private entrepreneurs lost on corruption**



Based on the presented survey results we can see that corruption is widely present and that it has become almost a public affair. This means that money or favors are sought or expected with no shame and fear. The next question according to importance is the question in which spheres of social life is corruption present the most. Results of this part of the survey, for private entrepreneurs, are presented in table 3.14.

One can notice right away that bribery is present the most with administrations dealing with acquisition of building sites, or, for construction of temporary buildings. Then import-export licenses and obtaining of government contracts, and then for acquisition of telephone and electric power services. At the bottom of the list are the tax administration, company registration, and approval of new sales prices. This means that more corrupt are those services where the possibility of income for the private entrepreneur is greater. The building permit can have a great market value, because the market price of a building in a exclusive city zone can be several times larger then the price of construction – the same holds true for import-export licenses.

**Table 3.14.**  
**Aptitude towards bribes of public sector employees; bribe for:**

	Always	Mostly often	Sometimes rarely	Never	Don't know	Index (1-5)	Rank
Import license	5,5	11,3	9,1	5,5	68,5	3,06	2
Export license	5,5	8,3	7,0	5,8	73,4	3,02	3
Customs documentation	5,8	13,4	8,9	8,0	63,9	2,96	6
Foreign currency transactions and inspection	3,7	12,8	12,0	8,6	63,0	2,67	10
Tax administration	4,0	21,4	39,7	17,1	17,7	2,12	17
Financial police	7,0	27,8	34,9	13,8	16,5	2,69	9
Company registration	4,0	19,6	34,3	19,9	12,3	2,30	16
Sanitary inspection	4,9	22,3	37,6	13,1	22,0	2,52	14
Urban planning inspection	4,3	22,0	32,8	12,2	28,7	2,59	12
Registration of foreign trade transactions	2,8	9,8	10,7	7,6	69,1	2,58	13
Building site acquisition	11,3	28,2	21,4	6,7	32,4	3,1	21
Working permit	5,8	25,1	31,5	13,1	24,5	2,66	11
Telephone and power acquisition	11,9	30,9	26,8	11,0	19,6	2,97	5
Government contract	8,3	11,3	12,3	7,3	60,9	2,98	4
Local government contract	6,1	21,8	24,4	9,5	38,2	2,8	18
State company contract	8,6	21,7	26,0	9,5	43,3	2,84	7
Approval to change prices	2,4	24,1	14,7	11,9	56,9	2,40	15

The above data tells us that no single authorities are immune to corruption – regardless of how they present themselves. The level of corruption in one society does not depend, as we said in the beginning, on the morality of an individual, but on the potential income from corruption and from the efficiency of the penal apparatus. This can be confirmed by the fact that building permits in seventeen largest cities in Serbia were issued by then opposition parties. Corruption of municipal employees in those cities, according to the survey, was the same (Cramer's  $v < 0,115$ ), as in those cities where power was held by the Socialist-JUL coalition. The level of corruption of municipal administration and services, regardless of what party was in power, was high; but it should be noted that municipal administrations (elected officials in administration) are somewhat more corrupt (index 3,78) from municipal services (index 3,51).

The bottom of the list of corruption of public services is the tax administration. This is due to several factors, above all the irregularity in the forming of the tax base. Namely, private companies and entrepreneurs are successful in minimizing their tax base by using various mechanisms and

there is no need to corrupt the tax administration to achieve minimal taxes. The second place is taken by the registration of companies and approval of new sales prices. In the first case the registration of a company has an insignificant market value on the informal market, because in Serbia there are hundreds of thousands of registered companies that are “frozen” – which do not work. In other words, there is no profit in the registering of a company. Approval of new sales prices, also, has a low price on the informal market, since private entrepreneurs very seldom do business in fields where the state sets the prices. Synthetically presented only the tax administration and registration of companies make up the relatively low corrupted services (index under 2,5), and highly corrupted services (index over 3,0) include municipal and city services for issuing of building permits and the customs service. To them very close in corruption are the government and their ministries (especially the one in charge of foreign trade) and public electrical power and telecommunications companies. All the rest are medium corrupted services.

Based on the presented survey findings it is more than clear that corruption in Serbia is present almost in all pores of business. More precisely, bribery has become a necessary, but not sufficient condition almost in the smallest business undertaking. From the viewpoint of public servants, as the most corrupt part of the society, bribery is seen as a normal phenomenon, or, as the author of this paper was told, as a “tax” the state did not and will not be able to collect. The consequence of the unpaid tax is his small salary for the job he performs. The fact that this “tax” (various “additional payments”) is also paid by those who should not be doing so, is not his problem, but a problem of the state. Especially since every business activity, as seen by one part of public servants, is perceived as a dubious activity. Corruption has spread so much that it became systemic – it is built-in into the social-economic and the political system of Serbia. This, among other things, is demonstrated by survey findings, in this regard there are no statistically relevant differences regarding the type of private companies, its activity, and scope of business activity.

### **Basic types of corruption**

Three basic types of corruption characteristic for contemporary societies are: additional payment to a public servant for realizing of a right which by law is available to an individual or a business subject, then bribery for the purpose of acquisition of a right which according to law or sub-law act one does not have, and finally, bribery for readjusting of a law of sub-law regulation (different bylaws and regulations) in line with interests of the corruptor. The extent of these three types of corruption we have presented in table 3.15.

The presented results demonstrate the following: first, there is a high percentage of “don’t know” answers and second, the dominant type of corruption is bribery for the realization of rights. The high level of undecided answers is a consequence of a fact that a private entrepreneur, or a common citizen, in practice cannot easily differentiate between realizing of a right or of breaking of a law. The second problem is that they are not interested in this issue. They are only interested if they have to provide

**Table 3.15.**  
**Types of corruption; bribery for (in %):**

	Realizing rights	Breaking laws	Changing laws	Don't know
Import license	24,8	20,2	4,6	50,5
Export license	23,2	20,2	4,0	52,6
Customs documentation	18,0	28,7	4,6	48,6
Foreign currency dealing and inspection	16,5	29,4	6,7	47,4
Tax administration	25,4	42,2	10,4	22,0
Financial police	25,1	45,9	8,6	20,0
Company registration	38,2	22,6	10,7	28,4
Sanitary inspection	29,1	35,8	9,2	26,0
Urban planning inspection	29,7	31,8	9,5	29,1
Registration of foreign trade transactions	21,1	22,0	5,5	51,4
Building location acquisition	36,1	28,4	8,0	27,5
Work permit	46,2	21,7	7,0	25,1
Telephone and power acquisition	52,9	17,7	4,9	24,5
Government contract acquisition	27,2	16,8	7,0	48,9
Local government contract acquisition	39,4	19,0	6,1	35,5
State company contract acquisition	37,3	20,5	5,8	36,4
Approval to change prices	30,9	19,3	8,0	41,9

additional payment for the service or not. Finally, psychologically it is somewhat easier to classify your deed as the realization of your rights, then as breaking the law.

The first type of corruption, realizing of a right, is a consequence of the following fact: bureaucratic apparatus of public services prolongs the realizing of rights or by its additional interpretation deters an individual or business subject from attaining that right. For this reason the user of this right is forced to “speed up the procedure”, which was put in place by the bureaucratic apparatus as an obstacle, by providing additional payment. The same holds true for the quality of service. Additional payment for realizing rights is explained by the public servant with an argument that it is possible only under a condition that he “ignores” certain elements of procedure. The same holds true for the realizing of a right “without waiting”. If a bribe is expected or coerced does not change things. The key characteristic of this bribe is that the public servant is not breaking the law, but circumnavigating it or misusing his position. By doing this, his risk is lower. This is one of the reasons why this type of corruption is most widely present. The outspread of this kind of corruption is caused by the frequent contacts of private entrepreneurs with public servants in an attempt to realize their rights. Corruption for the realizing of rights, according to statements of private entrepreneurs, most frequently occurs during the acquiring of electricity and telephone services, working permit, acquiring contacts with the government and local government, acquiring a contract with a state company, acquiring a building

location, approval of new sales prices, import-export licenses, and company registration.

The second type of corruption, breaking of rules, is a consequence of the following chain of events: a public servant, so that he could collect for a service, tolerates a potential client who is breaking the rules (various misdemeanor fines, letting the merchandise pass customs, etc.) or breaks the rules himself (issuing of different permits, fixing tenders, etc.). Since in this case there is no clear line between corruption and crime, for both sides, the corruptor and the corrupted, the risk is higher. The amount of risk, in addition to the value of the deal, influences the price for the "service". Since this type of corruption is linked with more risk it is somewhat less present than the corruption aimed at the realization of rights. Breaking of rules, as a type of corruption, is the most common, according to statements of private entrepreneurs, for acquiring of customs documentation, foreign currency transactions, tax administration, financial police, then sanitary and urban planning inspections, and mandatory registration of foreign trade deals.

The third type of corruption, influencing the change of laws, in the West is mostly legalized and called lobbying. Locally it is less developed, at least in regard to small private entrepreneurs. This is most likely because their social influence is rather small, and they are not in a position to participate in passing of laws, or rules. It is probable that some of their answers in this regard are overstatements of their real social influence. On the other hand, large private entrepreneurs, with close ties with the previous regime, most likely focused the largest part of their corruption activities towards state employees, or politicians in an attempt to change laws, or sub law regulations.

In conclusion, according to statements of private entrepreneurs, the basic characteristic of corruption in Serbia is the realization of rights of business subjects. If we compare this position with results of public opinion polls, then it is clear that citizens and business subjects are additionally "taxed" from state employees. Since the fiscal discipline in the society is very low, or tax collection is different and varies from one subject to another, the same holds true for this additional "tax". In reality, not everyone pays it, only those who have to. Its amount depends on the will of the public servant, the relationship of the entrepreneurs with political authorities and his quick-wittedness. This additional "tax", or bribe, has become a necessary way of life and of doing business. Finally, corruption very seldom, almost never ends up in court. From this it follows that moral condemnation by the widest social community is very rare, and if this condemnation does exist, it is mild.

### **Development of corruption in Serbia**

At the very end we must ask ourselves if corruption in Serbia is increasing or decreasing. It is known that there were no surveys of this kind in the past so we attempted to find out from private entrepreneurs what is the situation today compared to three years ago. Such results have limited value, but there are no other means on our disposal. In table 3.16. we presented the assessment of private entrepreneurs of the state of corruption in certain public services now and three years ago.

**Table 3.16.**  
**Corruption three years ago and now. What is the situation?**

	Better	Same	Worse	Don't know
Export license	8,9	19,0	3,1	69,1
Import license	10,7	20,5	3,4	65,4
Customs documentation	9,8	23,2	4,0	63,0
Foreign currency transactions and inspection	8,9	25,7	4,0	61,5
Tax administration	15,0	57,0	7,3	19,9
Financial police	15,9	55,0	7,3	21,7
Company registration	16,8	49,2	4,0	30,0
Sanitary inspection	12,8	58,1	3,4	25,7
Urban planning inspection	11,6	52,9	3,4	32,1
Registering foreign trade deals	10,4	23,2	1,8	64,5
Acquiring building location	14,1	45,0	5,5	35,5
Work permit	17,1	45,0	5,2	32,7
Acquiring of telephone and power services	11,9	53,5	10,7	23,9
Acquiring a government contract	9,8	29,7	2,4	58,1
Acquiring a local government contract	17,1	40,7	4,9	37,3
Acquiring a state company contract	11,3	45,6	7,3	35,8
Approval of sales prices	13,1	41,3	4,6	41,0

Before presenting the survey results, it is necessary to point out that private entrepreneurs assess corruption in those fields they deal with. For example, almost 70% of them are not importers, and regarding corruption and foreign trade they simply answer – don't know. On the other hand, every each one of them individually, could not have had personal experiences in all the listed fields. This is the reason for the exceptionally high value of the "don't know" column. This tells us that they did not assess fields without personal experiences or where experiences are scarce. This fact confirms our assumption about the high quality of answers to presented questions.

Simultaneously, the presented data tells us that the assessment of private entrepreneurs is that there is a mild decrease of corruption in Serbia. There are significantly more, from two to four times depending on the field, of those who believe that the situation regarding corruption is better now than three years ago. This can mean two things: first, private entrepreneurs as an interested party expect from the new authorities a decrease in corruption, and therefore they partly project their answers, and second, with political changes in 2000, corruption in Serbia may have decreased.

## **2.8. Business, corruption, and the business environment**

The business environment, defined as the sum of all factors that have an influence on activities of companies, has a very great influence on the activities of companies, or decisions made by entrepreneurs.

**Table 3.17.**  
**Factors of a successful business activity:**

	No problem	Small problem	Moderate problem	Big problem	Don't know	Index (1-5)	Rank
Financing	5,2	13,5	30,3	47,1	3,9	4,05	4
Phone, power, roads	17,1	32,1	30,9	18,3	1,5	3,14	13
Taxes and dues	3,7	10,1	28,4	56,0	1,8	4,31	1
Economic policy	2,4	11,6	25,4	52,3	8,3	4,24	2
Inflation	15,3	15,0	19,3	48,0	2,4	3,78	7
Exchange rate	22,3	16,5	20,8	37,3	3,1	3,44	11
Functioning of courts	15,3	22,3	22,6	27,2	12,5	3,38	12
Corruption	4,3	12,2	22,6	53,5	7,3	4,19	3
Street crime and riots	16,8	16,8	17,1	39,1	10,1	3,59	10
Organized crime and mafia	15,3	12,8	17,1	40,7	14,1	3,71	9
Monetary activities of state companies	9,5	11,6	25,7	43,4	9,8	3,93	5
Monetary activities of private companies	10,4	15,6	23,5	39,8	10,7	3,80	6
Various inspection services	10,4	19,6	27,2	40,1	2,8	3,75	8

In table 3.17. we presented the assessment of private entrepreneurs how individual factors, beginning with the economic policy, through the quality of the infrastructure, influence their business practices, or the quality of those business practices.

Survey results clearly demonstrate that private entrepreneurs see as a barrier to the development of business activity, first the amount of taxes and dues, then the key elements of economic policy, ever present corruption, and lack of financing. In contrast, the smallest problem, but still with a very high index, is seen in the unstable exchange rate of the local currency, functioning of the courts and infrastructure (telephone, power, roads).

At the same time we should note that indexes, for all examined factors of business activity, have very high values. Yet, we should examine the most important ones. First, it is known that the tax rate for private entrepreneurs (especially shops) is not significant, but other dues and other indirect giving, which are occasionally hard to figure out, are very high and uneven. Taxes and other dues taken together, which is basically the only thing that interests the entrepreneur, for salaries of employees are over 120%. Due to this, they are forced to pay one part of these salaries illegally – in cash. Previously we saw that private entrepreneurs have stated that the corruption of the tax administration was smallest, and now we see that the tax policy is in the first place (because of inconsistency and great interest rates on unpaid taxes) as a factor limiting the development of entrepreneurship.

Economic policy, as the second example, demonstrates that views of entrepreneurs are greatly indicative. It is known that political authorities

for more than ten years wavered between a market economy and a market/planned economy. Because of this fluctuation, which is not the object of this analysis, we have great state intervention, which continues, in spite of declarative support for the market economy. Because of this private entrepreneurs assess the economic policy as a highly restrictive factor of business activity. In other words, a very wide and extensive state intervention represents a limiting factor for the growth of private entrepreneurship.

Thirdly, the state of the infrastructure is extremely bad: the road network is damaged, constant restrictions of electric power in the winter period has become customary, regular telephone service is overloaded, mobile telephony is overloaded, unsure, and too expensive for the level of services it provides. In spite of the facts stated above concerning the inadequacy of infrastructure services (table 3) entrepreneurs believe it represents the least, but still an important factor in the limiting of business activity, and therefore of social development. Comparison of the significance of this factor and its influence on business activity with the importance of tax policy or globally economic policy or the possibility of financing (expanding of activities or quality) entrepreneurs clearly judges. By doing so they want to say: a quality infrastructure, court system, and stable money is important, but for economic progress the priorities are a moderate fiscal policy, a clear market orientation in regards to economic policy with all of its associated elements, a honest public administration without corruption and the lifting of monopolies held by state/social and private companies.

## **Conclusion**

Corruption is almost as old as human society. It has grown parallel with the increase of social and political power, growth of bureaucracy and the meddling of the state in market transactions. The key causes of corruption in the Serbian society are the lack of the rule of law, disarray of social values, all-present state intervention, and insufficient income of state employees. The absence of the rule of law has an older origin, while the disarray of social values, or moral crises and poverty are more recent phenomenon. When we say lack of rule of law, we mean the lack of control of the executive branch, non-functioning of the institutions of the system, and a low level of overall social control.

One of conditions for development of corruption is both the quality and the efficiency of activities provided by public services. Survey results demonstrate that the qualities of work of these services are unsatisfactory for the needs of private entrepreneurs. They assess this work in majority of cases negatively, or rather poor, poor, and very poor.

The most outspread kind of corruption, according to the experience of private entrepreneurs, is in the acquisition of a building location, then during acquisition of import-export licenses, acquiring of government contracts, and acquisition of telephone and electric power services. In contrast, bribery is present the least in the fields of tax administration, company registration, and approval of new sales prices.

From the three types of corruption, or, the realization of rights, breaking of rules or sub laws, and influencing changes of laws and sub law acts,

in Serbia the most outspread corruption concerns the realization of rights. At the same time, influence on changing of laws and sub law acts has a very low value on the informal market of services, since small businessmen in Serbia have no access to the legislative branch of government.

The subordination of the judiciary branch to the executive branch influenced the fact that various types of bribery and corruption remained unpunished. For this reason corruption expanded and became an integral part of doing business, or it entered all pores of the society and became, almost, a completely open public activity. Poverty and the crises of morals, on one hand, and preoccupation of the majority of the population with basic survival, on the other, prevented wide condemnation by citizens of this social phenomenon.

At the same time, it is necessary to point out that private entrepreneurs, as other citizens of Serbia, from the new, democratically elected authorities, expect the decrease of the level and scope of corruption in public services. Also, they directly state that corruption is now somewhat lesser then, for example, three years ago.

## ANNEX

**Table A1.**  
**Perception of outspread of corruption in certain fields and institutions (in %)**  
 (“There is no corruption at all” [1], to “very outspread” [5])

	1	2	3	4	5	Don't know	Average	Rank
President of Yugoslavia and his staff	30	18	12	7	13	20	2,42	19
President of Serbia and his staff	6	10	18	17	29	20	3,65	6-7
Assembly of Yugoslavia	8	20	23	14	13	22	3,05	15
Assembly of Serbia	9	19	22	15	13	22	3,07	13
Federal government	10	19	22	13	15	21	3,06	14
Republican government	10	18	21	14	16	21	3,09	12
Ministry of economy	5	9	22	20	19	25	3,52	8-9
Army	18	23	22	13	11	13	2,73	17
Customs service	1	3	11	23	52	10	4,35	1
Tax administration	1	4	16	27	40	11	4,1	22
Courts	2	6	15	27	41	10	4,11	3
Police	2	6	16	26	41	9	4,06	4
Post-Telecommunications company	4	11	27	23	20	16	3,52	8-9
Electric power company	3	9	25	23	24	16	3,65	6-7
Privatization agency	2	7	17	17	26	31	3,85	5
Service of social bookkeeping	4	12	22	17	14	31	3,35	11
Chamber of commerce	3	10	19	19	15	33	3,49	10
National bank	13	16	20	13	15	24	3,03	16
Statistical bureau	15	17	17	6	7	37	2,58	18

**Table A2**  
**To what extent are following professions included in corruption (in %)**

Profession	1	2	3	4	9	Average
Directors of social (state) companies	32	45	16	3	5	3,11
Teachers	5	20	57	12	6	2,20
University professors	7	27	46	71	4	2,40
Employees in republican ministries	13	32	40	4	11	2,62
Employees of city administration	13	33	43	3	8	2,61
Judges	17	43	30	5	6	2,76
Lawyers	22	38	28	5	6	2,82
Policemen	23	39	27	5	5	2,85
Customs officials	40	35	14	6	6	3,17
State leadership (presidents, ministers, etc.)	18	24	32	13	13	2,55
Doctors	21	40	30	6	3	2,78
Private entrepreneurs and businessmen	23	36	26	6	8	2,84
Banking officers	10	28	45	7	10	2,47
Municipal employees (inspectors)	24	33	33	4	6	2,81
Sales people in stores with scarce goods	25	35	27	5	7	2,86
Leaders of political parties	15	27	36	6	15	2,61
Party officials, local political activists	14	28	36	7	15	2,58
Employees in communal companies –power, post, heating	12	28	41	7	12	2,50
Journalists	10	20	39	13	18	2,31

(Legend: 1. Almost all are included;  
2. Majority included;  
3. Only some included;  
4. Almost no one included;  
9. Don't know/No answer)

Note: Average (average mark of outspread) is calculated in reverse– from 1 (least corrupted) to 4 (most corrupted); therefore, the larger the average – the largest the assessed corruption.

**Table A3.**  
**Who sought a bribe from a citizen?( in %)**

	Yes	No	I wasn't in a situation	Don't know
Doctors and medical staff	26	29	43	2
Teachers	5	36	56	2
University professors	4	23	71	2
Municipal employees	12	33	52	2
Employees of public utility company	9	33	56	2
Judges or court employees	9	22	67	2
Customs officers	17	15	64	3
Policemen	19	22	55	3
Assembly representatives or party leaders	1	15	75	10
Ministry employees	3	16	78	3
Tax collectors or inspectors	11	22	64	3
Banking officials	4	32	61	3
Sales people	16	37	44	4
Private entrepreneurs	1	22	85	73
Activists of political parties which in power in my municipality	4	24	69	3
Other	1	3	17	79



# IV Manifestation of Corruption

## CORRUPTION IN THE JUDICIARY

### Introduction

#### *Working definition and subjects of corruption*

The most general concept of corruption in public services – the doing, in execution of a public service, function or affair, that which is not allowed (prescribed, foreseen) or not doing of what is an obligation (prescribed, foreseen), for a counter favor in money or some other benefit – demands more precision when focusing on the judiciary

Having in mind the formal side of the executing of a judiciary function, corruption can result in the majority of cases in, passing of court decisions of different kinds, either incorrect (unlawful), or correct, so that corruption is aimed at accelerating or securing of its passing, removing the threat of not passing of a decision, or removing the danger of the passing of an incorrect decision. The same purpose has the not passing of a decision that would have to be passed. However, corruption can have as its goal (consequence) the incorrect activity or lack of an activity pertaining to other matters (for example the executive proceedings), or something that will influence the content of the court decision (for example, corruption of court experts or witnesses), or another official activity which will influence the accomplishment of rights which do not exist or the not attaining of rights which do exist (for example, issuing of incorrect deeds for land or another public document, verification of false documents, and the like).

If one has this in mind, corruption in the judiciary can have the following participants (subjects):

- judges, professionals or (rarely) jury judges, who participate in making of court rulings (under influence of corruption) and court administration (presidents of courts or court departments), indirectly, by influencing a judge or by other activities (for example, by awarding a case to a “suitable” or taking away cases from “unsuitable” judges), or directly, for example by implementing of the withdrawal rule. It is surely possible to talk about the corruption in the judiciary;
- public prosecutors, as organs of criminal prosecution, directly, because of the (needed) wide discretionary authority (decision to indict someone, or to lift an indictment, for example because of the assessment of the social danger of an act, qualification, etc.);
- lawyers, indirectly (influencing the court), or directly (by way of using the procedural rights, for example)

- court experts, which in the implementation in the statutes, equally in criminal and civil, in the Yugoslav law have an over-sized role, and from whose findings and opinion often the outcome of the procedure depends;
  - court employees (executive officials, cadastral employees, court archives employees, summon servers and similar) who by illegal actions or lack of action can influence the outcome of the court procedure or the (un)realizing of a certain right;
  - interpreters and translators, who by willfully falsely communicating, or translating or interpreting statements of participants or falsely communicating to them statements of others, can influence court decisions
- Indirectly, a part of the widely understood phenomenon of corruption in the judiciary or concerning the judiciary is, the corrupted witnesses.

### *Consequences of corruption*

Having in mind the function of the judiciary, it is clear that we are dealing with an extremely dangerous form of corruption. The mission of the judiciary is, most widely said, the realization of the principle of constitutionality and legality and the protection of individual rights and interests<sup>1</sup>. The perception of citizens that judiciary organs do not act legally and that they are prone to influence, leads to the weakening of legality and social morals. Ruined is not only the legal consciousness and trust in law, degraded the idea of the necessity of behavior in line with laws, but a corrupt judiciary necessarily generates an increase of corruption in other fields.

With the corruption of the judiciary, except conditionally in one case, the goal (perceived objectively, not as an individual, psychological motive) that is to be attained by corruption lies outside the courts; the judiciary is only an intermediary in the attainment of that goal.

The exception when the goal of corrupting is attained in the judiciary zone itself is corruption aimed at avoidance (reduction) of criminal or another sanctions. An event in life, breaking of laws, from which the chain of corruption starts, has already taken place. The goal is to remove the regular functioning of the judiciary and it is attained inside of the judiciary. (Here also corruption can influence respect for legality in other fields: if the belief exists that it is possible by corruption to avoid criminal penal responsibility, this includes the avoidance of responsibility for corruption, and makes it easier to enter into corruption in other fields).

In other cases passing or not passing of a court decisions should lead to the realization of a certain “right” which does not exist, or avoidance of some other “obligation” aided by corruption, of a certain interest which lies outside of the judiciary, in any sphere of human activity.

For this reason corruption in the judiciary has, as a rule, a double adverse consequence. On one hand, it ruins the judiciary system as a vital element of state authority, and on the other hand, it “corrupts” the legal functioning of relations in the sphere from which it came to the judiciary.

As another example, corruption in a business dispute about the execution of a contract has as a consequence not only the improper functioning

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1 See Article 95 of the Constitution of the Republic of Serbia

of the judiciary, but also the weakening of contractual responsibility, which leads to the endangerment of the economic system.

Or, corruption in an administrative dispute, aimed at the annulment of a legally passed administrative act, has for its consequence the incorrect functioning of the state administration.

This harmful influence of corruption in the judiciary is not exhausted, however, in these direct consequences. Indirectly, the consciousness, be it right or wrong, about the possibility of existence of corruption in the judiciary implies also the **consciousness about the possibility of avoiding of responsibility for corruption**, which again leads to the growth of corruption in other activities.

Because of this it is not an exaggeration to say that corruption in the judiciary is the most dangerous type of corruption. It destroys the most vital functions of the state and for this reason its most aggressive suppression is needed.

### *Corruption in the judiciary and criminal responsibility*

No one who participates in court proceedings can be held responsible for an opinion given during the passing of a court ruling, and in a case initiated for a criminal act committed during an execution of a judiciary function cannot be held in custody without the approval of the National Assembly, states article 96 point 2 of the Constitution of the Republic of Serbia.

The right of a judge to make a mistake is one of the guarantees of the judiciary independence. But a right to err, along with certain other rights included in all of the procedural laws (criminal, civil, and administrative) as is the free appraisal of proof, can be a sure screen for mistakes behind which corruption looms.

Because of this criminal cases dealing with corruption performed by judges and other participants in the procedure are rarely discovered and processed in this country. The object of judiciary reaction to corruption in the judiciary were only a small number of drastic cases in which corruption was determined and uncovered directly, for example, by determining the act of giving of a cash bribe, or in other drastic cases.

Criminal liability for corruption, in the current Penal Code of the Republic of Serbia, covers:

- judges – Article 243, for breaking of the law by judges for acquiring for himself or someone else of a certain benefit;
- witnesses – Article 206, giving of false testimony;
- lawyers – Article 179 point 2, misuse of trust;
- translators and interpreters – Article 207.

Corruption of other participants in the judiciary system including public prosecutors can be covered by the general act of the misuse of official position or authority.<sup>2</sup>

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2 The draft Law on Changes and Amendments of the Penal Code of the Republic of Serbia, which entered procedure in April 2001, contains several new incriminations in the domain of corruption (for example, corruption in the process of privatization, corruption in public procurement), but there are no new incriminations for corruption in the judiciary.

The small number of processed cases of corruption in the judiciary surely is not a sign that the extent of corruption is small, but is a result of the characteristics of the phenomenon itself and of problems related to obtaining proof. In support of this statement one can cite the results of a survey performed for this project, according to which the judiciary, along with the customs service and the police, is the most corrupt field of the society, according to those polled.

The increased activity of organs of detection and persecution can cause that a larger number of corrupt judges and other participants in the judiciary be brought before law. This would surely be both useful and fair, but it seems that the real space for fighting corruption in the judiciary is located somewhere else, and not in the domain of criminal repression.

### *Indirect corruption*

The standard form, or model of corruption in the judiciary is a situation when the judge passes a wrong ruling, or another participant in the process decides to decisively contribute (witness or a court expert by giving false testimony, prosecutor by a lessening the qualification of the act) to the passing of a wrong ruling. Corruption originates from a side in the proceedings (or it is carried out for their benefit), and the corrupted is the judge or another participant.

In this country one can notice another, most likely most dangerous type of indirect corruption. It is manifested in passing of assumedly wanted decisions, and the motive is **certain indirect benefit**: a position in the judicial hierarchy or another privilege. Simply put, wrong rulings are being passed which are desirable for the state or other government bodies, those who manage the country, the executive or political elite.

A line cannot be clearly drawn between this form and classic corruption. If a judge (or another person) acts illegally in the direct, individual interest of a member of the nomenclature to accomplish direct or only indirect benefit, this is a classic case of corruption. If the law is incorrectly implemented to accomplish a certain supposed state interest (a classic example is the persecution of political adversaries, or granting privileges to those politically eligible), then it is hard to determine the dividing line between corruption and the dependent judiciary, a judiciary which does not pass rulings in accord with the constitution and laws but according to the will or interest of those managing the state. The dividing line is even less clear if one has in mind that in our law textbooks as a material source of law the will of the ruling class, which runs the state; is cited. Is interpreting and application of law not a search for that will?

These cases of corruption allowed us to, put forward a working hypothesis: corruption in the judiciary in Serbia is a systemic phenomenon and it demands a systemic strategy of its extermination.

### **Corruption and the prosecutor**

The public prosecutor is an independent state organ, which prosecutes the perpetrators of criminal offences, and other prescribed by law punishable acts and uses legal means for protection of constitutionality and legality.

## *Prosecutor's office as an organ of prosecution*

In penal-legal affairs, the prosecutor is present as an organ of prosecution.

The principles on which a prosecutors office is organized regarding its role does not have to be only a guarantee of its legal and effective work, but could also be a zone of discretionary authority and insufficiently controlled activity which leaves free space for development of corruption.

In the empirical survey of corruption in Serbia presented at the beginning of this study, the prosecutor was not separately noted. Statements regarding corruption in the judiciary pertain to prosecutors and there are no elements that could support a statement that there is more or less corruption among prosecutors then in other segments of the judiciary. Therefore here one should point out the rules and principles pertaining to the operation of the prosecutor's office and which assist the development of corruption.

The prosecutors office is a **highly hierarchically organized department**, more so then any other in our legal system. The Republican Prosecutor answers for his work to the National Assembly, and lower level prosecutors answer to him. The Public Republican Prosecutor has a right to issue **mandatory instructions** to district and municipal prosecutors, both general instructions and instructions pertaining to individual cases (*mutates mutants*, the district to the municipal). He can take away a case from a lower-level prosecutor and act on it himself or transfer it to another prosecutor. The instruction can be a means for influencing a working prosecutor, and simultaneously a "screen" for this prosecutor.

*The prosecutor's office acts in specific coordination* in the investigative proceedings with an investigative judge and the police. The investigative judge heads the investigative procedure, decides which proof will be collected or inferred, he decides in the first degree on the detention and releasing of the suspect, passes the decision on the suspension of the procedure, or on the completion of the investigative procedure and forwards the case to the prosecutor for the initiation of the procedure before a court. Regarding all of these activities the prosecutor has the initiative: he suggests detention or the lifting of detention, appeals the decision on detention, proposes the inferring of proof (and new, additional proof which can influence the length of detention), decides on the initiation of a bill of indictment or on the lack of reason for doing so, later he decides on discarding of the bill of indictment. In the bill of indictment he qualifies the criminal. At that, he is bound only by the Constitution and the law, which means that the prosecutor has a very broad discretionary authority.

In following the **indictment policy**, one can notice a specific political dependence of the prosecutor's office. It is clear that certain criminal acts are in one period prosecuted, and in another period they are not, that certain activities in one period are qualified in one way, and in another period in another way. This indictment policy does not have to be (and was not) a result of the evaluating of the prosecutor (which can vary depending on social circumstances), but of some other state organs or political centers of power. This is the reason why this policy did not vary (and it did not vary) only in regard to time, but also in regard to representatives of certain social groups. The different position of certain "elites" before the law is a result of direct or indirect corruption.

Also there is a special relationship between the prosecutor's office and the police. Even though it has a right (and a duty) to demand from the police (and other government departments, including the court, and other legal entities) acts, statements, information about things from within its competence, the prosecutors office as a rule waits for the initiative of the police. And when that initiative takes place, the prosecutors office does not have the efficient means to oblige the police to carry out efficient activities linked to discovering, and aimed at indicting. Those means at its disposal that it does have it does not use enough. Therefore, on the triangle investigative judge, prosecutor, and police it depends whether enough facts will be collected so that one could talk about the uncovering and indicting of a crime, enough proof for a serious bill of indictment, and a guilty verdict, although it is absolutely obvious (from the financial situation, or the relationship between income and wealth) that the acts and perpetrators exist in the public eye.

That this is an area of corruption, and that there is corruption, one has elements to adequately assume, but also to believe so based on hearsay, although in regard to the prosecutors office the number of processed cases is relatively even smaller than when dealing with judges.

### ***The prosecutor's office as an arm of protection of constitutionality and legality***

The prosecutor is authorized to initiate an extraordinary legal remedy against a valid court decisions in all, and even non-penal issues, when he finds that the decision has broken a law or an international treaty. In practice, the public prosecutor initiates a demand for the protection of legality, as a rule, at the initiative of the litigant that is not satisfied with the decision in the validly concluded proceedings.

In deciding on the initiative of a litigant, the prosecutor is armed with discretionary authority and is in a position to, based *on an evaluation*, significantly influence the flow and outcome of court proceedings. In practice, prosecutors act very differently in similar cases, which leads to the conclusion on the presence of direct or indirect corruption.

The scope of this possibility is even greater when one has in mind the extent of the authority of the prosecutor, who decides to initiate an extraordinary legal remedy, to order a postponement of the execution of a valid court decision up to the time of completion of the decision on the extraordinary legal remedy.

The postponement of the execution can be enough to satisfy the interest of one, or significantly endanger the interest of the other side, so that this is obviously a potential source of manipulation.

Practice proves this indication. Recently it can be noticed that the federal public prosecutor ever more frequently is issue demands for the protection of legality against decisions allowing the execution of a valid court ruling. The procedure has at that time passed all jurisdictions, including the possibility of the prosecutor to issue a demand for the protection of legality. Only when the procedure of execution has begun, the prosecutor appears and, at the least, postpones the execution for a long period.

## ***Conclusion***

The role of the prosecutor is very significant and very delicate. The prosecutor necessarily has to possess wide, in essence discretionary authority. Simultaneously, he is placed in between the judiciary, state policy, and the police.

There is no reason not to assume, that the prosecutors office is exposed to corruption. It is known that it often was, or that it used to be. At the same time, this corruption is most difficult to prove; activities of the “prosecutor” are covered by actions and decisions of other departments (investigative judge, police) and by hierarchical relations, but also by the authority in assessment of the factual and legal material.

This very hierarchical organization of the prosecutor’s office must be the first obstacle against corruption. The rest are linked to the overall position of the judiciary.

## **Corruption in the judiciary**

### ***Introduction***

Corruption in the judiciary is ever more and more often talked about. Statements are general and vague. Yet, they are disturbing. In courts this item is either not talked about or only whispers can be heard. However, different stories are getting through and they are all credible. This was a reason for the Association of Judges of Serbia in March 1998 to call a round table and to the esteemed participants (colleagues, lawyers, court experts, psychologists, scientists, and others) clearly pose a question – Is there corruption in the judiciary?

Even though the discussion about this issue was serious and alarming, no names were named. At the same time, however, they remained worryingly convincing. Anyway, if corruption is present in the society, why should it not be found in the judiciary? It is very possible, therefore, that the virus of corruption has also attacked the courts. The judges who receive bribes already have a nickname — “receivers”..

And what can a “receiver” receive? Everything: money, an apartment, gifts, election to a higher court, a ministerial position, position of a court president, political office, a roasted lamb or a piglet, lunches and dinners, various services, and every other material and immaterial benefit. And what can he give? There is no great choice: a ruling according to what is ordered. Corruption in the judiciary is, therefore expressed in the exchange of every dishonorable ruling for every dishonorable benefit, fully in line with Latin ”*corruptio*”, meaning: rotten, perverted, tainted, misguided, bought.

The world sees corruption as misuse of public authority with a goal to gain any material or non-material benefit. The material benefit is not only money, but also other material goods. Non-material benefit is every benefit, privilege, advantage or other non-pecuniary gain. Corruption is, therefore, not only carried out with money or by other material goods, but also by meeting various needs and interests, as are: promotion in service and career, a political office, a position of status, a position in the professional

hierarchy, a privileged position and the like. This is a common occurrence in the Serbian judiciary.

Such understanding of corruption was noted in the canon No. 7 of the Code of Judiciary Ethics: "A judge cannot rule while securing or expecting any benefit for himself or another person". Also canon No. 6 reminds him that: "A judge should avoid any action that is unusual or seems that way, and from actions which cause distrust, induces doubt, diminish confidence, or in another way degrade the trust in the court and its objectivity"!

### *The syndrome*

If preconditions exist for the development of corruption, usually there is corruption, regardless the fact that stories are faceless, and participants anonymous. This holds true for corruption in the judiciary.

This belief is deeply rooted with citizens, so they are, to a large extent; sure that corruption has a hold in the judiciary. In a survey performed by "Argument" in February 1997 with a sample of 200 citizens who did not have cases before courts 71% of those polled believed that there is corruption in the judiciary. In a survey of the same agency in February 1998, with a sample of 100 citizens who do have a case before a court, 95% of those polled believed that there is corruption in the judiciary; that it is most represented in economic cases (42,1%) and criminal cases (28,4%); that it is executed through holders of political power (40%), judges (36,8%), lawyers (13,8%), and court experts (8,4%); that the greatest pressure on the court is exerted by politicians in power (47,4%), powerful individuals from business circles (17,9%), and criminals (14,7%). That with a good connection one can influence the court, said 95% of those polled. That cases of special importance are always given to certain judges, said 95% of those polled. Court corruption can be most efficiently suppressed by removing of the pressure by politicians against the court, said 57,9% of those polled. That this can be accomplished by increasing of salaries of judges, said 32,6% of those polled.

In a survey conducted by the Association of Judges of Serbia in February 1998, judges themselves confirm that there is corruption in the judiciary. From 95 judges of Belgrade courts: 21 judges said that there is corruption; 39 judges – that there is pressure on the courts; 33 judges – that court decision can be influenced; 54 – that corruption will attain worrisome proportions if the financial situation of judges and other court employees is not improved; 45 judges – that cases of special significance are given to certain judges; 40 judges – that the existing operational management serves corruption in the judiciary.

The Association of Judges simultaneously conducted a survey among the Belgrade lawyers. From 69 participants: 17 believe that there is corruption in courts; 43 – that there are pressures against the courts; 28 – that a personal contact can influence a court; 50 – that corruption will attain worrisome proportions if the financial situation of judges and other court employees is not improved; 32 – that the existing operational management serves corruption in the judiciary.

The judiciary, therefore, is not immune to corruption. According to a survey conducted by "Argument" in 1997, corruption is present the most

is in health care, municipal services, and judiciary. According to this survey, the descending order of corruption is: customs service, judiciary, police, health care, republican, city, and municipal administration.

According to the discussion at the mentioned round table of the Association of Judges, and from appeals of citizens, the centers of corruption in the judiciary are: merchant courts, investigation, execution of a court ruling and reduction of sentences. Merchant courts pass rulings in business and status cases, manage a register of companies, and manage bankruptcies. Since in those cases there is strongest conflict of interests of various centers of power, the court authorities have failed the most during resolution of these cases. The cause was most often the state, by protecting the interests of partners conducting semi-legal and illegal business activities. Investigation is also the goal of corruption, especially in cases where someone is taken in custody. Also present is an interaction between the court and the police, public prosecutor, correctional institutions, and lawyers. The execution of court decisions is the final phase in providing court protection. If it is neutralized, then there is no court protection even when a valid court ruling exists because of this the execution phase is the last chance for corrupting of the court. Assumptions and complaints of citizens point out that corruption also overtook the sensitive field of the reduction of sentences. To their increase significantly contribute the medical certificates of dubious validity. In every of these fields, corruption is supported by the discretionary authority of the judge.

Corruption is not announced nor is it published. It is not transparent, but discreet, without witnesses and other proof. Yet, there are signs that cause the lack of trust or induce doubt. They are: taking away of a case from one judge and giving it to another, transferring of a judge to a different court or to a different department of the same court, forming of special councils for certain cases, giving of cases to certain judges and thus bypassing an existing court schedule, promotions after dubious rulings, and the like.

Corruption is not linked only with judges, but also court employees, especially those who by their work in administrative services can “match” certain cases with certain judges, or can by removing the bill of lading or other tricks, obstruct conditions for the holding of a proceeding.

The targets for corruption are also court experts who cannot refuse the so-called private giving of evidence, or more precisely giving of false reports. Corruption in courts can be a part of a wider organization in which linkages are formed with the police, public prosecutor, and lawyers.

### *Causes*

Corruption is like weed. It grows as soon as there are sufficient conditions. For this reason of the utmost importance are the answers to following question: what caused in our judiciary a “climate” so for the rapid growth of corruption?

First the loss of independence, as the result of the moral downfall of society that sacrificed the law to violence, legality to interests, and judiciary to party politics. This fall was initiated by the “killing” of justice in the judiciary, which became a “will of the ruling class”, and in the judiciary,

which became a class institution. The will of the ruling class was embodied in the party, “its avant-guard”, which placed under its control not only the judiciary, but also the legislative and executive branches of government. Reined courts expressed almost religious affection for their “historic goals”, and since those goals were contained in the Constitution and laws according to which they brought decisions, this affection (or should we say bias) was a part of the formal independence. The judiciary had lost its identity and gave way to the mentality of a subject, acceding to serve the political will of the ruling party. Since that will was later translated into informal centers of power, the judiciary begun to get “accustomed” do serving another master, which was “good preparation” for getting accustomed to serving any one master.

Along with the loss of independence, politics were brought into the judiciary. Party membership, was an informal, but a *sine qua non*-condition for a function of a judge. Who did not fulfill that unwritten condition, could not be a judge. And the one who did meet the condition had party obligations and responsibilities in carrying out of the judiciary authority. This condition did not lose its significance in the last decade of the last century, although it was somewhat milder, but in the past few years it again grew in strength by the political demand that the representation of ruling parties in the courts be the same as the representation in the National Assembly. Obvious signs of political influence on the judiciary were: the practice of forming of special councils in politically sensitive cases; operetta trials of Bill Clinton and the other “angels of mercy”; turning of chambers into political cabaret, political processes, kangaroo trials, extralegal arrests; various misuse of judiciary authority. In this way the respect for the courts was destroyed. So one should not be surprised that the court first found itself lacking authority, and then it was placed under the care of the executive branch. By this supervision (in which interests of the political elite and criminals were mixed), influence over the courts spread, towards para-state and para-political organizations, criminal centers of power, and powerful individuals. So the courts became “available” to be influenced, and therefore corruptible.

The financial position of judges is unfavorable. Judges live at level of poverty, with salaries at the level of a nutritionist minimum. It is almost indecent to talk about it. Judges do not have a right to hold an additional job to supplement their income, which makes their position more difficult, especially if they have not solved the issue of housing. Of course, this influences the possibility of corruption, because material misery weakens the resistance to temptations. Growing poor and coercion of judges lead to the decreasing of the quality of the judicial function, since many more experienced judges sought better paid jobs, turning over the duty of judges to the incompetent, unsure, and unable colleagues, who were susceptible to the influence of others.

The legal system of the country is drastically ruined. The Serbian constitution is not consistent with the FRY constitution, because it was passed before, instead of after it. Numerous federal laws are not consistent with the valid FRY constitution, because they were passed at the time of the former federal constitution. Numerous republican laws are not consistent with the Constitution of Serbia, because they were passed at the time of

the former republican constitution. Many republican laws are not consistent with federal laws, because they were not harmonized.

The law is fully derogated. Chaos rules. Within that disorder, the inefficient courts begun being replaced by “efficient” debt collection agencies, and courts were only good for party politics, especially pertaining to the electoral rulings. Judges who were obedient were awarded by ministerial positions and presidencies of courts, which was a clear sign that the judiciary was corrupted from its own state. A judiciary that is ready to do so demonstrates readiness to also be corrupted by others, also.

Corruption was also encouraged by the hypocrisy of officials in the executive and legislative authority, who publicly proclaimed their support for an independent judiciary, and in secret applied pressure against the courts, knowing that the judges have not freed themselves from political narrow-mindedness.

## **CORRUPTION IN PUBLIC ADMINISTRATION**

### **Corruption in the police force**

#### ***Introduction***

Corruption is a phenomenon that is hard to determine and measure. In this paper we will first point out to certain general characteristics and causes of corruption in the police force, and then examine the results of previous surveys on corruption in the police force of Serbia.

Integrity of the police is one of the key, if not the most important issue that deserves to be at the center of attention of every examination of the manner of fulfillment of the role of police in a society. In some countries, as the US and the UK, discussions about this problem are very intense and all encompassing. This does not mean that by doing so the problem of police corruption is resolved in these countries, and also it is not true that corruption exists only in those countries where it is discussed, or that it is most widespread there. It only attests to the level and character of democracy, which is made possible by the political system, and the openness of the police force.

Since the basic function of the police force is to take charge of the implementation of laws, corruption among its ranks represents the basic negation of the purpose of existence of this service and institution. For this reason it is necessary to develop a precise definition of corruption pertaining to the police. At the UN a definition was reached according to which the notion of corruption comprehends every activity or every mistake that a responsible person makes during the carrying out of duty or connected to his duty, and for that as compensation seeks or accepts a gift, promise, or some other benefit.

According to American authors, the concept “police corruption” pertains to such punishable behavior of a member of the police force when because of his official capacity accepts or expects to accept certain unallowed real or potential compensation or benefit. More direct is a definition given in 1973 by the US National Advisory Committee on Standards

and Goals of the Criminal Legal System: "Corruption in the police is made up of activities which imply the misuse of police authority aimed at materializing of personal gains for members of the police; activities of a member of the police force which endangers or can endanger his readiness to in an unbiased manner implement law or provide other services; the protection of an unlawful activity from the activity of the police, regardless if the member of the police is assisting the business of one person, and simultaneously discouraging the business of another person".

There are several definitions of corruption and attempts to point out their constitutive elements. In this paper, corruption consists of two significant elements and their simultaneous existence in a certain activity or a deliberate lack of activity. The first element is a desire to fulfill a personal benefit. Certain authors go further and state that police in general can be corrupted if in the system of power it wins a position that places it above the law. In this understanding which somewhat departs from the original idea of corruption, the highest level of police corruption is attained in a police state.

The second element is the breaking of a certain rule by the misuse of official capacity, of course by a person who has the official status.

A corrupted police cannot fight corruption in a society, in the same way that a corrupt society will not initiate activities for removal of corruption from the police force. One should add an observation that the police to a great extent influence the nature and quality of relations in a society.

Due to an exceptional position in society, the police is subject to pressure of corruption from all sides: from below (from criminals), from the side (from citizens who are not criminals, but with an interest in breaking the law at a certain point in time), and from above (from the administration – municipal, city, republican, etc). The founder of the Belgrade police, Archibald Raise, pointed out that the police profession "is possibly the one where its members are subject to greatest temptations". One of the reasons for that pressure lies in the fact that discretionary rights of the police are very significant because often and to a greatest extent, it depends on them if the law will be implemented.

Since policemen are almost constantly offered compensation for not carrying out of their duties, it can be said that police corruption is an endemic phenomenon. With the increase of crime, especially drug related, the offered compensation is extremely high. At that the policemen remain, in essence ordinary people although some of them are perceived as supermen, and numerous policemen have a tendency to see themselves in a similar way.

Since he is responsible for the state of his police unit and for its performance, a police commander at every level is also responsible for matters of corruption. For him the biggest problem is to determine if there is corruption in the unit. It is present everywhere, but the same activity does not have to be considered everywhere an act of corruption. If in one place it is considered normal that a policeman does not pay for a cup of coffee, in another place or country this can be treated as an act of corruption.

Corruption is as a rule a phenomenon linked to an individual. There are, however, cases when illegal activities become a characteristic of the whole unit, so that even the commanding officer takes part. This is the

organized corruption, because it is linked to the police force as an organization. Finally, in certain cases police corruption can be tolerated (even encouraged) by politically influential groups, and even the populace itself. Then we are dealing with the “environmental corruption” which is its worst manifestation.

The stability, or lack of stability or social and political relationships is of great importance for development of corruption in general, and therefore for the development of the corruption in the police force. In conditions of instability of society and institutions it has created demonstrate less resistance to the influence of corruption. The policeman protects the society from crime, but if he understands that big, and even bigger criminals are at the top of the political and social hierarchy, then he cannot but change his “compass” bearings and his value system. His loyalty to the society as such changes or disappears. In this regard the policeman is in an exceptional position, because more than any other social group he knows about the criminality of all others, and not only those who are officially labeled as criminals.

Police corruption is also influenced by the nature of the police system. A position prevails with police experts that *fragmented* police systems, in which local police forces are under the competence of the local authorities and is to a great extent independent from central police organs, are most accessible for development of police corruption. The US is taken as a model, and in Europe the Netherlands, Belgium, and Switzerland. (It is a paradox that for such systems of which it is said that they are to a great extent accessible to corruption, and inefficient at that, it is simultaneously said that they are democratic. This poses a question: whether or not any police system can be denoted as democratic, if it bears a seed of corruption and inefficiency). Yet, corruption is also to be found se in the so called *centralized* police systems, and the difference is that in this case it is considered that the highest level as a rule is not accessible to corruption. But if it is overtaken by corruption, then corruption unavoidably spreads to the complete organization, which confirms the folk moral that a fish smells bad from the head down

### ***Corruption of police in Serbia***

This was the situation in Serbia before the downfall of the Milošević regime. The regime used international sanctions as an excuse for the overall voluntarism in interpreting and the implementing of the Constitution and laws. A **non-transparent system** was additionally clouded by various *ad hoc* measures of the federal or republican governments, increasing the motives for evading already high customs duties, which lead to the increase of corruption, because interest groups sought exemption for themselves from the implementation of such decisions.

In spite of the non-transparent system, which seemed like an iron curtain, the Yugoslav public was aware of the outspread of corruption even at that time. This was contributed to by activities of democratic forces and civil society organizations, but also an almost permanent and daily experience of citizens in contacts with state officials.

Only now is the tangible proof of the shocking scope and content of corruption and organized crime in which the state and other structures

participated, all under the control of the then ruling parties becoming public. The public has not learned that any one person was sentenced for offering or accepting of a bribe, although the act was a felony<sup>3</sup>. It is at the same time an international criminal act, because it is a subject to international instruments both material (for example the UN Code of Conduct for Officials Responsible for Implementation of the Law), and formal (UN Convention Against Transnational Organized Crime, signed in Palermo in late 2000; EU convention on fighting corruption in which includes officials of European bodies or officials of member states of the EU).

There is no exact data on corruption in general, and the same holds true for corruption of the police force in Serbia. However, since our state is one of the most corrupt in the world, it is certain that our police could not have been left untouched. It is also clear that the top of the police hierarchy (or their families) could not have grown rich as they were from salaries they received. Corruption of one or another form and type was the basic source for their new wealth. Regardless of whether it was passive, active, individual, organized, corruption or “environmental corruption”, a widely held belief was present that the Serbian police was completely corrupted.

However, the public did not know if and what measures were taken inside the Ministry of Internal Affairs (MUP) of Serbia to deal with and suppress cases of corruption. So the activities of internal control units, which do exist in MUP of Serbia, remained cloaked by a veil of secrecy. This significantly decreased the effect of measures that were, possibly, undertaken. If they were, and were not made public, then there was no effect on the public opinion.

The social and material status of the members of the police force represents a very important element for police corruption. Even Aristotle focused on the low social status, when he talked about the extreme dislike of the service, which in the beginning was made up of only slaves, while free Athenians scorned the new profession. Similar views in general remain today. If such a social status is accompanied by insufficient financial compensation, then a policeman becomes especially vulnerable and accessible to corruption.

Before early 1998 (when armed fighting intensified), in the Serbian police an assignment in Kosovo was very popular and sought after. Members of MUP not only received special financial bonuses (which is normal), but as a rule returned from Kosovo with large amounts of money or other valuables. Unfortunately, one part of those goods was acquired by taking bribes from Albanians who needed to register a vehicle or obtain a driver’s license, a certificate to buy or sell something or for other kinds of activities.

Police corruption significantly influences the capability of this institution to carry out duties entrusted to it, and that influence can be either direct or indirect. The direct influence is the essence of police corruption:

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3 FRY Penal Code, article 179 (receiving a bribe); Penal Code of the Republic of Serbia, article 254 (receiving a bribe) and article 255 (giving a bribe). Certain other felonies that are included in the notion of corruption are also covered. During the modification and amendment of the Penal Code it would probably be useful to foresee corruption as an individual criminal act, based on international definition.

it does not react, as it should regarding the breaking of laws and regulations. Indirectly, corruption negatively influences the capability of the police in such a way that the police force is criticized more, even much more than it deserves. Even if police corruption was a rather limited phenomenon, it has a character of a sensation in the media, and therefore the effects are increased manifold.

Information on police corruption is not disseminated only by the media. If a policeman, or a police patrol, eat at a restaurant every day without paying, other patrons will doubtlessly conclude that the restaurant owner does not have to worry if he does, or is already doing something, that is not allowed. The word about it spreads, and the rumor does not target only the individual policeman, but the complete police force itself. In Serbia there were foundations for spreading such rumors. In frequent cases citizens could see a policeman warmly greet a person who is a well-known underworld figure and a black marketer.

Very often, if not most often corruption pertains to traffic violations. In Serbia it was, one could say, an everyday occurrence. Police almost never acted preventively by warning drivers of a restriction before they broke the law and initiated a dangerous situation for themselves and others. The police as a rule took a position **past** the place where the dangerous situation existed. Then traffic fines were collected from violators, or very often deals were made that the driver should pay an amount less than the fine but pay it to the policeman, without a receipt. Additionally, issuing of vehicle registrations for cars without proof of their legal origin and status used to be a common reason for giving and receiving of bribes to members of MUP.

Police corruption is linked with the gray economy, and during the times of great discrepancies between the official and black market exchange rates of the Dinar, members of MUP were often to be found in the role of black market foreign currency traders. In one period in the 1990s, they were receiving their Dinar salaries a day or two before all others (and before pensioners) and they bought foreign currency under a favorable exchange rate (because citizens had no Dinars). As soon as the foreign currency price went up, they sold them at the new, higher rate. The police participated in extortion or “protection” of restaurants and stores, and for these services split the money with criminals who were paid by the extorted owners. Members of the Serbian police practically forced small shop owners to sign owner parts of their businesses so they would be protected from extortion. Such accusations were stated in public, (although not always with the needed accuracy) and were never denied, nor was anyone ever held responsible.

During the times of gasoline shortages, certain policemen had their own “gas stations”; they secured gasoline thanks to contacts with “importers” from government or public companies. The contacts received part of the income (rent) made on the difference between the import price and the sale price.

The Serbian police was misused for making possible and concealing various illegal activities by private persons or social companies in connection to import of gasoline, cigarettes, etc. This was in a way encouraged by the fact that FR Yugoslavia, up to the democratic changes of 2000, had that misfortune to be subject to different types of international sanctions,

which significantly contributed to the destruction of public morality and the system of values which limit the growth of crime.

Besides the general safeguards in the penal legislation, for acts of corruption sanctions are foreseen in the laws governing police activity. The Internal Affairs Law of Serbia (ar. 50) qualifies as a serious breach of work obligation and duty the illegal acquisition of personal or material benefit for oneself or others if it is connected to the job. In similar fashion, the concealment of a grave breaking of work obligation and duty carried out by the directly superior officer was qualified.

### *Lack of trust in the police*

In one survey from 1994 carried out by the Open University of Subotica, the police won the high third place regarding the trust of the populace (after the church and the army).

**Table 4.1.**  
**Trust of the populace in the police**

	High	Average	Small	None	Don't know
Serbia	21,5	22,2	17,5	31,8	7,7
Montenegro	39,3	21,3	13,8	7,7	17,9

The table points to significant differences in the perception of the police in Serbia and Montenegro. In Serbia, only 43,7 percent of those polled had a high or average trust in the police. In Montenegro, that percentage was rather higher (60,6).

Among eleven institutions that were subject to the survey (government, parliament, president of the Republic, constitutional court, army, police, education, church, health services, media, labor unions), the police was placed in the third place in the group of institutions that were highly trusted (after the army and the church). Yet, the police in Serbia simultaneously received the fourth place in the group of institutions that were granted *no trust* (after the parliament, labor unions, and media).

Empirical research carried out in 1996 in Belgrade (Nikolić-Ristanović) gave 42,4 percent of negative answers to the question if police was efficient in fighting crime, and additional 31,5 percent of those polled answered with "Don't know". Additionally, 72,1 percent of those polled stated that they were victims of a conventional crime in the period 1991-1996; and only one third went to the police in regard to those crimes.

The most frequent reason for not registering a complaint with the police is the belief that the "police will not do anything". At the same time, the majority of those who did register a complaint were not satisfied with the way police acted on the complaint. The percentage of those not satisfied ranges from one half (for robberies) to three fourths (for sexual assaults). This means, for example, that from 100 victims of robberies only 15 were satisfied with the way the police came to their aid regarding the critical situation that they found themselves in.

The noted survey was conducted in Serbia in mid-1997 and it demonstrates that 84 percent of those polled believe that in this country organized crime exists, and that they feel seriously endangered, both physically and materially. Organized crime, by definition, always implies the participation of state organs in illicit activities.

According to empirical research carried out in 1996 and 1997 (Slavujević), lack of trust of citizens of Serbia in the police was constantly increasing. While in the second half of 1993 the difference between those who do not trust the police (50%) and those who do (44%) was -6, in 1996 that negative difference increased to -18. In 1997 the difference has more than doubled: almost two thirds (61%) of citizens expressed the lack of trust, and less than one third (only 31%) trust, in spite of the fact that the negative difference was -30. In 1997 a greater negative difference was registered only in Ukraine (-40), Belarus (-47) and Bulgaria (-50). In Montenegro the difference was also negative, but it amounted to -11, in the Czech Republic -9, in Croatia 0, in Slovakia the difference was positive (+1), as in Romania and Poland (+2), and in Hungary the positive difference was +17. While in developed countries the police force represents a strong integrative institution, police in Serbia found itself in the category of "illegitimate institutions that act disintegratively".

A survey conducted in Serbia in January 2001, as part of this project is fully presented and examined in chapter III, so here we will only examine briefly some findings regarding the police. Those polled were asked, among other things, to name one of eight institutions (army, church, education, President of FRY, health care, Serbian Academy of Sciences and Arts, opposition parties, police) that they trust the most. Only two percent of those polled stated they trust the police the most. The police was placed on the last, eighth, position.

The reasons for the lack of trust of citizens towards the police are different. The influence of politics over the police, as its failure to solve several extremely important murders, surely decreases the trust of citizens in the police force. Their knowledge or belief that the police is corrupt is surely one of the most important findings, and most likely the most important one. The outspread and deep-rootedness of corruption is one of the most destructive types of crime. How can then citizens trust a service that is heavily affected by this phenomenon?

For this reason the most recent surveys confirm the fall of the trust in the Serbian and Yugoslav police. Among institutions that were the subject of the survey, those polled assessed that the police and its members take the second or third place in corruption, right after or ahead of the corruption in courts.

In answering a question of what do they think about the extent of corruption in the police force, 76 percent of those polled answered that they believe that it is present in that service much or very much. The customs service has taken the first place with 84 percent, and courts the third with 75 percent.

The police is in the second place regarding answers to the question "Where is corruption most widely spread?" "In the police" answered 12,4% of those polled, while 31,4% of those polled said it was the customs service, and 12,3% believe that corruption is most widely spread in courts. To the opposite question "Where is corruption least widely spread?" only 0,6% of those polled said in the police. Worse places were assigned to the

customs service and the courts (0,5% each) and three more institutions. When asked to what extent are members of certain professions involved in corruption, police was chosen by 62% of those polled. At that, 23 percent of those polled believe that *almost all* members of the police are part of corruption, and 39% believe that we are dealing with the *majority*. In answering this question the first place was assigned to the managers of social companies (32%+45%), and the second place to customs officers (40%+35%). The police, therefore, was again placed in the third place. Finally, citizens believe that the police force is extremely corrupted in connection with public (state) procurement, although somewhat less than public works (average 4,16) or health care (average 4,11). The average for the police force is 4,04.

The police in Serbia is very corrupt, which has very negative consequences for implementation of laws and suppression of corruption. When the institution that has a job to protect the law and the legality and to fight all types of crime, including corruption, is heavily contaminated with the virus of corruption, then it is difficult to expect that in other areas or institutions of society there is room for improvement. The poor effort by the police simply provides an incentive to citizens and entrepreneurs to break laws, or manage their affairs in muddy waters.

### **Corruption in the Customs Service**

If an importer does not pay customs or does not pay the full amount of customs duties, it makes it possible for him to capture rent. Other importers are paying customs duties and the equilibrium price of imported commodities is formed according to thus defined total costs (purchase price is increased for customs duties). Since his costs are lower (decreased for the amount of the customs duties which he did not pay), the difference between those costs and the equilibrium price of commodities represent the rent. For this reason every importer has an incentive to avoid payment of customs duties, or to resort to corruption, to free his commodities from payment of customs duties. Unpaid customs duties (in full or partially) directly lead to forming of and of capturing rent.

Public opinion poll results, and surveys of experiences of entrepreneurs demonstrate that the customs service is seen as the most corrupt state service. The multi-year inheritance of the Federal Customs Service under the leadership of Mihalj Kertez obviously produced results that cannot be easily annulled. During the past ten years a union was formed between people, or clans from the customs service and people from the police, both from the Public Security Service and from the State Security Service. On all border crossings besides customs officers there are police officers, both in uniform and in plain clothes. The police carries out passport control and provide physical security of the border at the border crossing. Therefore, for carrying out of practically any kind of corruption of the customs service, participation of policemen is needed. If they did not participate, they could have easily prevented the majority of customs offences. Additionally, impartial and effective police force at the border would have been a sure signal for customs officers not to engage in corruption, or intentional irregularities of customs procedures.

The above named union of customs and police in corruption was amplified by the fact that the two services did not have clearly differentiated spheres of competence at the border. That meddling of competences was increased by the naming of Mihalj Kertez for director of the Federal Customs Service. Kertez was a confidant of State Security, so with his arrival meddling of the police in customs procedure was increased, and especially by State Security Service. Additionally, a large number of newly employed customs officers were either transferred directly from the State Security, or were indirectly linked with State Security (for example wives of State Security officers).

Corruption of customs officers (together with the corruption of their colleagues from the police), or mechanisms of corruption, aimed at not paying full customs duties, i.e. making of a profit, can have several forms.

First the lack of import records (commodity bypass) which represents the best solution for the importer (full exemption from customs duties). This method is the most difficult for implementation, since a number of customs officers have to be corrupted, or a network of corrupted officers has to be formed (police and customs) and the division of labor among them has to be accomplished. In Serbia a commodity bypass, or practically bypassing of customs by trucks with commodities, occurred most often on the border crossing Horgoš, because of the specific configuration of the border crossing. The mechanism was based on corruption of the customs officer who first meets the truck at the border crossing and instead of sending it to the parking for customs clearance the officer sends it directly to the highway. Since there were a large number of witnesses (officials), it is necessary to achieve their cooperation, i.e. include them in the chain of corruption. Since the bypassing of vehicles implies that the driver does not have all the necessary documents in case of later control on the highway, it is justified to assume that in this corruption chain the traffic police was very probably included, or those patrols which stop and check trucks, and their documents. Often for the purpose of avoiding control license plates were replaced, and falsified transport orders were used.

For these reasons this kind of corruption of customs officers, even though most advantageous for the importer, was used relatively seldom compared to other kinds of corruption that we will discuss later. It seems that it was implemented in cases when the importer had great political weight, a very close relationship with the State Security Service and the police, since in those cases trucks passed through the customs crossing at high speed and under police escort without any customs records of commodities, and without customs clearance.

Another, rather effective, and less risky way of bypassing commodities is the so-called false transit. Of course, all commodities in transit do not succumb to payment of customs duties. After entering the country the truck is registered, or its load is registered and appropriate documents are issued, i.e. documents that confirm the intent of the shipper to deliver commodities in another country. One copy of the document is given to the driver of the truck, and the other copy goes into the customs documentation. Additionally, depending of the announced point of exit from the country, the driver and the truck are given an amount of time to leave the country. At the point of exit, documents from the truck are compared with documents

that are exchanged between customs offices and after departing the country all obligations to pay customs duties cease to exist. Transit for the import of commodities without payment of customs duties. It was necessary to corrupt customs officers in at least two customs offices, or border crossings. At the first customs office, or border crossing, the truck driver meets the corrupt customs officer, which fabricates documents not according to the real state of affairs but according to the wishes of the exporter. Even though the truck is full of cigarettes for the domestic market, the corrupt customs officer enters that soybean shot is transiting, for example, Macedonia. The truck enters the country with no payment of customs duties and cigarettes are sold on the domestic market, with a large profit for the importer. On the border crossing towards Macedonia, another corrupt customs officer simulates the exit procedure for the truck and constructs full documentation as if the truck has really left for Macedonia.

The second method of evasion of customs duties is unpaid duties for recorded imported commodities, which means finding a false base for the exemption from paying customs duties. This method of corruption is somewhat simpler, although for its implementation it is often necessary to include a person outside of the customs service in the corruption chain, in order to provide a false basis for exemption. This method is used most often in cases when there is a large number of different bases for exemption from payment of customs duties. Complicated foreign trade regulations in FR Yugoslavia and a large number of exemptions have increased the possibility for this kind of corruption, specially in conditions where a significant part of import consisted of humanitarian aid, which is exempt from customs duties. Therefore, it was important to prove that import consists of humanitarian aid and it would be exempt from payment of customs duties. Consequences of such exemptions are significant differences between the nominal and actually calculated customs duty. According to data for year 2000, that difference was around 1.400 million Dinars or around 30% of the total nominal customs duties. Even though one part of such exemption is legitimate, if exemptions reach almost one third of nominal customs duties, it is certain that many of those exemptions are caused by corruption, not necessarily of customs officers, although they are an unavoidable part of this chain.

Additionally, this method of corruption is often used during customs clearance and collection of customs duties from citizens who carry commodities across the border. A collective customs control is carried out for 5-6 vehicles, and for all except one customs duties are calculated and collected, and the person who has paid a bribe on time and to the right person, crosses the border with commodities he did not pay customs duties for. Since inspection is executed for several vehicles simultaneously, potential witnesses have a hard time determining who actually paid customs duties, and who did not, making corruption of this sort easier.

Still the basic problem in this and similar case is the payment of the bribe, since payment at the border crossing is technically difficult and it takes a long time. Due to this payment is most often carried out through an intermediary, with the existence of economies of scale. The intermediary pays amounts for several transactions, or for more corruptors. In such operations it is necessary to very precisely determine a number of details,

like shifts of customs officers, when each corruptor crosses the border crossing, etc. It is most often necessary to include in such operations top officials of one border crossing. It is especially important to ensure corresponding control mechanisms, i.e. mechanisms by which corruptors will be able to follow the implementation of the informal agreement, or the providing of services they have paid for.

Problems in implementing of informal agreements on corruption came into existence after staff changes late last year in the Federal Customs Service. Certain customs officers, who were dismissed for corruption, were not in a position to provide services for which they had received payment in advance. Corrupted officers had already spent the up-front payment, and the service they could no longer provide. Corruptors do not know how to solve the problem.

Moreover, effective customs duties can be lowered by biased valuation of commodities, or by effective lowering of the customs base, which is most often initiated by issuing of a falsified invoice, or an invoice for a smaller amount than the real cost of commodities. Additionally, this lowering of the customs base can be achieved by reclassification of commodities. According to Customs data, over 95% of sneakers imported into Serbia are cloth sneakers of Chinese manufacture. Of course, the supply of sneakers on the domestic market clearly demonstrates that this is a case of incorrect registering of imported commodities – over 95% of offered sneakers in domestic stores are sneakers of different kinds. Falsifying of commodity lists has a goal of the lowering of the value of commodities, since cloth sneakers are worth 12 DEM, and therefore the paid customs duties are much less, than an unbiased valuation of the real value of sneakers being imported, which would be near 100 DEM. In this case one part of customs duties is collected, and the importer is rather content, since this corruption mechanism is rather simple and does not need the forming of a network of corrupt civil servants – one right man at the right time is enough, which is relatively easily achieved.

Finally, effective lowering of customs duties can be achieved by reclassification of commodities, or by false identification of commodities that enables the use of a lower customs tariff rate. This method is especially appreciative for countries, like Serbia, which have a large number, or great spans of customs tariffs. Namely, up to the passing of the new Law on Customs Tariffs in May 2001, customs tariffs had an extremely wide span (0-40%) and there were a large number of customs tariffs (even 37). At the same time, similar products had customs tariffs with very different rates. For example, ribbed reinforced concrete steel used to have a tariff rate of 3%, while smooth reinforced concrete steel used to have a tariff rate of 21%. The reason for this difference is the supposed intention to protect the domestic manufacturer of smooth reinforced concrete steel (Sartid), while the ribbed reinforced concrete steel was not manufactured domestically. The consequence of the named difference and corruption of the Customs Service was that the complete import of concrete steel up to October of last year was classified as ribbed concrete steel, regardless if the steel was ribbed or smooth. So, a large number of tariff rates and significant differences between them in cases of similar products lead to this form of corruption. There is no excuse for such customs policy. The domestic manufacturer

was not protected, since the effective tariff rate was 3%, and not 21%. The customs procedure was not transparent and it enabled corruption. There were no winners, all were losers, – except, of course, the corrupt customs officers who found another way to take bribes.

According to unofficial, but trustworthy estimates from the Federal Customs Service itself, a very large number of customs officers, or state servants in this service were a party in corruption. According to certain estimates, even around 50% of customs officers had contact with corruption. Only by their dismissal, employment and training of new people, implementation of new rules (from the law to the Charter), the defining of new procedures and the introduction of better technologies, conditions will be formed for the Federal Customs Service to cease being the most corrupt service as perceived by citizens.

## **Federal and Republican Government: State Intervention and Corruption**

### ***Federal Government and the implementation of foreign trade rules***

Until the changes of federal foreign trade laws in early May 2001, a very large number of products were on the permit of the import regime. That regime included 482 products, or tariff lines according to a standard international classification of products. That makes up around 4,5% of the total number of products, and roughly the same participation in the overall import.

Of that number for around 100 products permission had to be sought because of international conventions – for products like explosives, poisons, and similar products on permission which are on the permission regime in countries with most liberal foreign trade regimes. The next 203 permissions deal with iron and steel, or products form iron and steel, and 90 more for the supposed protection of some other domestic branches (trucks, tractors, and the like). There are 47 positions on the permission regime, which deal with agricultural and foodstuff products. Additionally, there are products on the permission regime that are there for totally unknown reasons, like old clothes, certain medical equipment (EKG), compressors and others whose total number is around 40.

The biggest problem in assigning permits was subjectivity and lack of transparency in decision-making. Civil servants assign permits, to individual companies that requested the permits and assign a permit for a clearly specified commodity and with a limited value of the transaction, measured either by quantity or value of commodity. Additionally, civil servants have the discretionary right to issue or to reject the issuing of a permit based on a subjective judgment regarding protection of general interests, which meant domestic manufacturers, or the protection of the country's balance of payments. These very general guidelines make it possible for civil servants to easily offer their services for the issuing of permits, or to be corrupted.

The largest number of permits for import of foodstuff products (chewing gum, sugarless chewing gum, sugar, bananas, chocolate, etc.), or products with an extremely high profit margin, was reserved for large

importers, often close to the authorities. For example, Delta M, Genex (and companies which are part of Genex), Nelt, Stankom trgovina, Deljug were among them. In addition, often smaller companies were present, often with two or three employees which received permits for import of certain products, for example Food Industry Dunja, registered in Belgrade, Bulevar Revolucije 276 (no factory or industry exists on that address) which in the year 2000 received permission for the import of chocolate in the value of 1 million USD.

The next interesting phenomenon is the unrealistically low price under which import was reported and in this manner corruption was covered. Namely, the nominal amount of allowed import was relatively small, so that doubt would not be raised in the regularity of awarding of permits. In regard to unrealistic prices presented on permissions, the leader is the company named International CG which is a part of Genex, and at the time under direct control of Radoman Božović, and which received permits for the importing of 6.100 tons of bananas, with the reported price on the average being less than 10 cents per kilogram. Furthermore, companies under control of Genex received permission for the import of an additional 1.500 tons. Other importers received permits for the import of 900 tons of bananas. The average price for them was from 40 to 50 cents per kilogram.

It is interesting that a rather significant discrepancy exists between amounts of issued permits and realized import. In certain cases as the realized import is several times greater than issued permits. This indirectly demonstrates significant corruption of the customs service, or of the institution that should implement foreign trade regulations. For example, total issued permits for import of trailers and tractors during 2000 were in the value of 9 million USD, and the total import of these products exceeded 20 million USD. Also, for buses, the value of issued permits was 2.1 million USD, and imports amounted to 5,1 million USD. For trucks the value of permits was 7 million USD, and import exceeded 18 million USD, while for sidecars were issued permissions for import of 1,12 million USD, an imported is over 10 million USD.

Having in mind that a large quantity of bananas was sold on the green market and other locations where payment was in cash, it was noticed that International CG (Genex) imported bananas in the quantity of 3.400 tons for a company Neretva Fruit from Novi Sad (the city where Radoman Božović grew up) which does not exist in the register of the federal Statistical Administration. Several things can be concluded from this. Above all, that through this company Genex introduced the bananas on the cash market through which it could have avoided payment of the sales tax, and also to take all income off the books of the company. Next, the Federal Ministry of Foreign Trade had certain criteria for issuing import permissions. Among others, according to this criterion, small private, and even socially owned companies were denied a chance to import freely, and specially to import such significant quantities. Obviously in this case this criterion was not observed.

It can also be noticed that at the time of the collapse of the old regime in proportionally large number of permissions was issued. For example, from October 6 to October 10, 2000, 16 out of 18 permissions for import of sugar in the year 2000 were issued.

And finally, one should mention the cadre that issued licenses in the former Federal Ministry for Foreign Trade. It is assumed that licenses were worked on by people linked with the State Security Service. This can be substantiated by the fact that one of the main persons in the committee for licenses was the wife of one of the heads of the State Security Service. In cases of the most delicate import deals, licenses were approved personally by the then Minister for Foreign Trade, a high official of JUL.

#### **Frame 1**

#### **Regulation of foreign trade transactions: Not according to likes or dislikes**

The most regulated field of business operation in Serbia during the 1990s was foreign trade. Imports were limited by quotas, and when during 1999 the quotas were lifted, the very widespread use of licenses for import and export began. Import quotas were granted by the Federal Ministry for Foreign Trade together with the Federal Chamber of Commerce. Import and export licenses were issued by the Federal Ministry. Additionally, one had to have a company registered for foreign trade activity, which demanded the meeting of certain conditions regarding the number of employees and technical standards, and a paid deposit. Also, an obligation existed to register every individual foreign trade deal, a mandatory deposit of foreign currency with the National bank during import, and the mandatory sale of one part of the foreign currency made on the export according to the official (for exporters unfavorable) exchange rate. Of course for all of the listed obligations, or for their real of fictive fulfillment appropriate certificates were issued. Since foreign trade deals brought in significant profits, entrepreneurs, most often importers had a significant incentive to pay for issuing of any one listed certificates, or licenses. Therefore, it is less than likely that they were issued to personal likes or dislikes, but on market principles – to the one ready to pay the most.

### **State control of prices**

The state control, or limitation of prices, as a means of state intervention, is also very often used, especially in certain economic activities, like agriculture. Over 40 percent of prices on the average were under direct state control in Serbia while in certain periods this went to even above 60 percent. Such state activity could not have been taken without certain consequences. First of all price control had demonstrated its unavoidable negative effect – a tendency to grow in scope. Deciding to persevere in price control the Serbian government was forced to pay subventions to industries where prices were under control. In this way it brought itself into the situation that it had to increase the level of price control to prices that make up basic costs in those industries. Very often this did not work either, and operational costs of companies with controlled prices were higher than their overall income. Therefore, the companies were making losses.

Typical products of this kind were the basic foodstuff products in Serbia during the rule of SPS and their coalition partners. Very often, because of the maximized price that was not followed by an adequate mechanism of

fanatical incentive for the manufacturer, there was no interest of manufacturers to manufacture the product. Accordingly, equilibrium supply was not adequate to satisfy the full demand for the given price. Insufficient supply formed irregular shipments, shortages, and a queue in front of the stores. For this reason certain consumers were ready to pay an additional amount in order to acquire the adequate number of units of the product in question. For example, sugar at controlled prices, was almost never to be found in stores. Then one should not be surprised over corrupted store managers who receive money or counter services.

### ***Public companies***

Public, or state companies, which provide infrastructure services, are very often centers of corruption. Namely, it is customary that prices of services of these companies are depressed, often significantly under the level of their costs of supply. The supply of those services under such administrative limitations of prices is insufficient. Such a price policy of infrastructure services in Serbia was explained by protection of the standard of living, although it turned out to almost always, be a part of the election campaigns. Since, on a free market, equilibrium prices of these services are higher, consumers were ready to pay a higher price for those services. Due to administrative limitations, such a price would not be legal, and it surely transforms itself into illegal payments, or into corruption of those who can provide such a service. Corruption for connecting new telephone subscribers in Serbia is a typical example (example in Frame 2).

#### **Frame 2**

#### **Corruption for connecting new telephone lines: "Bottle of spirits for 200 DEM"**

The tariff policy of Telecom Serbia is not based on the cost of providing services. For this reason in a large number of cases the telecommunication company is not interested in providing those services. A typical example is the price of a new telephone line. At the present price, a large number of citizens have applied for a telephone and following that they have to wait a long time. In such conditions they are ready to by payment influence the queuing of their own telephone line. Sometimes, a "contact" is used, which also represents corruption, in this case of an investment in the social capital of the one who is in a position to "take care" of the telephone line. A separate type of corruption is the one that speeds up the already approved telephone line. The lack of interest of employees of the Telecom Serbia can lead to months of waiting for an approved telephone line. Then action is undertaken by entrepreneurial workers of the Telecom itself. Namely, the new telephone user has to, at his expense, secure the home wiring of the new telephone line. Since few new telephone users have the technical knowledge needed for such a task, the job is often offered to one of the Telecom workers. Accepting of a job very often means that besides placing of home wiring he speeds up its linkage to the telephone exchange. According to testimonies of new telephone users, the price of this service varies greatly (used to be 200 to 500 DEM all inclusive). Sometimes the prices of this service are even broken down, possibly even with a rational: "Give me about 200 DEM so I can buy a bottle of spirits for the people at the exchange."

## *Tax administration*

Payment of taxes unavoidably decreases the well being of taxpayers, since it decreases their available income. In principle, regarding this issue there are no differences between legal and private entities. Corporations want to pay profit tax as little as possible, while citizens want to pay a smaller income or property tax. Of course one of the available options for those who do not wish to pay taxes is classic tax evasion, but in many countries it represents a high-risk activity, which most often constitutes a criminal offence (one should remember the instructive case of Al Capone). On the other hand, corruption often represents a reasonable alternative for those who wish to decrease their tax burden. Corrupt state servant in the tax administration, for example, can calculate the tax return in a biased manner, decrease the tax base or use a more favorable tax rate, which would decrease, if not eliminate payment of taxes for the total income of citizens. Also, the value of personal property can be assessed with bias, so that the assessed value is several times less than the market value. By this the tax base is decreased, and therefore the amount of taxes due. Additionally, others can be included in corruption. For example, those who carry out financial auditing of the working of a corporation, so that they accept the final financial statement that depicts a lesser profit less and thus decreases the burden of the profit tax on the corporation.

The tax system in Serbia during Milošević's rule represented an exceptionally strong generator of corruption. Survey findings confirm that citizens place the tax administration right after the customs service as an institution they link massive corruption with (4,12). The tax code in Serbia used to be too complicated and hard to understand. There were a large number of different taxes, overemphasized was the tax directed at spending (sales tax) and income tax. Also, there was great space for discretionary state measures, or discretionary decisions by state servants. The practical manner of functioning of the tax system shows how operative it really was. When one has in mind the complete nature of the economic and political system in Serbia, it is not hard to conclude that authorities purposefully made possible, for certain groups and large companies, whose managers were members of the political elite (often ministers), to attain a privileged position (to pay decreased taxes) or even to without punishment, without any fear and any responsibility, fully avoid payment of taxes. This represented one of the ways of assigning privileges to certain companies, and even to complete economic industries. On one hand, by not paying taxes they could lower their prices, which made market competition extremely uneven and made it possible for them to eliminate the competition, i.e. the establishing of uncompetitive market structures. On the other hand, if they did not decrease the prices, since their overall costs were significantly less compared to income, the privileged businessmen seized a significant rent.

In the context of the fiscal system of Serbia, a significant issue is taxation of salaries. Salaries were, simply put, overtaxed. Namely, according to then relevant laws, for one Dinar of net salary companies were under obligation to pay an amount of over one Dinar for taxes and other dues. Such an extremely high tax burden for salaries caused a direct incentive towards evasion of this tax that was realized in different ways. Before all a massive

“gray market” of labor was formed. It is estimated that this market still numbers at least one million people. Additionally, even those workers included in the formal labor market were not in the majority of cases paid in the standard manner, but through work contracts and in similar ways, so that taxes would be avoided. An incentive for corruption and the “gray” labor market was a consequence of the fact that the majority of workers, who were included in the “gray market” of labor, were formally employed elsewhere. In other words, they have based on formal work contracts secured social protection. Therefore, they were encouraged to join the “gray labor market”. Essentially the management and workers divided a part of the profit that was made by evasion of payroll taxes.

Corruption linked to the tax administration, or the tax system in Serbia at the time of Milošević’s rule became a symbol of the business elite of that time and the dominant way of doing business. Growing rich through crime and, of course, corruption became a common place and formed new business “rules“. It is clear that entering into these “closed” arrangements had to be paid well. Only those who were chosen could go unpunished for tax evasion, to introduce or carry on blackmail, to organize smuggling, to have access to credits under special conditions, often with negative interest rates. Those companies which strictly followed the rules could not survive the competition with those who did not pay taxes, break all rules and norms, use funds from money creation of the National Bank. In this way corruption became a component of managerial activity, something considered an unavoidable part of “business costs”. Survey results have shown that private entrepreneurs slated from 1 to 10 percent of their annual budget for paying bribes. Corruption in this way became a “way of doing business” in Serbia. Preconditions for a higher living standard and, therefore, social prestige were not secured by successful entrepreneurship, but by political lobbying and corruption. Economic dependence grew stronger between state companies and holders of political power. Profitable businesses could not be carried out without the knowledge of the state, or more often, without someone in a high political position.

### ***Market monopoly and barriers***

A significant cause of corruption in Serbia was the monopoly structure of its market. Empirical research, or the standard econometric measurement of monopoly power, show that the market in Serbia in the past decade was to a large extent monopolized. This fact by itself does not represent a great surprise. It represents a natural consequence of events that took part on the territory of former Yugoslavia. Companies in Serbia in previous decades have opened up, like in all the republics of the then unified state, having in mind the complete market of the former Yugoslavia. Only as part of such a unified market were these companies exposed to strong competition. Additionally, since the market was significantly larger than today the companies could have used the positive effects of the economy of scale.

At the moment of disintegration of the former Yugoslavia and the turning of her then republics into independent and internationally recognized states the economic situation was drastically changed. Above all, the then unified market was overnight divided into several smaller and closed units

overnight, which led to the situation that many companies were left with no competition, or certain industries became classic monopolies. Additionally, since the new market was much smaller, some companies were able to by lowering capacity use meet the existing demand. Simultaneously with the process of monopolizing of the market in Serbia one could feel and see a constant lack of certain products, especially of those which were previously supplied by the of companies from the former republics of the joint state. At that time one could notice the full extent the inadequacy of the existing economic structure.

It is a fully obvious that there exists a very strong link between the monopolistic structure of the market in Serbia and the incentive for corruption. The monopolistic position makes it possible for a company to acquire a growth of profit above the amount it would acquire in conditions of free competition and open market – in other words, rent was captured. Having this in mind, monopolists were naturally interested in maintaining their position as long as possible, if possible permanently. For this reason they were ready to corrupt state servants to stimulate them to intervene in the market in their behalf. Every entry of a new company in the existing monopolistic activity would reduce the monopolistic profit, which the existing monopolists attempted to oppose by all available means. In preventing of market entry and growth of competition they are using corruption.

The process of corruption used by the monopolists was additionally supported by the fact that activities of the former authorities in Serbia were to a great extent, arbitrary. Members of the ruling elites were granted great authority that the common public could in no way control. The monopolists in reality shared one part of their rent with those state servants who enabled them to achieve their position.

### ***Multiple exchange rates***

Certain countries use multiple foreign currency exchange rates. It is rather hard to understand the economic logic for such a solution. However, regardless of the motives, in Milošević's Serbia there was at least a double daily exchange rate. The official rate was linked to the German Mark, while on the street a freely formed market rate was present, and there also existed a so-called deposit rate, an exchange rate for deposit account transactions. With an expansive monetary policy which was in place, the difference between the official and market foreign currency exchange rate increased constantly, so that in the last year of Milošević's rule the market rate of the German Mark was on the average five times greater than the official one. The authorities persisted in the implementing of the fixed nominal foreign currency rate. It is hard to say what caused such a policy. In other words, is the reason stupidity, elementary lack of knowledge of economic policy, or is the issue more complicated. Such rate differences presented very large possibilities for corruption. To purchase foreign currency at the official rate and sell it at the market rate – surely represented a business practice with an extremely high profit rate, or practices that generate an extremely high rent. Access to buying of foreign currency at the official rate had, of course, only the privileged, those who for such a position were ready, or forced to pay well. This especially held true for banking and foreign trade dealings (see frame 3).

**Frame 3**  
**Corruption and Multiple Exchange Rates:**  
**A bank in Belgrade...**

One of business specialties of local large banks was the granting, to privileged users, of course, the so-called Dinar credits with a foreign currency base. This, somewhat simplified, looks like this. A client at a time when both nominal and real Dinar exchange rate is equal and is 6 Dinars for 1 DEM receives a Dinar credit in the amount of 100.000 DEM, or receives 600.000 Dinars for two years with an interest rate of 10% per year which is calculated and paid with the return of the principal amount. The client, of course, buys German marks on the market right away in the amount of 100.000. Two years later the Dinar rate has fallen, and equals 20 Dinars per 1 DEM. For client to pay back the credit of 600.000 Dinars, or 100.000 DEM nominally, he needs only 30.000 DEM, or 36.000 DEM if interest is calculated. So, the net benefit from this operation is 64.000 DEM. It is very clear that the user of such a favorable credit would be very willing to share a part of the windfall profit with someone. With whom? With the right one at the right place.

### **Special pensions and giving to citizens**

Disability pensions are designed for those people that were left with no work capability. Such a solution exists practically in all civilized states. However, many people who are still capable for work, in these conditions, have an incentive to receive disability pensions. Such pensions make possible for them an additional income and free benefits (free spa rehabilitation, for example). Namely, they acquire through welfare and disability pensions, fixed income and free benefits. Therefore, people who wish to acquire a disability pension, and have no right to do so, are ready to corrupt civil servants who make decisions on the granting of such pensions. In Serbia the “price” of a decision on a disability pension is around five thousand DEM. The level of potential corruption is determined by the discounted amount of the expected benefit that the corruptors (false pensioners) are to seize in the future. Since it is rather difficult to grant a disability pension to someone whose work abilities are fully preserved, the most serious candidates for this kind of corruption are people whose work ability is partially preserved, and they wish to demonstrate that they have no work capability at all. Corruption of this kind can be indirectly examined through the number of people who receive regular and disability pensions.

### ***State subventions to manufacturers***

The mechanism of realization of a subvention to a manufacturer is linked to measuring of the quantity and quality of the delivered product. For example, for the subvention of milk production, the quantity of delivered milk and its fat content is measured. The manufacturer has an incentive to, by corrupting the one who is measuring the named parameters and issues the adequate document, increase the amount of the subvention he is seizing. In other words, by corrupting the one who is measuring the named parameters, he can acquire a fake report with the specified quantity, or

quality that are higher than the value of the parameters of the delivered commodities. The one issuing the certificate is not paying the subvention, but is only an intermediary in this process, so his is not extremely interested to exactly measure quantity and quality. On the other hand, a buyer on the green market, who pays for the bought goods out of his pocket, is very interested to receive more and better quality. All of us pay special attention when buying at the green market, to both check the quality and the quantity being delivered. The person who issues certificates of the delivered commodities for payment of subvention is surely not that interested.

### ***Free medical protection***

In Serbia during the last decades there existed, at least in theory, a free health protection system based on the so-called mandatory health insurance. All citizens are obligated to, according to previously defined criteria, pay a certain amount in the central, state health insurance fund. Accordingly, in case of sickness, they receive free medical protection. In many countries, for different reasons, such a system of health insurance, or providing of medical services, leads to insufficient supply of those services. Therefore, individuals who are seeking medical services have an incentive to, by corrupting doctors or other medical staff, receive the sought medical service. The market value of a medical service for any one sick person is very high. In other words, everyone is ready to pay a relatively high amount for obtaining adequate health service. Since such a service cannot be obtained under regular procedure, a space opens up for corruption. Corruption can pertain to basic medical services (examination, therapy, operation, hospitalization, ect) or to other services (better conditions in a hospital, better treatment by non-medical staff, ect.). In addition, corruption in health services can be of various types. Besides paying cash, they include expensive gifts, and also an investment in the social capital of the corrupted, or different counter services that patients can provide.

### ***State public procurement and sales***

For a state to function it needs to acquire various goods and services. They include, for example, computer equipment used by the Ministry of Finance, or vehicles used by the customs service. Additionally it includes the commodity reserve formed by the state to intervene on the market if it assesses that conditions for this are met. In principal, the listed goods and services should be acquired from the most efficient manufacturers, or for the lowest price for the same (prescribed) quality. Doing so fulfills the law of economic efficiency. Budget expenditures are also minimized. Unfortunately, state employees engaged in these jobs have an incentive to break this principle. By acting rationally, they are not interested in the general economic efficiency, nor in minimizing of state budget expenditures. They are exclusively interested in personal gain. If a manufacturer is ready to corrupt them to get the job, or to deliver his products to the state, they are, in principle, ready to accommodate him for payment of, for example, of 2% to his bank account. Cash is, of course, even better. The question is:

are manufacturers ready for such an arrangement? Of course, all are ready, except for the most efficient ones, and those most efficient are ready for such a deal if they think that others will attempt to corrupt the civil servants. The manufacturers are ready to corrupt civil servants, in order to acquire a job at a better price, and cover all of their costs which are higher than those of the most efficient manufacturers and to by doing so seize a certain benefit.

Many states have introduced formal procedures of public procurement, minimizing the possibility for corruption of civil servants in this field. Private, or direct (closed) deals are the best arrangement for corrupting of civil servants; so many contemporary states avoid such procedures. Milošević's Serbia was surely not such a state, and public procurement was always done by direct dealing, and details of those procurements will most likely be known during a series of trials that can be expected this year.

The mentioned arrangements in the former economic-legal environment in Serbia formed a number of possibilities for corruption. Surveys have shown that a large percentage of citizens intuitively know that public procurement is the very activity in which massive corruption was present (as a special field causing corruption public works were listed – 4,16, or works linked to the “reconstruction of the country”). Additionally, public procurement in health care was named as extremely effected by corruption – 4,11.

The mechanism itself is very simple. Having in mind the overall setting of the economy of Serbia, or a state in which all significant decisions and transactions were hidden from the public, in these activities participation was reserved for those picked by the state. They gave offers and were granted deals, but had to pay bribes for such contracts. In this way corruption represented a result of an “informal auction”. A larger number of interested groups would show up, or one could call them pressure groups, which were competition with one another. In such “free competition” the winner was the one who has offered the largest bribe.

Public procurement tenders in countries different from Milošević's Serbia are based on forwarding of closed offers of contractors. This mechanism, if there is no collusion, in general, makes possible effective procurement. Possibilities for corruption are, thereby, significantly lessened. However, they still exist, and are only redirected to the corruption of the tender committee. Yet, transparency, public opening of bids, keeping of tender documentation as public documents significantly decreases these possibilities. Better yet, from the standpoint of the elimination of corruption, is the use of public auctions, where transparency is even higher.

Besides public procurement, public sales can also be a source of corruption. Typical public sales are to be found during privatization of state, or public companies. The sale of public companies forms a room for corruption. Potential buyers have an incentive to, by corrupting the seller, or civil servant in charge of the implementation of the sale, decrease the price of the company that is being sold. The greatest possibility for corruption of this kind is during direct bargaining of interested parties, which is preceded by private (closed) negotiations of participants in the sale. Mechanisms used in this case are rather simple (see the example of the privatization of Telekom Serbia, frame 4). Due to this for sales of state companies tenders

and auctions are usually used. A wave of privatization in East European countries in 1990s have demonstrated that tenders and auctions is a solid barrier to corruption during privatization.

#### **Frame 4**

#### **Privatization of Telecom in Serbia: Pronto Italia, can you hear me?**

For a long time, the Italian STET, or today Telecom Italia, was interested in buying at least one telecommunications company in East Europe. STET failed in its attempts to purchase MATAV (Hungary) and SPT (Czech Republic), and since STET lost on both tenders, even though it offered the highest price, even 10% above the offer of the one who won at the tender. STET then turned to Serbia and decided that it will never lose another tender. A most certain way of not losing on a tender is that there is no tender. The story of no tender begins in September of 1996, and when problems arose Lamberto Dini, then the Italian foreign minister, visited Belgrade. Evil tongues say his wife is one of the largest shareholders of Telecom Italia, but evil tongues are not to be trusted. So, minister Dini then said in principle that Milošević was right, that the Serbian opposition should not demonstrate, seeking the return of annulled elections (winter 1996-97). A bit later, a deal was cut, of course without a tender, on the privatization in which STET became the owner of 29% of Telekom Serbia. The price, having in mind conditions that were granted to investors, can be assessed as very low, conditions for this country in general as very unfavorable, and for investors, headed by STET very favorable. All this points out to possible corruption, or that one part of funds that was paid did not end where it should have – in the budget of the Republic of Serbia. The District Public Prosecutor in Turin has initiated an investigation regarding this case. Possibly we will soon know the answers to three questions: Who? How much? When? However, even before we get the answers to these three questions we already know the answer to one. And that is – what no government at any time should do.

Certain models of mass privatization in countries in transition can generate room for corruption. In that sense Serbia has offered the world a very good example how this is not to be done. As early as 1989 the Law on Social Capital was passed (later to be several times changed and amended), which institutionalized conditions the opening of privatization in Serbia. The process of privatization after 1994 was reversed and practically stopped, so that a significant portion of the Yugoslav economy was formally kept in state and social ownership until today (first half of 2001) – only about 6 percent of the economy was privatized at this time. It was said that privatization was postponed until conditions are met for its “fair execution”. In contrast to the proclaimed, the privileged political elite in fact carried out a massive “hidden privatization”. Some analysts believe that it can be concluded that in Serbia the complete state was privatized. Therefore corruption became one of the successful and very fast ways to “privatize” social and state property.

The hidden, or spontaneous privatization, in fact is a euphemism for a plundering transfer of resources of the social, or state companies, into private hands. Most often the mechanism included the forming of a private company owned by the manager of the existing social company. It is

customary that this new company be registered in the name of manager's wife or a close relative. The former Macedonian defense minister registers his private company in the name of his – father in law. To the new, private company owned by the manager most significant funds, or resources of the state company are transferred. This most often pertains to business contacts, or business network (sales network, procurement network, financing network, etc.), and sometimes direct transfers are at hand, or clear asset stripping. In this way the value of the capital of the state company is decreased, or the capital is transferred into the new, private company. Since the named process has many witnesses, it is necessary to secure their silence, or cooperation, to use this euphemism, and for this corruption is used. Regardless if discretion will be paid at once in cash or by a well paid position in the new private company owned by the comrade manager.

### ***Public works and transactions pertaining to public works***

Public works have become very popular in the 1930s, when in the US they lead to very favorable macroeconomic effects (they had even better effects in Hitler's Germany, but it gave them no great popularity in other parts of the world). Public works represent a specific form of public procurement, only instead of procurement of goods and services; investments are provided and financed from public sources. So, basically, mechanisms of corruption are similar to public procurement. Potential contractors are ready to corrupt state employees to get a job and to increase its value, or their income. However, the complexity of projects to be carried out by public works opens up the possibility of different kinds of corruption, even wider than in the case of public procurement. One way is bias in the project design for public works, so that the project would have a higher value than the needed (known as "inflated project"). The second method is lobbying for a certain project, where experts are directly bought off so they support the most expensive version, regardless the fact that it is not economically justified which is another form of corruption.

A special type of corruption in public works is collusion of potential contractors. Collusion is a way to avoid the tender, so to increase, or "inflate" the price and in that way still seize the rent. Namely, a tender leads to the selection of the most favorable offer and economic efficiency only if competitors (potential contractors) are not in collusion. It is customary that collusion is attained with the help of corruption.

### ***Obtaining a government job***

In many countries, especially developing countries, people are ready to pay a certain amount to obtain a job in government services. In other words, to corrupt civil servants so they could themselves become civil servants. As a rule, salaries of civil servants in those countries are rather small. Therefore a question arises of why would someone be ready to pay a certain amount, or to corrupt a civil servant to become a civil servant. The basic motive of seeking employment in the government services in these countries is an expected income from corruption. Namely, it is

expected that a position of a civil servant will bring income from corruption for, for example, issuing of licenses for import. In other words, by corrupting of civil servants for a job in the government service entry fee is paid for a club of those who have access to income based on corruption. This is a kind of investment in the future. I pay now to win income in the future. This forms a chain of corruption. The basic incomes of civil servants in these cases become income from corruption, and not the basic salary.

In Milošević's Serbia, corruption linked to obtaining government jobs should be added to the corruption linked to employment in general. Namely, this corruption is a consequence of inadequate solutions in local employment laws. Lack of functioning of the labor market in Serbia also presented one of significant sources of corruption. Formally the non-functioning of the labor market resulted in the fragmentation of national and local labor markets to a large number of small, monopolistically organized and closed markets. Since there was no market verification of economic results the amount of the salary depended the most from the economic branch the company is doing business in, which naturally resulted in attractiveness of jobs in those "priority" branches. Especially attractive were jobs in the public sector. At that there was a question of how to obtaining a job where there is no free labor market, or when there is no mechanism of free selection and competition where chances are made for those more capable and more ambitious. For this reason, to arrive at a new job, especially in state services, one usually had to be made up. Directors of social and state companies (members of the political elite), since they were not interested in the efficiency of the company because they did not function in market conditions, decided very easily to do such things. When the mentioned elements are integrated, it is easy to understand that different mechanisms of corruption were very active here in their full force. Therefore 41 percent of citizens answered that they would pay a bribe if asked to do so during a competition for a job.

### **Corruption of local government**

Corruption in Serbia exists in all levels of power, as on the federal and republican, also, in a considerable amount, on the level of local authorities. It, surely, with the local government has specific forms connected with prescribed functions and of municipalities and cities, which make up the local level of government.

Local government in Serbia has very limited functions, much less than in other countries in the region or in West Europe. Former wide decentralization of government in 1990s was turned into a process of centralization, or transferring of functions from the local to the republican level in numerous fields of social life. In this way municipalities and cities were "liberated" from all functions pertaining to education, health care, the judiciary, and police, and in greater part of social welfare, culture, business activity, regional development, and the like. This trend of transferring functions from the local to the republican level was a result of aspiration of the previous regime to transfer all vital powers, and also financial funds, to the level in which it felt strongest and most durable, having in mind the

possibility that it will lose local elections in a large number of municipalities and cities. The democratic opposition won local elections and took power in local communities, but all significant levers of power remained out of their reach, on the republican level.

Besides administrative functions in the strict sense, municipalities and cities in Serbia exercise governance in field of infrastructure (water works, garbage collection, public transport, heating, graveyards, public lighting, streets, parks, etc.), in urban planning, the use of lots for real estate development, and in managing of commercial real estate in state ownership.

In the framework of the listed functions of local authorities in Serbia corruption can be found. The four main fields of corruption are:

- granting of locations for building kiosks,
- granting the use of commercial real estate,
- granting lots for of real estate development and building permits and
- public procurement.

In numerous cities in Serbia, beginning with Belgrade, in the past decade a developed frequent and massive corruption connected to granting of locations for the *construction of kiosks*. Kiosks are considered temporary buildings and, therefore, do not succumb to the rigorous urban planning regulations, and thus it is easier for local authorities to grant locations for their construction. On the other hand, the private sector was suffering from the lack of commercial real estate, because the existing is mostly used by social companies, and very inefficiently at that. Social companies were not showing an intent to free the excess commercial real estate because they have low costs of its keeping, either if it is in their ownership, or if it is owned by the state company managing the commercial real estate. In the second case, the rent is low, much lower than the market prices, and even the worst used space still brings in sufficient funds for covering rent. The only quick solution, even in the current conditions, for the shortage of commercial real estate in the private sector, especially for small retailers, is the construction of kiosks. Corruption linked to locations and licenses for constructing kiosks developed quickly, especially in attractive locations in city centers. A customary “price” used to be between 5 and 10 thousand DEM, and for the best locations and largest kiosks the amounts were much higher.

The Serbian state is the owner of a large number of units of commercial real estate in the cities of Serbia, especially stores and offices. This *commercial real estate* came into state’s ownership mostly by nationalization after World War II. This commercial real estate fund is managed by public companies of municipalities, of cities. The larger part of this commercial real estate is used by social (or mixed) companies, while a smaller part by craftsmen and the private sector. Present tenants are protected by indefinite contracts and it is difficult to move them out even if they do not pay rent regularly.

Corruption in granting of commercial real estate exists to a great extent. The basic cause is the low, below market rent, and this policy is maintained, supposedly, for the protection of tenants and consumers. When the rent is low, then a rent is present which someone will seize – either the tenant or the one who decides who the tenant is. It is usually the latter. This kind of corruption, as other on the local government level, has two types: the first is cash payment, and the second is granting of commercial real

estate to party friends. For the further growth of corruption pertaining to commercial real estate the basic problem is the slow removal of present tenants, which causes the relatively small number of free locations for making lucrative deals.

City *building lots* in Serbia are owned by the state, while local government decides who will be granted which lot and what right of use he will have. As with the commercial real estate, with the building lots the official costs of acquisition and use are much lower than the corresponding market values, and again rent is present which will be seized by someone. When the market does not stabilize supply and demand for lots, then corruption does. Nevertheless, the Law on City Building Land prescribes that lots are granted on a competitive basis. That rule holds no water, however. In practice they are granted in direct bargaining of interested parties, to mutual satisfaction.

In the field of residential and commercial construction there are points where corruption is possible and frequent. The first is the acquisition of urban planning conditions, either for a location for which there is no detailed urban plan, or regulatory plan, or for deviations from that plan when it does exist for a certain location. Then there is the building permit, and finally the usage permit. At each of these points there is a possibility for corruption, and for making payments of often large amounts, especially for most attractive locations (for example, of several million in the Dedinje district of Belgrade). Participants in corruption are often the building inspectors, who are in charge of controlling the legality of construction, and who demonstrate leniency towards offenders, for compensation.

Public procurement on the local level, as everywhere else, is the favorite pastime of corrupt employees. When procurement is not competitive, the “fixing” of prices is unavoidable. Corruption exists both for procurement from the budget, and for public utility companies (the Belgrade Public Transport Company was often mentioned). The favorable aspect lies in the fact that procurement in Serbia is mostly small – in the last ten years there were few large investment projects, which are on the top of the list in corruption potential. Yet, even the small -scale gains, if they are frequent, can bring in large amounts of money.

Corruption on the local level – either with kiosks, commercial real estate, construction and lots, or public procurement – was usually party-based. The ruling party would organize corruption, and trustful clerks would carry it out. Also the coalition partners knew to participate in the division of the loot.

Citizens of Serbia know there is corruption on the local level of government. The survey conducted for this project has shown that the citizens think that corruption is very much developed with the local authorities – they grant it with 3,78 on a scale of 1 to 5. In contrast with other state institutions, local authorities are still not rated highly corrupted. The private entrepreneurs give even worse marks to the local government, granting it an index of 3,91, and stating that among all dealings with the public administration of all levels corruption is most present in the granting of locations by local authorities.

Corruption surely harms the local community budget. When the prices of commercial real estate, building lots, or kiosks are low, then the rent

(the difference to the market price) is seized by either the tenant, or municipal employee and his party, and not the budget. And along with the budget the citizens are at a loss, or the local community in general.

### **CORRUPTION IN HEALTH CARE: CORRUPTION OR EXTORTION?**

If we understand corruption as a voluntary exchange in which actors are the one who is receiving a bribe (someone who holds a public function) and the one who is giving a bribe (someone who is seeking a service and is ready to pay for it) we will face a serious problem in implementing this definition to health care. Why? Because the one who is giving money so he could receive a service (be given medical attention) to the one who holds a public function (medical worker in the state sector of the health care service) is not in a position to decide freely, without serious consequences to his health, if he will pay for the service to which he is entitled under law. According to our empirical research, as much as 53 % of those polled would offer a bribe to acquire better medical protection – which in first place from nine offered possibilities. This means that one cannot speak of any voluntary activity here.

According to form of appearance the problem of illegal forms of payment can be treated as corruption, but in essence this phenomenon, which in health care has grown to endemic proportions, is closer to extortion or blackmail. A person who is in a state of need of medical attention sometimes is not in a situation to choose if he will pay for an operation which he has to have performed, for a referral for treatment to a medical institution of higher rank, or a similar service from which in final consequence the length and quality of his life can depend. Yet, we will use for this paper the World Bank definition of corruption, which is a misuse of a public position to acquire personal benefit.

#### **Types of corruption in health care**

Corruption, or illegal out of pocket payment in health care in Serbia can be manifested in several basic forms.

##### ***Donation***

For numerous services it is necessary that the user pays for the cost of material or medicine that will be used so that the service can be provided. For example, during long periods health centers or hospitals did not have material for basic dental interventions, diagnostics linked to x-rays, certain medicine that were given to patients intravenously while he was under hospital care or for therapy in medical centers, or material necessary for surgical interventions. In this case a director of the medical institution would, through certain departments (dental, x-ray, surgical,..) inform the patients that it is necessary that they buy certain material (x-ray film, tooth filling, scalpels, gauze, string...) or medicine (drug, anesthetic, infusion solution...). The purchase was carried out, generally in two ways: directly in pharmacies (in this case the patient would purchase the material, then

he would turn it over to the doctor or a nurse in which case he did have control over the use of the acquired medicine or material) or by way of “donation”. Namely, in a longer period of time the practice was to ask the patient for money, even for emergency treatment, so that with that money costs of medical treatment would be financed. The “donation” depended on to the kind of intervention the patient would pay into a deposit account, or directly in cash to the authorized official.<sup>4</sup> An appendix operation cost around 500 DEM, a cataract operation around 400 DEM, embedment of an artificial hip around 3.000 DEM. Medical transport or house calls by mobile units was paid around 0.5 DEM per kilometer. The route of money that the patient gave as a donator was obscured. The money ends up on the deposit account of the medical institution, and if it is spent for the necessary material and medicine for a given intervention, or the purchase for apartments for the staff, travel abroad for specializations, the user of the service – the “donor” will never learn.

In certain medical institutions permission was given to doctors can sell to the patients the necessary material. Based on the price difference (one for which they acquire material or medicine and the sales price) the employees in health care make additional profit.

### *Direct soliciting of money*

The second form of corruption, or illegal payment, is direct solicitation of money from patients or his family. To secure quality care, speed up a necessary intervention, for emergency services to make a house call money is sought. Here too, there are a few ways for carrying out of this operation. In the high rank institutions with the highest price of services, someone will inform the user that the doctor who should treat him has problems to acquire financing for a trip to a congress where he will present a tremendously important paper. For this reason the doctor is busy more then usually during these days, and the patient will be admitted with a certain delay. The message is clear – if you pay, you will be admitted with gratitude and right away, if not, wait. The second way of soliciting money, which is the practice in the majority of institutions, is that a good friend of the doctor says how much money should be paid. The third way is that doctors ask for money themselves. Usually they do this directly by telling the patient, and naming the reason, usually the miserable salaries that do not motivate them to work, or asking for a “loan” which will be paid back when they are in a position to do so. In both cases the patient knows that he is giving money for good.

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4 We will list only two cases characteristic for this phenomenon. The first is Order No. 667/12 issued by the director of the Medical Center in Kruševac: “To beginning with September 01, 1994 bill medical services, according to the attached price list, in the organizational unit “General Hospital” Medical Center in Kruševac. The price of a medical service will be paid by users as donation. This means, if services are paid in non-cash transfers they will be noted as: “PAYMENT OF FUNDS FOR A DONATION”. This text will be written in during cash payments, for the purpose of issuing receipts for the payments to departments of the General Hospital.” The second is the decision of the Managing Council of the Medical Center in Zrenjanin No. 01-145/2 of May 12, 1997. Among other things, the decision states that the following is to be billed “transport of patients for control examinations or release of patients, and home visits of emergency services. This obligation pertains to children and pregnant women”.

### ***Illegal private practice***

In many public medical institutions certain doctors openly conduct illegal private practices. This way of taking money from patients is practiced often in dental and dermatological services. For making of dentures (mobile or fixed) the patient pays a participation which is prescribed by the Republican administration and in arrangement with the dentist a certain amount directly to him in cash (for mobile acrylic dentures around 100 DEM, for skeleton dentures around 250 DEM, and for fixed bridges 50 DEM per element). Dermatologists in these cases use the medical institution (space, equipment, material) they work in to provide services.

### ***Sick leave and retirement***

Bribery of doctors exists for granting sick leave when it is not valid. In the past few years this phenomenon is rare when employees of our companies and factories are concerned, but is practiced with workers employed abroad. According to health insurance contracts findings of our doctors are valid. If a worker who is employed, for example in Germany, falls ill while on leave he is granted sick leave.

To acquire a disability pension, payment for additional care and aid, it is often necessary to bribe doctors who are members of committees that grant disability pension or additional care. The tariff for retirement varies from two to three thousand German marks, depending on the level of disability.

### ***Treats***

From the above listed forms of corruption one should differentiate the treating of doctors and other medical staff, which is to a large extent a part of tradition. A treat understands giving of cash (rarely) or gifts (often) without prior agreement. If the patient is satisfied by the manner in which he was treated and has a need to thank the doctors and staff, he will do so in line with his financial means. This form of giving of a gift or money is in certain cases so deeply rooted that it has become an exception if it is not carried out. For example, when a child is born a gift should be given to the person who brings the child out and places it in the hands of the father or another family member.

### **Indicators of corruption in health care**

Based on data obtained in this research, every second person surveyed from those who were in a position to give money, did give a bribe to a doctor. This means – every fourth citizen.

In the ranking of fields of social activity in which corruption is present the most, health care is in a high place, right after the customs service, police, and judiciary. Those polled in answering the question “To what extent are following professions included in corruption?” granted doctors the thirteenth place among nineteen offered. The average answer is 2,78. The grade for outspread of corruption in public, or state procurement,

places health care in the second place, right after public works (reconstruction of the country).

### **Causes of corruption in health care**

The causes of the outspread corruption in health care should above all be sought in the inability of the Republican Administration for Health Insurance to fulfill the obligations under the Law on Health Insurance, or to finance the treatment of those insured – the users of health protection, the costs of operating health institutions, and salaries for medical workers who provide services to those insured. Then, the outspread of corruption in health care is caused also by social anomy or the crises of morals, and finally the drastic increase of poverty of the populace, and therefore of the health care employees.

*The low level of funding which is set aside for health care* is the first cause of the general crises in health care, but also of increasingly expanding corruption. During several decades in Serbia the health care system has grown and rights of users were increased, above the economic means of the country. When the FRY fell into an economic crisis, all of the weaknesses of the systems of health care and health insurance became obvious. This caused not only the decrease of the standard to those working in health care, but also to the drastic fall of health care standards, and in the past years the question of the very existence of the system of health care. The fall of salaries in health care was the first consequence. Later came the technical basis of health care, because of the inability to purchase modern equipment and service the existing equipment. Finally the shortages of medicine, medical material and food in medical centers became a problem.

Because of the decrease of the amount of money slated for health care, there is a decrease of the quality of health services and an ever more present phenomenon of the qualm of citizens towards the health service. In the sphere of regular payment the citizens, users of services, because of shortages of medicine and medical material have to make additional payments, besides the mandatory payments for health insurance.

*Crises of morals.* Those employed in the health protection system could not remain immune to the changes of general values and moral criteria that exist in the society. While the state was in a process of political and economic transformation and crises, a chance for progress was lost, first of all, for those who held on to the old system of values (learning, good work, substantial accomplishments at work and in private life, full respect of law). Many, of weaker moral views, noticed that one system of values was being replaced by another, that those who should prevent illegal activities had themselves acquired illegal earnings and that political protection is more powerful than the law. They themselves attempted to try their luck in previously forbidden, and now ever more desirable form of behavior.

For medical workers, an additional stimulus for turning to forbidden activities (billing patients for provided services, asking for a bribe, using state facilities for private practice, theft of equipment and material, etc.) was the behavior by managers of medical institutions. Management was poor, based on party loyalty and orders from the top. It could not have been different since the managers were named on the grounds of loyalty

and, therefore, those chosen were not the best but the loyal. This was accommodated by a very high centralization of the health care system in Serbia, or the decisive role of the ministry in all affairs. The managers did not use adequate instruments for management, planning, programming, and quality control. Their only role was to be a transmission between the higher level, the ministry (or party committees) and the staff.

The extra-legal status of managers of medical institutions who undertook even clearly criminal activity certainly could not have a positive effect on the staff to conduct all of their activities in line with the ethical principles of the profession and laws. Anyway, the recent arrests of managers who used to run the most important medical institutions in the country, and one of them was for a period of time the minister, for fraud, serves as a strong supporting argument for the above statement. As a rule, the higher the rank of the institution one is seeking medical services in, the higher the amount one has to pay for that service, and it is more certain that a price list will be presented to patients.

The predisposition of managers of medical institutions to do business in an illegal manner had spread to the staff. Therefore a network of bribe takers was organized, or of those who blackmailed the patients. By following the logic “if the director can do it so can I, if the department head can do it so can I, if the colleague can do it so can I, if the doctor can do it so can I, if the nurse can do it so can I”, the lever of corruption was formed vertically in every medical institution and a precise tariff system was established that kept all of those who were corrupt in an mutually non-competitive relationship. On one hand the amount the nurse assistant received for taking care of basic bodily functions of a immovable patient is never larger than the amount taken by the nurse to secure adequate care, and a bribe that she takes is always less than the amount taken by the doctor). On the other hand, interest based linkages which results in a conspiracy of silence when the issue of bribes is initiated, were formed.

Why are those who do not participate in criminal activity in health care silent? Why do they not present the facts well known to them? Above all due to sanctions which they can be faced with in their organization from colleagues or other employees. Namely, since corruption is hard to prove, it is assumed that an attempt of one person who is not corrupt or is fighting corruption would be ineffective. Sanctions that he could face are numerous, from not receiving extra shifts that are paid separately, through an increased workload, transfers to a position dislocated from the center of the institution, to the direct sabotage of his work. It is clear that the cost of uncovering of corruption of health care employees is high, and that the benefit can be small – more often non-existent.

Why are those who were asked for money not ready to talk? Because they fear they could hurt themselves and their families. It is a fact that even if corruption is proven in a given case, there is always fear that this will make enemies in the medical institution, which will lead to different treatment towards them or their family if they seek help in the future.

**Small salaries.** The rapid growth of poverty in the society affected those who were previously adequately, or well paid. Salaries in health care have been miserable for a long period of time. From 1991 to changes of October 2000 salaries of doctors most often were not above 150 DEM, and were in

general lower – except for the period of high inflation and hyperinflation June 1992 – January 1994, and election manipulations of 1996–97 – salaries were not over 100 DEM. At the same time, many other professions were better paid, even those which needed a lower level of formal education, less health risks for those employed, and less responsibility for results of work.

A value system was established in society where your worth is equal to the amount of money you have. Highly valued professions in the previous period, among them the medical profession, have become totally valueless. Many of those who could not enter the private medical sector became hostages of a delusion that by the illegal making of money they can return to a position of a respected members of the community. Many turned to illegal activities for reasons of survival or due to a lack of ability to secure regular conditions for the education of their children.

## COMMON ROBBERY

Up to now we have examined classic forms of corruption in Serbia, classic in the sense that implies the misuse of the valid legal system and

### **Frame 5** **Pyramidal bank of the "Serbian mother"**

Dafiment bank robbed a great number of clients during the first half of 1990s. It offered enormous interest rates for foreign currency and Dinars, brought in numerous clients and finally failed. It was a classic pyramidal bank, which functioned while the influx of the money of new clients was greater than the outflow of the old. Judging by all available data, the state leadership backed this great swindle of the population. The bank was founded in the name of Dafina Milanović, who finished secondary economic school and was previously sentenced several times for fraud and forgery.

All the time during the Dafiment operation it was clear that it is backed by the state, which managed and determined the dosage of the defrauding of citizens. The bank was granted credit lines from money creation, consciously fabricating an illusion of safety for the clients, and the people from the shadows created the business and interest rate policy. At the time of the crises of the bank, they had agreed to by "rigorous control secure that the process of bank consolidation does not reach the public, having in mind the possible (also political) negative consequences, and that collaborators, or persons of influence, who will be included in this process, must remain for these reasons fully anonymous". There even existed an intent that this bank should be entrusted with the "buy-out of foreign debt of the Republic of Serbia, by engaging the foreign currency of the bank, about which previously consultations were to be held with the President of the Republic", or with Slobodan Milošević, as is stated in one of top secret memos of that time. Those memos show that the state was an active participant in activities of the Dafiment bank, and that president Milošević knew very well what was going on there and that the highest representatives of the then state leadership and leadership of the National Bank of Yugoslavia and National Bank of Serbia were co-participants in the defraud of the people carried out by this bank.

Even today it is not clear how much money was robbed from the citizens through the Dafiment bank and who profited. Dafina Milanović herself has, writing from abroad, where she was with the approval of the former regime, stated that the state by different means has taken from her bank 880 million DEM.

*(Bojana Jager)*

the finding of ways for private gain in this framework. However, this was not enough for those in power. They sought a more direct route towards profit and – they found it. In the following two frames we will present in short two great robberies, one of the populace, and the other of the state property.

#### **Frame 6**

#### **Plunder of state apartments and villas**

In the previous decade a great robbery was carried out of the state residential fund by highest state and party officials. The system was simple: state housing commission allowed the purchase of official residences for small amounts to all important and unimportant officials, and sometimes to their favorite staff members (chauffeurs, secretaries). Thus the law was broken twice: first, because according to the Law on residency and Law on Property of FRY, official residences could be used exclusively during the execution of a state function, and not purchased, or transferred from the state to private property; second, because they were purchased at low prices, which had no correlation to market prices.

Greatest misuses were carried out in three residential funds: the federal, republican, and diplomatic. Among the highest officials especially popular was the diplomatic fund, which was the owner of numerous large, representative and luxuriously set villas in the best Belgrade locations (Dedinje, Košutnjak, Senjak).

Profiteers from this robbery were presidents of the republic, prime ministers, ministers, ambassadors, highest officials of the army, judiciary, customs service, and the police, chiefs of state organs, party officials, directors of media and so on.

According to partial findings of the inspection, around 1100 official apartments from the federal fund and 1264 from the republican fund were illegally allocated. Investigation has shown that the register of state apartments is incomplete, and probably the number of allocated apartments is much larger. There still is no available data on findings of the inspection on the use of official apartments in other state funds (customs service, police, ministry of defense, etc.).

The former regime rewarded its members for obedience and loyalty, making possible illegal wealth. So Serbia, in this way too, became a poor country with rich officials.

*(Jovo Vukelić)*



## V Causes of Corruption

For any society, and Serbia is no exception, to be able to efficiently fight corruption, it is necessary to identify the causes, which support its formation, functioning, and spreading. At that, one has to have in mind a proven fact that corruption represent a much more complicated social phenomenon, then it might seem at first sight. Its causes, and its manifestations, are numerous, and the effects are dispersed through almost all parts of a society. To a great extent corrupted society, as was the case with Serbia in the previous decade, represents an “ailing” society. The illness, among others, is manifested by a massive lack of trust of the population in the existing institutions, the undermining and erosion of the existing system of values, as well as by an overall disorientation and uncertainty. As we have already illustrated by the results of the survey, a very large number of citizens of Serbia place corruption among the most significant problems of the society, even ahead of economic problems.

Massive corruption, besides a number of negative effects, can have one positive influence – it demonstrates clearly and directly that there is something wrong with the existing system of institutions and rules. Therefore, it focuses the attention of public opinion to basic causes of the main of problems in one society. In that context, a question can be asked: are there, and if so, what are the institutionalized causes of corruption in Serbia? In that way the analysis focuses on examining mutual linkages between the key elements of the economic, political, and legal systems in Serbia, and on ways of its functioning regarding the formation, level, and intensity of corruption.

The American Nobel Prize laureate Gary Becker believes that the cause of corruption is always the same: the existence of the state, or of state intervention, which is redistributing wealth to different social groups. Every regulation, law or public program opens up free room for manipulation in the interests of certain social groups. In that way the strong link is formed between the institutionalized framework of a society and corruption. Entrepreneurs in such conditions are not encouraged to invest an effort in bettering of technologies, internal organization of a company, advancement of business management, and market competition, but to a great extent to impose their own interests as general social interests during the defining of measures of economic regulation. This activity is known as rent seeking, which is explained in detail in the introductory chapter. The named processes have been present in Serbia in full.

## ECONOMIC CAUSES OF CORRUPTION

The further analysis will examine the past functioning of the relationship between economic institutions, or the economic policies that were carried out, on one side, and corruption in Serbia in the past decade, on the other side. The central attributes of the institutionalized, or economic-systemic framework which made possible and encouraged corruption in Serbia is represented by the statist economy, outspread state intervention, arbitrary decisions by the state, discriminatory social policy, but also economic sanctions against Serbia. At that, the majority of corruption mechanisms are universal, operate in all countries in a similar way, and possibly in Serbia they had only certain specific attributes.

### **Statist economy**

In answering the question of what caused, looking from the perspective of the existing, or former economic institutions, an extremely high level of corruption in Serbia, it is necessary to go back ten years. In the early 1990s the country was at the peak of the political and economic crises, the outbreak of war, and final disintegration of the state (former SFR Yugoslavia). This at the same time marked the need for the forming of a new economic-systemic infrastructure. The transition to different mechanisms of economic coordination caused the need for the formation of different economic institutions. In Serbia the worst possible scenario went into effect: one institutionalized system was destroyed, and in the mean time an alternative system was not established. In this way, the necessary orientation was lost, a state of institutionalized disorder was formed and, as a consequence of all of these factors, kleptocracy and corruption branched out.

In the early 1990s, Serbia did not implement decisive measures of social and economic reform and, therefore, corresponding institutions of democratic society and market economy were not established. In spite of the formal existence of certain market institutions, the Serbian economy in the past decade doubtlessly functioned as highly statist. Instead of initiating the transition, it has, in the economic-systemic sense, turned back a few decades in the past. The manufacturing and allocation of resources were not directed by consumers and their preferences, or by managers of relatively independent companies, but by administrative activities of the government.

Since there was no market verification of business results, political mediation in business processes formed a privileged position for certain individuals and groups. Politically influential individuals and groups imposed their own economic interests as "strategic goals" of the state and the society in general. The process was additionally complicated by the fact that the largest part of the political nomenclature was also the managerial elite – managers of large manufacturing and trade companies (often monopolies) or large banks. It is also interesting survey results place managers of social, or state companies, on the very top of the list of professions incorporated in corruption. Thus, 75 percent of citizens believe that managers of state companies are corrupt. They are positioned right after customs officials, for

whom around 78 percent of citizens, who participated in the survey, believe that they are massively corrupt.

In Serbia the very thing happened that was analyzed for decades in the framework of institutional economic theory. Individuals have in reality only reacted rationally to outside stimuli, or they secured for themselves the best possible position having in mind given systemic limitations. A strong interest based link was formed between the economy and the state, the state and one part of the workers and trade unions, as well as, between the banks and the economy. In this way a strong network was established of overlapping interests and lobbies that supported the status quo, or even supported the strengthening and increasing of state intervention.

The most frequent mechanisms used were the regulation of economic activities and price control. However, they represent only a part of numerous mechanisms of corruption in Serbia.

### **State regulation of economic activities in Serbia**

The basic institutionalized cause of corruption in Serbia was to be found in the excessive economic normativism. Price control was not able to resolve the issue of the adequate balance of demand and supply, which lead to new and ever more serious economic problems. They piled up and the government attempted to resolve them by using the same prescription that caused them in the first place – by issuing additional norms (“it is prescribed”, “it is forbidden”, “it is ordered”). The hypertrophy of economic norms in Serbia leads to a situation where sometimes even the experts were not able to successfully orient themselves. So the hypertrophy of economic normatives became, possibly unintentionally, an incentive for corruption. Over-regulation caused the opposite effect – institutional “sclerosis”, which induced direct evasion of regulations. Economic regulation, or control, in such circumstances lost all meaning – it was often much more costly than the very value of a transaction whose legality it controlled. In Serbia, the old and well-known rule, that when one attempts to control everything, then in reality nothing is controlled became evident.

It is certain that extensive regulation of economic activities, or limitation imposed on the free market, form very fertile grounds for the formation and development of corruption. The state regulation is reflected, for example, in issuing licenses for import and export, granting import quotas, issuing licenses, or agreement for business activity in many fields, or concurrence for executing certain transactions, issuing of urban planning and other permits for investment projects, or construction of buildings, work permits, etc. Since without such licenses it is not possible to carry out business activity, or to seize a profit, any one of these licenses has its market value. Entrepreneurs are ready to pay a certain price for such licenses, but not greater than the profit which they lose by not acquiring of such licenses, regardless of the fact that anyone who meets certain conditions has a right to such a licenses free of charge. Additionally, entrepreneurs are ready to pay for the more rapid issuing of such licenses, since waiting for a license causes a loss of profits. Experience has shown – if someone is ready to pay a certain amount, he will very probably find a way to do so. Corruption is generated at the moment when the licenses

like the ones mentioned find their way to the market, i.e. if in place of regular issuing, they are bought by way of corrupting the government employee in charge of issuing them.

A typical example of state regulation was the so-called mandatory registering of foreign trade deals. For every deal of this kind, the importer, or exporter had to register the transaction, had to fill out a form, or to provide all sought information, and for the competent state agency had to certify the registration. At the beginning these registrations were certified at the National Bank of Yugoslavia, and later the activity was transferred to the Federal Ministry for Foreign Trade. Queues in front of the Ministry were enormous, and in all situations where there are queues, there are ways to circumnavigate them. Among the first measures that the new federal government passed was abolishing of these mandatory registrations. From the standpoint of record keeping, there was no change. What was missing were the queues in front of the government building, the need to circumnavigate the queues, and the difference was noticed by clerks in the department for the certification of records. They were left without work and maybe, without something else, also.

### **Economic sanctions**

A special kind of “institutional constant”, or the business environment of the economy in Serbia in the past decade was made up of economic and political sanctions, introduced in 1992 by the UN Security Council. During the 1990s, those sanctions were strengthened, lifted, implemented again, modified, divided into internal and external walls, and at the end of 2000 they were finally abolished. They additionally strengthened the basic degenerative characteristics of the already statist economic system. On the other hand, the old regime reacted, from the standpoint of society, in an irrational way. Instead of opening up the market and providing space for incentives for local potentials and the increasing of the individual initiative, the authorities decided on freezing of elements and processes of the existing inefficient and inflexible economic system. Instead of supporting of free private initiative and opening of space for business operation of the successful part of the economy, a politically motivated promotion of “economic miracles” and various ways of robbing of the populace was initiated. Especially popular for a time were the banking “miracles” – opening of private banks that offered astronomical interest rates for foreign currency deposits.

The economic sanctions were therefore supported by the internal “economic blockade”, imposed by the regime. Authorities in Serbia in reality assessed that an uncontrolled growth of a free private initiative could in a relatively short period of time lead to a different differentiation of economic and political interests and, accordingly, to the electoral division of power. In line with this assessment, mild support was given to private initiative, but only in the scope and in those economic segments that were approved by the authorities. Everything outside this limit was directly and indirectly controlled and neutralized. In this way a paradox was arrived at: businessmen in Serbia were under a double blockade – one from sanctions, and the other (internal) imposed by the creators of the economic

system and economic policy. These were excellent conditions for boosting crime and corruption.

Closing up of the economy caused shortages of numerous goods and opened a significant space for the informal (gray) economy and pursuant corruption. In such conditions corruption represented a special cost for the overcoming of foreign and local barriers. An informal market is always present in situations when there exists a consumer interest for certain kinds of goods or services whose legal transactions are disabled. Thus, it is not present only for goods and services whose trade is forbidden or represents a criminal activity. The splitting of a unified market formed a situation where certain goods were constantly undersupplied, which was only emphasized by the economic sanctions. All these factors lead to extreme attractiveness of trade in deficient articles. It is natural that such activities could not remain out of the control of the authorities, especially of authorities like the one in Serbia during the 1990s. In places where the control of authorities is strong, the terrain for corruption is ready.

### **State functions not related to the state intervention in the economy**

The previously listed causes of corruption mainly pertain to state intervention on the market, or those measures by which the state, regardless of motives, or results, limits the free market activities. Additionally, however, there are significant causes of corruption that are not linked to state intervention on the market in the classic sense of that word. In this case we are dealing with state functions, or those functions that every state unavoidably carries out, regardless of the level of its interventionism regarding the economy, or the scope of state intervention.

A basic function of the state is surely the enforcement of laws. Without enforcing of laws, or the existence of the rule of law, simply there is no well-organized society, and therefore there is no free market. Namely, one of the necessary conditions for establishment and functioning of a free market is effective protection of private property rights. If the private property rights are not protected, or if entrepreneurs on the market cannot enjoy the fruits of their efforts, they will no longer have an incentive to go to market or to undertake any economic activity. There will be only anarchy and plunder of the existing property, and no one will have an incentive to manufacture and generate new value. All activities will be directed towards redistribution of wealth, and not on its formation. Namely, every entrepreneur will ask the key question: why should I work and increase my property, when tomorrow someone can very easily take it away from me? The answer to this question is very clear. No one, except criminals, will be interested in doing his job.

The same finding stands for the next state function, oversight over execution of contracts. All market transactions represent specific contracts. Some are formal and written, some informal. Contracts are voluntary, i.e. interested sides freely, without coercion, enter into a contract, exclusively because it is in their mutual interest. However, both contractual sides, in general, have incentives to break, or not implement the contract, since in that way they can maximize individual profit, or their personal wealth. Due to these incentives it is of key importance that the state, or its court

authorities, secure impartial and effective execution of contracts. If the state does not accomplish this, few will enter into contracts, and there will be no trade on the market, or there will be a decrease of economic activity, and there will be no market. As in the previous case of the protection of private property rights, no one will have an incentive to manufacture and generate new value, and all activities will be directed towards the redistribution of wealth, and not on its formation.

The listed state functions are potential causes of corruption. The key question is: how much is an individual ready to pay not to bear consequences of his criminal activity, or for breaking of a law or contract? The amount depends on the criminal offence, the benefit the individual attained by the criminal offence, the prescribed sentence for that criminal offence, and the expected negative issues linked to the serving of the prescribed sentence. In other words, the question is: how much is someone ready to pay to avoid a jail sentence, or how much does one value, for example, three years of freedom, instead of jail? It is clear that perpetrators of criminal offences are ready to spend significant funds to by the corrupting of a government official avoid punishment for perpetrated criminal offences. Since criminal offences secure for them significant funds, it can be said that in this case there exists a demand for corruption in Serbia.

The targets of potential corruptors are above all civil servants in the judicial branch of the government. This pertains not only to judges, to whom the law almost in all situations bestows a discretionary right to (within certain limits) pass a sentence (of course, it is not the same if someone serves a three or a ten year jail sentence). The same holds true for the members of the jury, or jury judges, and for lower court employees, who can prepare the case with bias. Possibly, the same holds true to a larger extent regarding investigators who by biased activity can cause that certain cases of breaking of law, or criminal responsibility, not go to trial. Finally, the same holds true for the police, as part of the executive branch, whose biased behavior can result in concealment of numerous criminal offences.

Thereby we arrive at the next function of the state, which is protection of the public security. Without an adequate level of protection of public security, contemporary society simply cannot function. If the physical (personal) security of citizens and safety of their property is endangered, no one has an incentive to undertake manufacturing activities and increase the wealth of the society. Everyone will invest all of their resources in protection of their security, and some in endangering of the security of others, or organizing of theft.

Real and potential criminals violate public security to increase their wealth. Some of them to increase their material wealth, and different pathological cases to feed their perverted souls by the very act of committing of criminal offences. All of them have an incentive to corrupt the police, so to be unhindered in committing their activities, which are profitable for them, and destructive for the society. Corrupting of the police represents a relatively simple operation, and there is rather sound evidence (book and film *Serpico*). At that, corruption pertaining to violations of public security does not have to be limited to the police, but it spreads to judicial authorities ("Don Vito [Corleone] is a simple man. He

controls all judges of the district court, and won't let us [other Mafia families] use them"). Corrupting of the police and the judiciary regarding violations of public security, or breaking of laws, represent a very grave danger, since in such cases corruption almost unavoidably leads towards the establishing of organized crime. The relationship of corruption to organized crime will be examined later.

Finally, one of customary functions of the state is national security. Accordingly, almost all states have their armed services, which should prevent any violation of national security. Mechanisms of corruption in the armed services are partially similar to mechanisms of corruption pertaining to public procurement, but there are a few specifics. One part of public procurement by the armed forces deals with armaments and military equipment, which are not simple high series consumer products. Many of these items are developed especially for the military, so that during acquisition it is not possible to acquire market information. Manufacturers of military equipment have an incentive to corrupt military employees in charge of procurement of armaments, so that the military, would make a decision in line with the economic interests of the manufacturers. The payment does not have to be in cash. "When you reach the well earned pension, dear Colonel, a place is waiting for you on the board of directors of our company and of a special advisor to our manager. Your duties will not be all that great, in contrast to your remuneration." Additionally, the system of the mandatory military service creates an incentive for all who do not wish to spend 12 months in uniform to corrupt employees of the recruitment office, so to avoid their military service. For that different techniques can be used. For example, direct corruption of the recruitment commission or corrupting of the medical committee that will prove that the corrupter is incapable for service. The discussion of possible corruption mechanisms for avoiding of the obligation to serve in the military we end with a question: did Marko (of Slobodan) Milošević serve?

It is very significant to notice that in many cases of state intervention the problem of corruption can be resolved by deregulation, or removal of that state intervention. However, state functions, like law enforcement, have to be carried out. Therefore, it is not possible to dispose of these services performed by the state, which means that in these cases room for corruption will always exist. Therefore, the anti-corruption strategy in these situations unavoidably has to be different from the anti-corruption strategies in cases of state intervention, especially of the one which is counter productive, regardless if it is followed by corruption or not.

## **POLITICAL CAUSES OF CORRUPTION IN SERBIA**

### **Social preconditions for corruption**

Are there societies that are prone to corruption? Is it possible to establish a division of societies to those that are, according to their characteristics, predestined for corruption and those that are not? Which group is Serbia in? Answers to these questions demand an examination of social preconditions for corruption. Although the social preconditions for corruption are

unavoidably numerous and interconnected, let us attempt to identify the most significant.

The character of human relations in a society represents the first precondition for corruption. In certain societies inter-personal relations are traditionally very close, while in others they are rather distant. One Indian anthropologist in the early 1990s made a comparative analysis of relationships of people in a Danish and an Indian village. Inter-personal relations in the Danish village are, according to this analysis, very superficial. Inhabitants barely know each other. Practically, they never visit each other, and remaining mutual contacts are very rare. Villagers have very limited information on other villagers, even their neighbors, and they are not too interested to learn more about them. Even relationships between children and their parents in a Danish village are not close. When children grow up, they leave the parents, go on to acquire an education, and live in another settlement, rarely visit, and the largest number of contacts in by phone.

In contrast, interpersonal relations in an Indian village are very close. All people, especially family and neighbors, practically live together, regularly, or daily visit each other, share among themselves almost all problems and often offer support to each other. Everyone knows everything about everyone else, or they are interested to learn all about all of the people in the village.

If we go back to the basic definition of corruption and remember that corruption exists if there is intentional violation of the principle of impartiality in decision making aimed at seizing a benefit, it is sure that the culture of interpersonal relationships in an Indian village represents a much more suitable surrounding for generating of corruption compared to the culture of interpersonal relationships in a Danish village. Namely, mutual remoteness of people in a Danish village forms a very favorable social framework for the respect of the principle of impartiality. People almost don't know each other, and it is easy for them to be impartial. This impartiality is almost the result of their culture of interpersonal relations. If someone from a Danish village becomes a civil servant, almost no one from the village (including his parents) will even think of asking him a favor, or for his biased decision. Even if someone asked, it is even less probable that he will agree to make such a biased decision. In this way, the character of interpersonal relations is a condition for the lack of favorable grounds for the demand of corruption, and for its supply.

In contrast, mutual closeness of people in an Indian village forms a favorable social base for corruption. Traditionally, all participate in everyone else's problems. If someone from an Indian village becomes a civil servant, he will continue to behave according to the already established cultural model. He will be expected by almost everyone to be biased in passing of decisions in favor of his relative, neighbors, and friends. In such models of behavior, bias in decision-making is not only unacceptable, but is considered socially desirable, as part of previously formed culture of interpersonal relations. It is socially unacceptable to be impartial. Such a model of interpersonal relations forms a favorable social base for, both the growth of the demand, and the growth of supply of corruption. The model of impartial behavior, or lack of corruption, opposes the already established system of values.

The mentioned models of behavior, or inter-personal relations, represent extremes and it is very likely that the majority of contemporary societies are located somewhere between the two listed extremes. But, it seems that the process of urbanization unavoidably leads to a drift towards the Danish model of behavior, or to breaking of certain established inter-personal contacts. Models of behavior in the cities of Serbia, especially in large cities, have become rather close to standard European models.

### **Types of state and corruption**

The next significant social precondition for corruption in every contemporary state, and therefore in Serbia, pertains to the character of public administration, or the nature of the public sector in every state individually. From the theoretical models of public administration, Max Weber developed the best-known model. Weber's public administration, or bureaucracy, is considered ideal, or a normative type of public administration. Public servants in Weber's model behave according to rational procedures and universal principles, with no space for individualism (in the sense of bias), personal contacts and, most importantly, mixing of the public interest, protected by the public servant, and their personal interest, or benefit. It is clear, on one side, that Weber's model of bureaucracy describes the public administration, or servants, which does not exist in any one country (although the opinion can be found that the Prussian bureaucracy was used as an example for this model). On the other side, it is clear that in his model of public administration there are no possibilities for development of corruption. Accordingly, the greater the deviations of public administration of one country from the ideal model, the greater are the possibilities for the formation, and growth of corruption. In other words, if all public administrations in the world were in line with Weber's ideal model, there would be no corruption.

Unfortunately, the reality is very distant from Weber's model. Public servants in reality, as in Serbia, and in other countries as well, act very differently than the ideal public servants. Namely, public servants are people, who like all other mortals, wish to maximize their wealth, and very often the division of activities between the protection of the public interest and the maximizing of personal interest is not fully separated. Such activity of public servants, and especially of the elected representatives of the people (politicians), or the lack of ability to explain this model by Weber's model, lead to the formulating of the theory of public choice, which shows that during collective decision making the expressed public interest does not have to be (and most often it is not) the maximizing of wealth of the society in general, but maximizing of wealth of only certain interest groups. With this the phenomenon the problem of corruption is unavoidably conceptually expanded. Therefore, we are not dealing only with the corruption of government employees, so-called administrative corruption, but also the corruption of legislative authority, so-called political corruption. The difference between these two kinds of corruption, and especially the difference between their economic effects, will be examined later in more detail. Regardless of this, it can be concluded that by departing of the public administration from Weber's model, the possibility of generation, or

growth of corruption grows. To what extent, in the reality of today's Serbia, is the deviation of today's public servants from Weber's ideals? Considerable, one could say based on public opinion survey results, and especially based on the survey of private entrepreneurs, who are, because of the nature of their work, in daily contact with public servants.

Thus we reach the next social factor of corruption, and that is the character of the state. In the contemporary world we can see states with different character. One extreme is the so-called benevolent state, whose only goal, generally speaking, is maximizing of the wealth of its subjects. The other extreme is cleptocracy, or an order in which the state is only means for maximizing of the personal wealth of the ruler. The first case represents a theoretical abstraction, since a state with such a goal is yet to be found in political practice. Unfortunately, the second case does represent a theoretical abstraction, having in mind the rather long list of rulers-robbers, both those from history and of the contemporary world. It is clear that deviating from the extreme position of cleptocracy decreases the possibility of corruption and that the benevolent state is not immune to corruption, the analysis of mechanisms of corruption to be found in the next section will show. Although it is relatively easy to pass judgment on the character of a state headed by a man like Slobodan Milošević, later we will present more facts about the character of that state.

The next social precondition for corruption is based on the character of state authority. That character can be described best by the use of extreme, or diametrically opposing notions: democracy and dictatorship (tyranny). Namely, corruption is, in its nature an activity that is carried out in secret, or is not carried out in public. The democratic character of state authority is based on continuous control of that authority by the electorate, or the citizens of that state. Therefore, social conditions for generation of corruption in the case of a democracy are lesser than in a case of a dictatorship, in which there exists no institutionalized control of state authority. Democracy is characterized by the free flow of large amounts of information about functions of the state, which is caused by the existence of opposition political parties, free media, non government organizations, and everything else which makes up for a democratic order. In other words, all of this makes up an effective public control of the state, state functions, and politicians in power, or public servants who implement authority. Although democracy is not an impervious damn for corruption, the democratic order is a far less suitable framework for the formation and growth of corruption compared to a dictatorship.

Another significant social factor of corruption can be the type of the dominant relationship of citizens towards the state. Namely, the state can be perceived in different ways. On one hand, the state can be perceived as an institution that provides certain services to its citizens and towards which citizens have a constant lack of trust. Basically this concept is individualistic, the citizens of a country are placed in the foreground, while the state is perceived only as a service of citizens, in which they closely control the scope and quality of the service provided to them by the state. This, liberal concept is dominant in Anglo-Saxon countries and is followed with a constant distrust of citizens towards state, which means that great resources are invested in the control of the working of the state bodies.

Therefore, social possibilities for the genesis of corruption are lesser or the probability of formation and growing of corruption is less under such social conditions.

On the other hand, the state can be perceived in a totally different manner. This is the state as an object of respect, almost worship. The state is in the foreground, while the citizens are only subjects of that state, or means for executing of important functions of the state. Even though this concept is usually linked to the Prussian state and Hegel's political philosophy, such perception of the state is present in almost all of the countries of the world many years after the disappearance of the Prussian state. One should only remember the message of American president John Kennedy on his inauguration: "Ask not what your country can do for you, but what you can do for your country". Not even Bismarck himself would be ashamed of such a statement. The problem is, however, that the perception of a state based on respect, or worship forms fertile ground for corruption. Subjects do not meddle in state functions, there is less probability for control of the state, and in the final analysis, everything is allowed in the name of higher goals. Even corruption.

In Serbia during the 1990s many perceive the state as an object of great respect, some even of worship. Patriotism became a key word and a misused word. Volunteers left for fronts, many not to come back, without even knowing the goal of the war they fought in. At that time, those who ruled Serbia learned very well the magic power of the words – state and patriotism. They were never interested in the Serbian state, nor did they have the faintest idea of what patriotism is. In the name of higher goals they formed a framework for plunder and personal accumulation of wealth. Higher goals, general social interests and the like were of no interest to them. Many higher goals and too little cold reason was the order of the day. Because of such "patriots", at the beginning of last century, James Joyce, leaving Ireland wrote: "patriotism is the last refuge for the last tramps".

### **Decentralized and centralized corruption**

Faced with corruption, a citizen or an entrepreneur has before him a representative of authorities – a government employee, policeman, judge, or someone else. He curses their greed and his bad luck, but usually does not think what kind of corruption is at hand: are they only supplementing their income by taking a bribe, playing this old game for themselves, or is it something larger, with the participation of the higher echelons of public administration and politics?

In countries of mature democracy "small", administrative corruption dominates, where individual state officials work alone, or where, possibly, smaller groups work together, hiding from the law, colleagues, and investigators. The type of corruption is the same, regardless if the lowest clerk or the minister undertakes corruption. It is significant that we are dealing with a situation where individuals place themselves above the law, in their own interest, and that the state is not inclined towards this activity. This is the usual, so-called decentralized corruption. However, in many countries in transition and in many developing countries corruption is played on a significantly higher level. Powerful individuals and groups are attempting

to conquer the state, or to place it under their control and use it for personal accumulation of wealth. Sometimes they have partial success, sometimes full.

The two theoretically clear types of corruption are the decentralized and centralized. Within decentralized corruption the state is honest, and corruption is undertaken by civil servants on their own account, fearing they will be caught and punished.

Centralized corruption represents a completely different type of corruption, where one disregards the assumption of an honest state and those who lead it. A wholly different perspective is opened. The state leadership becomes then the generator of corruption, and the state apparatus represents an instrument for accumulation of wealth for members of the ruling circle.

Imagine one band of thieves, whose goal is the winning of power and growing rich. It is headed by an individual with the greatest abilities, who decides on the division of spoils among the other members of the group. He must not give them too little, because the possibility of a court coup will arise, but not too much, so as not to unnecessarily decrease his share. His goal is, therefore, to maximize his own income, but also to retain the loyalty of his accomplices so they would not overthrow him or turn him in, and in a way that will secure for them a part of the acquired bribes. This relinquishing of one part of income has two goals: to keep collaborators interested in the joint affair, but also to keep them linked to the ruler by threat of sanctions for corruption if they attempt to become independent. An additional useful mechanism for increasing of cohesion is prescribing small salaries for civil servants, because then they are forced to indulge in corruption so that they can live decently. This places them again at the mercy of higher authorities.

The model of the centralized corruption is, as we can see, of an eminently political nature. The political sphere generates corruption, its scope and modalities, and corruption is endogenous in regard to the political system.

### **The political system of Serbia**

During the 1990s in Serbia a specific political system was constructed, which served well the development of corruption, and was possibly even modeled in such a way as to provide for the ruling political elite a possibility of growing rich off the state and society in general.

The new Constitution of Serbia of 1990, besides certain deficiencies, abolished the socialist system and proclaimed political freedoms, democracy and a multi-party system, opening up a possibility for the formation of a free, democratic society. However, life did not follow the Constitution and laws, but took another route. The ruling political elite retained the existing control over the political, economic, and social life of Serbia, in contrast to the essential provisions of the Constitution and numerous laws, written in a freer and more democratic spirit, and it even expanded its control over many fields.

The regime that ruled Serbia during the 1990s and until October 5, 2000, was autocratic in the full meaning of the word. The bearer of the regime was Slobodan Milošević, in two aspects. First, the regime stayed

alive thanks to him, because he was an expert in political technology, a master in behind the scene games and tactical strikes against the unexpected adversary. By his great political skill he also secured great authority within SPS, which gave the regime the much-needed homogeneity; no one dared stand up to the leader. This formed an authoritarian organization that functioned smoothly. Second, he alone made all the significant political decisions, probably after consultations with his wife. He decided what road Serbia should take, what the political system should look like, what should be done with the opposition, with the economic or foreign policy, and all other spheres of life. He determined political goals, dictated the system of values, and made strategic decisions. Others implemented them like obedient soldiers. The few collaborators from the phase of Milošević's ascent to power that used their own heads lost their positions over time. Others came to the boss with fear and respect, not knowing enough about the complicated games he played, received the orders they only carried out, believing in the leader. A system was formed much like the one of Prince Miloš from the first half of the XIX century, when one smart head did all the thinking for the whole nation.

On the other hand, the early phase of political and economic transition of the former Yugoslavia around 1990 brought, even on the normative level, institutions of the democratic order, which could have presented a problem to the establishment of an autocratic system. Milošević chose the following strategy: he constructed an autocratic regime, with ignoring of institutions of the democratic order as much as was needed to attain the goal. He kept the facade of a democratic order, attempting to avoid, as much as possible, accusations about the illegality and illegitimacy of his power. He organized elections, but he manipulated them as much as he needed to win. Laws were passed by legitimate parliaments, but it could have been done without them. Finally the aspiration for certain legitimacy brought Milošević his political ruin: he erroneously evaluated his popularity in the summer of 2000 and organized federal elections, which lead him to defeat.

The mechanism of control of the pillars of the regime was the old, communist personnel policy, or placement of loyal, obedient people in all of the important places in state, social, financial, media, and other fields. To secure loyalty, a system for their special rewarding was constructed, which sometimes took the form of high salaries, when it was possible, and sometimes by granting extraordinary, hidden privileges. For example, managers of companies had the right to set high salaries for themselves, but also to embezzle from their companies in numerous ways, known throughout East Europe. For example, the president of the Board of Directors of the Oil Industry of Serbia, also a high JUL official, received US\$ 204 thousand for membership in the board of directors of the daughter company registered in London, which had no commercial income of its own; other members of the managing council received a somewhat lesser amount (Danas, 4.13.2001). On the other hand, obedient judges could not count on high salaries, but were granted various privileges, like state apartments without queuing, which they later bought for small amounts of money (the well known example of the 1996/97 election fraud and awards granted to judges). Editor and managers of the leading state media had exceptionally high salaries, but also other income from hidden funds.

The first pillar of power was the media. Their propaganda and promotional role regarding the regime were exceptionally important. A great majority of media was under the control of the regime. In these media authorities were presented in the best light, daily were listed their supposed great successes and a great future was promised, in spite of poverty, wars, disintegration of the state, and continuous defeats. Activities of the opposition were consistently not reported, and the opposition itself was always represented as traitorous and incompetent. All problems were reported as temporary and never was even one criticism directed at the authorities. Independent media was suffocated, especially the electronic media. The regime bestowed much attention to television, as the basic medium of the propaganda message, knowing that the impoverished populace meant decreasing newspaper circulation and that television gained in importance. It did not allow registration of new, independent media outlets; new licenses (frequencies) for broadcasting were easily obtained by media controlled by the regime, and no one else. Broadcasting without licenses was punished and made impossible by impounding of equipment; opposition control of individual television stations did not last long, because the regime was quick to take control back (example Belgrade TV station Studio B). The print press was used for propaganda and brain washing (dailies *Politika*, *Večernje novosti*, etc); independent dailies did exist, but they were occasionally neutralized and suffocated, for example, by punishing them according to the Law on Information, by illegal takeovers (*Naša borba*, *Ekonomska politika*), and by blackmailing printing plants not to provide printing services for them, as well as, by forming artificial shortages of newsprint (with a ban on imports) etc.

The wide regime control over the media had a direct influence on the growth of corruption, because it almost removed the public control of authorities, which media usually bring. And when the state and its bodies do not have to report to the public, then it is a very fertile ground for development of all illegal dealings, including corruption.

The second pillar of the regime was the repressive apparatus, above all the police, but also the judiciary. The police was turned into a protector of the regime, and not of the state and law. It not only protected the regime by physical force, when needed, but also in the role of an investigative body, turned a blind eye towards the members of the authorities. Members of the nomenclature could break laws at will, and all eventual consequences would be gone with one phone call. Even worse, the border between criminals and the police began to fade. The criminals did dirty jobs for the police, while policemen began to undertake criminal activities (extortion and other corruption activities). The present Minister of Internal Affairs Dušan Mihajlović states that “this Ministry was politicized, criminalized, and linked with leaders of the underworld”, and adds that it is “very hard to discover which employees of the Ministry are engaged in criminal activity, and which criminal has an official identity card of the public or secret security service”. In the judiciary the main role was played by presidents of courts, appointed by the former regime and still loyal to it. All important or sensitive cases were awarded to loyal judges that could be told, or ordered, what ruling to pass. The state of the judiciary during the last few years of the Milošević regime is probably most accurately

depicted by a statement of a lawyer: “in the past I had to pay a bribe to get a positive decision; now I pay bribes to get a lawful one”.

When the police and the judiciary serve the authorities based on the principle of loyalty, then the most important barriers to both centralized and decentralized corruption disappears. When no one is fighting corruption, corruption spreads and engulfs all spheres of social life, and basic players being the members of the nomenclature.

The third pillar of power was the control over the finances of the country. Authoritarian power that does not control finance has no chance to survive for long. The personnel policy of the authorities brought to the head of all state banks loyal people, who included their banks in a unified financial system of the country, but also of the ruling regime. The banks did not do business based on the profit motive, but served as a service of authorities. Since the trust of citizens in banking was destroyed a long time ago, the banks depended on the National Bank and its operations, and, essentially, they represented branch offices of the National Bank. Their main role was to, as much as possible, to block the financial leaks of the authorities, to hold in submission the mixed companies by threats of withholding of credits when needed, and to, as a secondary effect, discriminate against the independent private sector. Among private banks those owned by the people close to the regime dominated. An especially shameful operation was the pyramidal Dafiment bank, whose formal owner was Dafina Milanović, and the real one the leadership of the Republic of Serbia.

The fourth pillar of the regime was the control over all larger companies. The basic goal of this control was political: the pacification of workers, potentially dangerous adversary of the regime. The second goal was accumulation of personal wealth of the nomenclature through various machinations.

### **Change of morals**

In the early 1990s a change was made in the relationship of the ruling nomenclature towards ownership, or private property. The previous generation of communist officials, from the time of Josip Broz Tito, did not aspire to grow rich and attain their own private property, but were content with benefits which were brought by membership in the communist leadership – socially owned villas, official cars, free travel abroad, plentiful entertainment accounts, inexpensive and luxurious summer vacations on the coast and the mountains and the like. They believed that the socialist system was eternal and that there was no need to, for safety’s sake, amass their own capital, even more since it would not be in line with the spirit. To all of them the idol was Tito, who had tens of villas in all parts of the country, a large number of luxury automobiles, yachts, servants, works of art, lovers, and everything else that makes life “good” available to him.

In 1990 a multi-party system was formed in Serbia, which, although deformed, suggested the old truth that no regime is eternal and that old methods of securing of a decent life of officials were no longer enough. Additionally, the communist dogmas on the surpassed ideas of private property were surpassed, since Serbia entered the first phase of transition, in which, at least normatively, limitations were lifted in regard to acquisition of

wealth and to the spreading of private property. Both the possibilities and the need for growing rich were formed and – the ruling nomenclature did not miss its chance. The old model disappeared; it was replaced by greed. When in 1987 he was ascending to power Milošević pointed out that he lives in a modest apartment in the city, in contrast to Ivan Stambolic, his political opponent, who resides in a villa in Dedinje. He played to the old communist ascetic morality. Not much time passed before Milošević too moved to Dedinje and soon for a small amount bought his residential villa. This was a symbol of the new times and of the change in the relationship of the nomenclature towards the wealth.

### **State activism**

The rule of law means the limitation of activities of both the individuals and the state: limitation for individuals in their mutual relations, so that they do not undermine each other's freedom and so that it would protect property and contracts. Limitations of the state, so that it would not decrease the scope of liberty of the individual. However, an activist state bans limitations imposed by the liberal democratic concept of the rule of law and attempts to accomplish goal conditions, or conditions perceived by the holders of state authority as more desirable from those that would be brought by a system based on free competition in the framework of a set of very general rules. In other words, the activist state is not satisfied with the role of the protector of the rules of the game, in which an individual seeks his own well being, but it wants to influence the game itself and, more importantly, the results of the game. It does so, generally speaking, for reasons of redistribution. On the other hand, economic freedom, as is clearly confirmed by both economic theory and historic experience, brings superior economic results in comparison to alternative regimes with a very active state. As was finely said by Adam Smith: "little is needed to ascend a country from the lowest barbarism to the highest level of abundance except peace, low taxes, and good distribution of justice; all the rest is brought by the natural order of things". This says it all.

The former government of Serbia is a typical example of an ambitious arbitrary authority. It provided for the peasants fuel and compost, it built apartments, initiated manufacturing in factories, secured medicine, gave out salaries, decided on what can be imported and exported, decided to whom the banks will give credit to whom they will not, prescribed prices. It presented itself as a good father who is taking care of his children and attempt to secure for them all that they need. Surely this is not a job the state should do. Not only because authorities were mostly made up of economic ignoramuses, but since no government can do this job in a satisfactory manner. And then, according to the age old formula, the mastermind government of Serbia was responsible for the small number of good things, and all great problems were someone's else's fault.

Legislation in the field of the economy, for example was generally catastrophic. There were several kinds of laws:

- The majority were bad in the legal-technical sense, which made possible liberal and wrong interpretations by the state bodies, and at the expense of companies and individuals;

- The majority of laws were intentionally restrictive; for example, free trade in foreign currency was forbidden, under penalty of jail, and no one explained why. There are two equally convincing explanations: so that state's pets could buy foreign currency from state reserves at the low official exchange rate and that it would be possible to persecute those businessmen who were not members of the ruling coalition;
- Numerous laws made it possible for the kleptocratic oligarchy to grow rich through monopolistic privileges of different kinds. A good example are import and export quotas granted to members of the ruling parties, with a note that officially it could not even be learned which companies received those quotas.
- The small number of good laws was not implemented. For example, the bankruptcy law was not implemented against the numerous favorites, supposedly important, banks and companies,
- The laws were often replaced by government bylaws, which is unconstitutional. For example, the government of Serbia frequently introduced new duties; although the Constitution clearly prescribes that exclusively a law can do this. The Government of Serbia often by its bylaws regulated issues from the federal domain (import, transaction tax, financial discipline, etc),
- The Government of Serbia often acted if there existed a regulation giving it the right to intervene, although that was none. A good example is the constant misuse of the anti-monopoly laws for establishing of administrative control of prices in fields in which there existed no monopoly;
- The state bodies often consciously undertook illegal activities. One example is the fully illegal and extra legal takeover of ICN Galenike by the state, based on a decision of an incompetent body, while avoiding the contractually agreed on arbitration. The second example is the keeping of the position of company manager by ministers, in collision with the clear provision of article 49 of the Law on Public Administration.

It is obvious that the previous authorities did not respect even the elementary legality, and that the idea of the rule of law was totally foreign. To them laws were needed only to limit the competition of the independent companies in regard to "their own" companies and to grow rich, regardless of the cost for the economy and the country.

The state was the basic generator of destruction of legality in Serbia. Its intentionally poor legislation, its lack of respect for its own legislation and, even more, its misuse of legislation have had extremely negative consequences on the general respect for laws. When the one who should set an example of abiding to laws does that, then it is not strange that all others, in line with the same model, acted that way. When the state is not an unbiased actor in the social life, then it cannot be expected from individuals and companies not to be biased in their own favor. The state muddies the waters, and the fish act as best as they know how. Until recently the state here was a party state and a kleptocratic state, and it seemed to have existed only to provide for private interests for a small class of people. Corruption was widespread, and organized crime had merged with the authorities.

The Milošević regime was irresponsible towards the electorate and towards the public and towards the law. It had a strong control over the legislative, executive, and judicial authority, making impossible the checks and balances through the division of power. It could have done what it pleased. This was used to the utmost.

## LEGAL CAUSES OF CORRUPTION IN SERBIA

### Introduction

Legal conditions of corruption are considered those factors that are to be found in the characteristics of the legal system, and which influence the generation and expansion of corruption. Conditionally, they could be classified in the following way:

1. Factors influencing that which is more comfortable or quicker in order to attain (existing) rights through corruption;
2. Factors influencing that which is difficult or impossible to attain without corruption;
3. Factors influencing that which makes it possible through corruption to attain something where no right exists;
4. Factors influencing that which makes it possible, through corruption, to avoid a sanction or some other unfavorable legal consequence, including the execution of a legal obligation.

The first two cases have for their consequence the passing of a legal decision (or other activity based on law). Corruption has the goal to “speed up” the procedure, or to cause the making of a decision that would, by breaking of the law, be omitted. The second two cases mean that by corrupting one is aspiring towards an illegal decision of action.

In the first group of cases corruption is caused or at least made possible by the fact that some state body or civil servant, or a servant of a business company, or some other official in a position to be able to, without consequences, not carry out his function, or not to execute it orderly and efficiently, and in a way as expected of him. In the second instance the body or official can, again without consequences, act against the law.

If we discuss corruption as a phenomenon, and not as a limited number of in essence criminal occurrences, it is possible to construct a hypothesis that this phenomenon also has exclusively legal causes, or that the legal system, or more precisely legal order in both of its elements, normative and factual, is such that it allows both kinds of decisions or activities under the influence of corruption, and at that in a relatively concealed manner.

In what follows we will point out certain deficiencies of our legal system which in the described manner generate or make possible the appearance of corruption, pertaining to immanent, internal features of the legal system, therefore not causes which could predominantly be classified in another way.

### Incompatibility of the legal system

An orderly legal system implies, *first*, the vertical compatibility of the legal system, which in theory is usually called the realization of the principle of

constitutionality and legality. If for the sake of simplicity one neglects the federal principle, which if undermined in our case, hence the necessity that all rules of the federal units be in accord or not to be in contradiction to the federal constitution and federal laws, under which we assume the compatibility of laws with the constitution, bylaws with constitution and law, constitutionality and legality with autonomous origins of law. The constitutional court should secure this vertical compatibility, anyway; and according to many views it has, especially in the past decade, functioned problematically to put it mildly.

Additionally, the horizontal compatibility of the legal system is also necessary, a mutual lack of contradiction in regulations at the same level of power. If two laws regulate the same issue differently, the system is incompatible. Legal theory knows of rules for interpreting of these incompatibilities, for example, the rule *Lex specialis derogat lex generalis* and *Lex posteriori derogat lex priori* (specific law abolishes implementation of a general, and later of former), but these rules not only are not perfect (what happens if the former law is more general?) but forms with the addressee a doubt regarding the content of the legal rule, gives the one who has the authority to implement the rule a possibility of arbitrary or selective action. Of course, this is room for corruption.

It is especially dangerous when the incompatibility has the temporal dimension, when specific parts of the legal system, rules, change significantly and others do not follow those changes. (For us this is surely the case having in mind the fact that the deadline was extended several times for the implementation of constitutional laws that regulate the compatibility of rules with the constitutions). What legal voids and illogic can be found there can be shown through an example, (I do not suggest it was linked to corruption): it was interpreter that the PTT was authorized to issue licenses for mobile telephony.

### **Excess regulation and legal voids**

Excess regulation of a certain kind of relationships by legal rules or excess regulation and therefore excess authority of the state and her bodies necessarily generate one of the two phenomena: an unacceptable slowing down of legal affairs (different forms of corruption are then customary to shorten the queue) or the departing from law, and entering of relationships which should be regulated by law into the no-law zone, in which everything seems to be allowed and is out of any control.

This phenomenon is present in many domains. Usually it is noticed in the foreign trade and foreign currency dealings, urban planning and construction regulations, but the phenomenon is present in the everyday life of an ordinary man. One should point out, for example, complicated and unclear rules that existed at one time and regulated the possibility of receiving free medicine based on doctor's prescription. The consequence was that for some, thanks to direct or indirect corruption, medicine was available, and for others, it was not.

In essence, excess regulation by law makes possible the selective implementation of rules and that is an ideal milieu for corruption.

The same effect arises in a situation when there is a lack of legal rules that should regulate one relationship that by its essence demands to be legal. Then there is a legal void. With all legal interpretations, or filling of the legal void, the state body which implements the law necessarily has great freedom in choosing the manner in which it will regulate the legal relationship. In circumstances of a disturbed hierarchy of institutions, this means a possibility of inconsistent interpretation, or unequal practice. Of course this is a space that opens the doors of corruption.

### **Bylaw regulations**

The need for the necessary flexibility (adaptability) of the legal system necessarily requires that within these laws there remains a competence for executive and managing bodies to pass bylaws (regulations, orders, directives) that more closely regulate the manner of the implementation of the law.

There always exists a latent danger, especially in legal systems that lack great legal conscience and culture, that this manner of regulating of a legal relationship can cause a lack of legal confidence. The lack of legal confidence is an environment that generates corruption. These bylaws are subject to fast and easy changes, and thus to the accommodating interests of certain parties or the repressing of interests of others.

For this reason this form of legislative technique should be used carefully which is not the case here. Moreover, here bylaws sometimes regulated matter which is legislative according to its nature or explicit constitutional text. The most drastic example is the situation of introducing, or changes of taxes by bylaws. (The Constitutional Court would speak up only after bylaws ceased to apply without retroactive application of the decisions, or reimbursement of taxes paid based on a bylaw.) Vice versa, by bylaws individuals and certain legal entities were exempt from paying taxes, customs dues, or duties, which by itself qualifies as a wider form of corruption: a state body secures material gain for someone by unlawful activity.

“Ruling by bylaws” can in yet another way be a factor that can be determined as a legal cause of corruption. It accomplishes that the legal system is unclear and too complicated, and therefore the regime of individual rights is unclear and uncertain. This is an environment that is suitable for arbitrary acts and corruption.

### **Decomposition of classic legal institutions**

There are classic legal institutions that have a century long legal regime where the rules of conduct for all of the involved subjects are clear in advance. When the word, for example, ownership is used, it is clear that only the owner has the right to hold and use the object and that all the rest have to restrain from acts of the use of someone else’s property. A contract has to be carried out as specified, and if the debtor will not or cannot pay, there will be a forced realization by confiscation and public sale of things of his ownership. Who causes damage to another is obligated to reimburse it, and if he is insured from responsibility, the insurance company will reimburse the damage.

These and other institutions were so reshaped in the development of our legal system that the legal certainty that stood in its base was practically lost.

When we talk about ownership, it is almost futile to point out the very lack of legal seriousness of the institution that was called social ownership. As property with an undetermined title holder with the disappearance of self-management (a bad but still legally regulated management model) social ownership became an environment of decision making without a clear base for managerial rights and responsibilities. Therefore, it is an environment in which corruption necessarily breeds. Known are the corruption models of gray privatization for example by taking over the market and clients of a social entrepreneur by its managers. This is property without protection and a cause of export of corruption to other fields.

It is not much different with state property, so we were probably the only country in the world in which it was possible that the manager of the customs service gives as presents confiscated automobiles not only to members of his nomenclature, but also to people from his home town with whom we grew up, to professors who taught his children, doctors who have treated him.

This situation also necessarily destroys private property. For illustrative purposes we can use the regime of mutual property in our law where shared parts of an (apartment) building are qualified as joint property, but are placed on a regime which has nothing to do with it: the adaptation or construction of an additional floor in a building which was fully private mutual property decisions were made by the bodies of the municipality until recently, and today by 51% of mutual owners under the condition that municipal bodies issues needed licenses. That this is a cause for corruption attests almost regular legal action pertaining to realization of the decision to change the use of joint parts of a building or to construct an additional floor. The same holds true for the sale of building lots that is forbidden and at the same time subject of taxation. Remedy for corruption is, obviously, in the consolidation of property and other classic legal institutions.

### **Discretionary decision making**

A regulated legal state and the principle of the rule of law imply limitation of all state bodies by law. Only as an exception it allows the implementation of the notion of expediency and discretionary decision.

Not only must such exceptions be severely limited but also in such cases procedural rules must be extremely restrictive with an obligation of providing a rationale and a possibility of an annulment of the discretionary decision. On the contrary, one side is in such a weak position that the doors to corruption are wide open.

In our law this is most obviously seen in cases when the public mandate along with a discretionary decision making right is granted to services that are not formal state bodies. For example, corruption in health care has for one of its causes the fact that the doctor makes discretionary decisions on how a patient will use his right to health care: who and when will be sent to the best specialist for an examination, who will be, and who will not be hospitalized, who will use the right to rehabilitation in a spa. Therefore it

is not strange that the survey that is part of this research identifies medical workers as one of the most corrupt groups.

### **Compound competence and conflict of competencies**

Under compound competence we define a situation when several different state bodies are competent for proceeding in the same legal affair, each one in one segment or domain. Such a case, for example, is the so called compound administrative acts, those in forming of which several bodies participate, when the document is complete only then they all issue their acts which form the complete document.

Similarly, for the purpose of this analysis, when in one situation it is necessary that several state bodies pass their documents, for example, when the subject, needs to be issued several licenses or authorizations by different bodies.

Even when the competency of these bodies is clearly and precisely determined, when it is known which body in which order does what, a citizen has before him barriers which are hard to overcome. The situation is even more difficult when documents of different bodies are mutually conditioned, when the order of their passing is not precisely determined, when the one who wishes to attain a certain right is forwarded by one body to another organ. This is a zone when a solution is sought in “special relations” with bodies that make decisions or in corruption. Everyone who has attempted to secure all permits for constructing a building understands this situation well, and the analyst asks the question if the entangled competence was designed for the very reason of excreting pressure against the citizen.

The situation can be even more complicated when there exists the so called negative conflict of competences, when two or more bodies state that they are not competent for giving an agreement, approval, or protection of a right, or when two or more bodies take competency passing mutually contradictory acts.

The solution is in simplifying the legal system. And in cases where coordination is necessary of several competent state bodies the principle of one window, well known abroad, should be introduced. The citizen communicates with one organ, which communicates with the rest.

### **Control function and responsibility**

As there is a hierarchy of legal origins, there exists, of course, a hierarchy of bodies. At the same time, two-level decision-making is a constitutional principle (article 22, point 2 Constitution of the Republic of Serbia.).

Therefore the higher bodies have in regard to the lower bodies a control function, and in regard to the realizing of individual rights, an appellat function.

In numerous spheres the notion of duality and efficiency of control of the decisions and work of the body of the first instance is in a large extent damaged. First, the high level of centralization that is characterized by “reforms” carried out here during the past decade made it so that there is no significant differentiation between the bodies of different levels. The regional bodies of first instance are most often named by the central

organ, work according to their instructions, but also enjoy their protection. There is no statistical data, for example, on the number of accepted appeals on tax issues, but even a superficial inspection shows that the number is relatively small.

Therefore, through the appellant process their control function is carried out insufficiently, generally understood, as oversight by higher bodies of the work of the lower bodies.

Some additional institutional solutions weaken the control function. In this way the rule that an appeal does not postpone the execution from exception, as it was set in the Law on General Legal Procedure, has become a widely used means of pressure against citizens. Therefore an appeal does to postpone the execution in many tax affairs, in cases pertaining to construction (for decisions on forbidding of construction or tearing down of buildings), in customs affairs. On the other hand, the possibility to postpone the execution is widely used.

In this way the first level bodies were granted a wide maneuvering space to threaten by forced execution of the final decision at the first instance, and to decide not to execute them. Since the contra-execution or the restoration, if there is one (it was recently published that the Federal Customs Service owns several million German Marks for the reimbursement of illegally confiscated objects for “customs violations”), cannot reimburse the inflicted damage, this forms room for negotiations between the body and the party that often lead to corruption.

Lack of administrative control of the public administration and other forms of control which follows form the principle of two-level decision making, decrease the idea of responsible government services and state, and the feeling of irresponsibility represents a golden bridge towards corruption.

### **Penal legislation and corruption**

Penal legislation, above all criminal, material, and administrative, can be linked with corruption in two ways.

On one hand, all mentioned weaknesses of the legal system, which generate corruption, can also appear in this field. Three should be mentioned:

- In our criminal law one can notice the existence of the so-called special criminal legislation, incriminations, sometimes very serious, which are contained in laws that regulate a certain special matter, and are not contained in the criminal law. For example, serious incriminations, with a high penal rate are to be found in the Law on Public Peace and the Law on Possession and Carrying of Firearms. Sometimes we are dealing with “forgotten” incriminations, which are rarely implemented, and there the process depends on the current policy (judgment, will) of bodies of investigation and pursuit. Therefore in practice one can rarely find persecution for the breach of intellectual and industrial property, although we are talking about common occurrences, whole industries, like for example publishing of video and music pirate editions.
- Some are the so-called blanket norms, those where the content of the incrimination in essence determines some other, non-criminal regulations. Here too, it is possible to apply various prosecution policies.

This is very characteristic for white-collar crime, or commercial crime, covered for example by the offense of “unethical business dealing in commerce”. The legal treatment of organizers of pyramidal banks, for example, demonstrates the wide space of discretionary decision-making.

- Also certain procedural norms, sometimes very important, allow different activities with which the public links the phenomenon of corruption. Most typical are the rules for deciding on detention (some of which, after ten years of their use, the Constitutional Court of Yugoslavia has ruled unconstitutional). Disturbing the public and the possibility of influencing of a witness are flexible enough notions that can cover any decision.

On the other hand, the phenomenon of corruption can be, influenced by the number and character of indictments that deal with different kinds of corruption, kind of punishment, and penal policy.

When talking about indictments, even though the draft of the changes of the Criminal Law of Serbia which was prepared in April 2001 does contain new acts (corruption in public procurement, corruption during privatization), the situation could be qualified as unsatisfactory. The penal policy, having in mind the relatively small number of fully concluded proceedings, cannot be assessed. The problem obviously lies in investigating and prosecuting.

## CONCLUSION

Today corruption in Serbia is one of the largest and most difficult problems the country has inherited from Milošević and his followers. Corruption in Milošević’s Serbia was not an accidental, and even less incidental phenomenon. Corruption was the very heart of that regime. It existed because the ruler wanted it, and not because he was too weak to prevent it.

From the institutional standpoint the basic cause of corruption in Serbia was a particular institutional vacuum. Namely, institutions of the old communist system were abandoned, and operational institutions of the new, market system, or the institutions of political democracy were not still formed.

At the level of economic institutions, or of economic policy, even though the former regime wanted to form an impression of the existence of great order in the society, in reality there was a lack of will to ease the introduction of free entrepreneurship. The intent was, it seems, just the opposite and it was reduced to keeping the number of new companies and new economic forces constantly under direct control. Profitable businesses were strictly reserved for the chosen political clientele. In those businesses combined entrepreneurship and common criminal activities were present to a great extent.

Shortly stated, state intervention, or the influence of the state in economic dealings in Milošević’s Serbia was exceptionally great – economic freedoms were restricted. The known fact that every limitation of individual freedoms, and especially the economic freedom, simultaneously means forming of conditions that encourage corruption has demonstrated its full

effect in the case of Serbia. Global determinants of economic-systemic relations have generated conditions for development of corruption in Serbia. Since the market economy did not function, or the end result was not based on free market competition, certain social groups were inspired to readjust the regulations (institutional framework) to their interests. This could have been accomplished in two ways: by excluding them from the existing rules or by readjusting of the rules to fit individual interests.

Redistribution, which was imposed by the state as a management model, could not be implemented transparently. This was done mostly far away from public eyes, and it formed a strong incentive for corruption. In other words, the positive incentives were formed and the “demand” grew for corruptive behavior. The mentioned institutional framework formed on the other side, sufficient incentive for politicians to secure positions which possess certain economic authority, or those positions and functions that in a relatively short period of time can be very lucratively exploited. Since the state possessed the power of economic control it simply “pulled in” politicians who were prone to corruption. In this way a respectable “supply” of these services was secured.

What finally warrants special attention is contained in the fact observed in the implemented statistical research. It is interesting that citizens as a basic causes of corruption in Serbia identify lawlessness and the lack of rule of law (15 percent) and the crises of morality (17 percent), while the economic system and meddling of the state in economic flows is given a much smaller, almost negligible, importance. Likewise the proximity of war and economic sanctions is not granted significant importance as causes of corruption. This practically means that citizens of Serbia in reality are still not able to establish a correlation between characteristics of the economic system and the existing level of corruption in Serbia, but consider it some kind of derivative phenomenon.

The basic political cause of corruption in Serbia, as was pointed out earlier, is the very character of the former regime. Serbia was a kleptocratic state in which institutions of the system, or their functioning, were adapted for the basic goal – maximizing of the personal wealth of the ruler. At this point a very significant difference can be observed between the communist and post communist dictators. While the communist leaders, convinced in the immortality of their political project, were preoccupied with the processes, or maximizing of current privileges, the post communist dictator was obsessed by the maximizing of the stock of his personal wealth. He was cynical enough to know that his political project was not immortal (there was no project, except for the unscrupulous plunder), so he had to secure himself for the rainy days. By irony of fate, now, when his rainy days have arrived, seized riches are of no great aid, and it seems that it will hold true for his family.

For the legal system that exists in Serbia it can be said that it is complicated, outdated, and at the same time over regulating and full of legal voids, prohibitive, and unharmonized. In such a legal system, even if it was implemented by the best of state bodies there necessarily exists legal uncertainty. State bodies in this country, including the judiciary, however, when talking about professional quality, and organization, and ethics, do not deserve a passing grade.

Legal uncertainty, uncertainty of the outcome of a given legal proceedings and the possibility that law be differently implemented in same or similar situations make citizens unprotected from the state. To attain a right that belongs to him a citizen is often in a position of an appellant whose appeal has an uncertain outcome. Then it is not strange that corruption appears as a process that will improve the attainment of rights. Hereby, it is easier for corruption to be a way to accomplish that which is not a legal right and to avoid a legal sanction.

A legal system that deserves such qualifications generates therefore, the phenomenon of corruption in all other fields, these in which the law, or a decision or action by a certain state organ, is only one of the means for acquiring of a goal. Corruption in education and health care, among other things, is caused by the legally unclearly defined rights of the patients, lack of responsibility of the medical staff, or a great deal of discretionary authority (for example) during school and university registration and irresponsibility of educators, with a feeling that the legal system is "loose" and that sanctions can be avoided, influence the outspread of corruption in this field.

Cure for corruption is in the radical and complete reform of the legal system. The time has arrived!

# VI Effects of Corruption

## KINDS OF CORRUPTION AND THEIR EFFECTS

The different kinds of corruption have different effects, as in regard to type, also in regard to the intensity of effects. Before we commence with the analysis of the effects of corruption in Serbia, we need to remember the basic kinds, or aspects of corruption, already discussed in the introductory chapter of this study.

According to the mechanism of corruption, or its economic consequences, it is possible to identify several kinds (aspects) of corruption:

- Corruption which makes possible the implementing of rules (laws), so called theft-less corruption;
- Corruption which makes possible the circumnavigating, or breaking of rules (laws), so called corruption with theft;
- Corruption that leads to the change, or forming of new rules (laws).

The previously examined hypothetical case, or the example of licenses for import of bananas, can be used for clarifying the listed kinds of corruption, or the differences in motives, mechanisms, and consequences, or the economic and social effects of different aspects of corruption. We will continue to assume that the state policy of limiting the import of bananas is based on licenses for their import. Also, all assumptions that were used in the previous model still hold true (see the introductory chapter).

### **Corruption and implementation of rules**

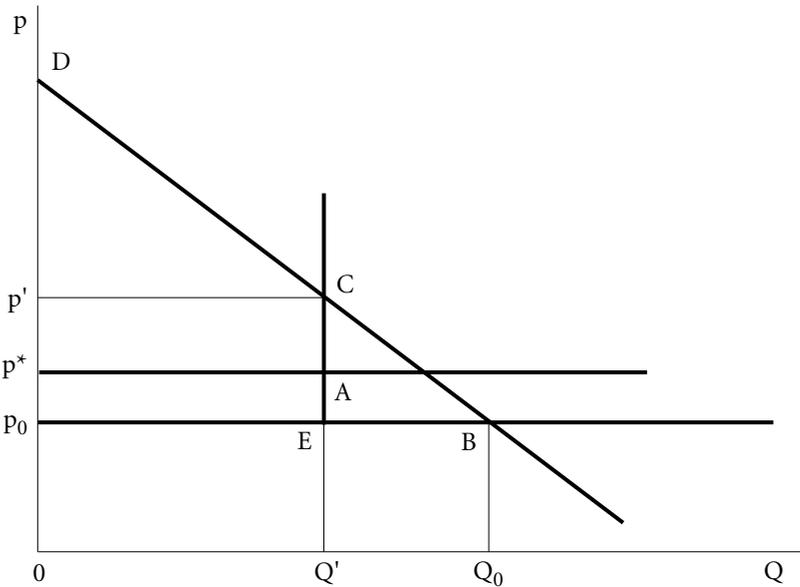
If it is assumed, for example, that import licenses are issued to all interested companies that meet certain conditions, a corruption model can be formulated that makes possible the implementation of law. Namely, government employees do their job inefficiently, and issuing of licenses is running late, which endangers the business activity of those companies that seek the named import licenses. Accordingly, a rational activity of those companies is that they are ready to pay a certain amount of money to be issued import licenses, or to speed up their issuing. In other words, they are ready to, by way of corruption, pay for the issuing of a free license for which, according to the rules, they have the full right.

There are two possible reasons for the named behavior of government employees. First, there is no incentive to work efficiently. Regardless of speed, or efficiency of their work, the salary remains the same,

and therefore the optimization of behavior of government employees is based on minimizing of effort (costs) for given income. Second, since they are aware that companies are ready to pay a bribe for speeding up the issuing of licenses, government employees are acting in such a way as to increase the probability of being offered a bribe for expediting the process of license issuing. The more they stall with issuing of licenses, the greater the probability companies will offer a bribe.

Even greater room for corruption of this kind is formed if the state decides to limit the number of import licenses by issuing them in the order that applications arrived (*first come – first served*). Then every import company will have an incentive to, by corrupting the government employee issuing licenses, get on the list of importers, or to skip the line that is being formed.

**Picture 6.1.**  
**Import licenses – corruption and implementation of rules**



Let us assume that the amount of corruption is 500 DEM per unit of product (i.e. per ton of bananas). On picture 6.1. that, average, amount of corruption is marked as the difference  $p^* - p_0$ , and the total amount of corruption is marked by the area  $p_0EAp^*$ . Corruption in this case does not lead to the change of the equilibrium quantity of the supply of bananas on the market ( $Q$ ) – this supply is determined by state intervention. Also, there is no change in the price balance ( $p$ ), the only thing that is increased is the total cost to the company, or the increase of the cost of supply, and the corresponding decrease of the economic profit (rent) which is seized by the companies. The loss of the rent is fully compensated by the increased income of the government employee, so there is only the redistribution of income, or welfare. It is very important to notice that, in this case, the allocative loss, or the loss of welfare due to unfavorable allocation

of resources, is a consequence of state intervention on the free market, and not of corruption. In other words, the named loss of welfare will be arrived at regardless of the existence of corruption. Also, the change of the amount of corruption does not influence the amount of the loss of welfare. The change of the amount of corruption only influences the amount of the rent seized by the companies – importers (Table 6.2.). Pursuant to all that was said, we are dealing here with, regarding consequences on allocation of resources, the least dangerous kind of corruption.

**Table 4.**  
**Licenses for import of bananas – corruption without theft**

	No state intervention	State intervention with no corruption	State intervention with corruption
Equilibrium price	2.000	3.500	3.500
Equilibrium quantity	150	100	100
Total costs	300.000	200.000	200.000
Social welfare	337.500	225.000	225.000
Rent (total)	0	150.000	150.000
Rent of the company	0	150.000	149.999-1
Amount of corruption	0	0	1-149.999

A certain part of corruption registered in Serbia falls within this kind of corruption. According to the survey results of private entrepreneurs, in 10 out of 17 offered cases (kinds) of corruption, we are dealing with corruption aimed at realizing of certain rights, or implementing of rules. However, one should be careful when using this data, or when concluding that this is the most outspread kind of corruption in Serbia, and for several reasons. First, for the one who is paying a bribe, the kind of corruption he is entering in is of no great consequence, so he is not interested in the typology of corruption – the private entrepreneur is interested only to carry out the transaction successfully. Secondly, in a large number of cases, private entrepreneurs said openly that they do not know what kind of corruption it was, so one should be careful when dealing with those who answered questions on the kind of corruption. Finally, psychologically it is much easier for one who has paid a bribe to say that he paid it to obtain his right.

The named reservations in making a conclusion are indirectly supported by results of the public opinion poll regarding corruption in Serbia. Namely, only 20% of those polled believe that this kind of corruption is the most outspread in Serbia, which contradicts the results of the survey of private entrepreneurs. Additionally, only 9% of those polled believe that this kind of corruption represents a social danger. Therefore, in a certain way, or to a certain extent, there are similarities between theoretical findings and the views of the local public opinion regarding the danger of this kind of corruption.

Therefore, in the case of corruption aimed at implementing of a rule, or realizing of a certain right, we are dealing with the least dangerous form,

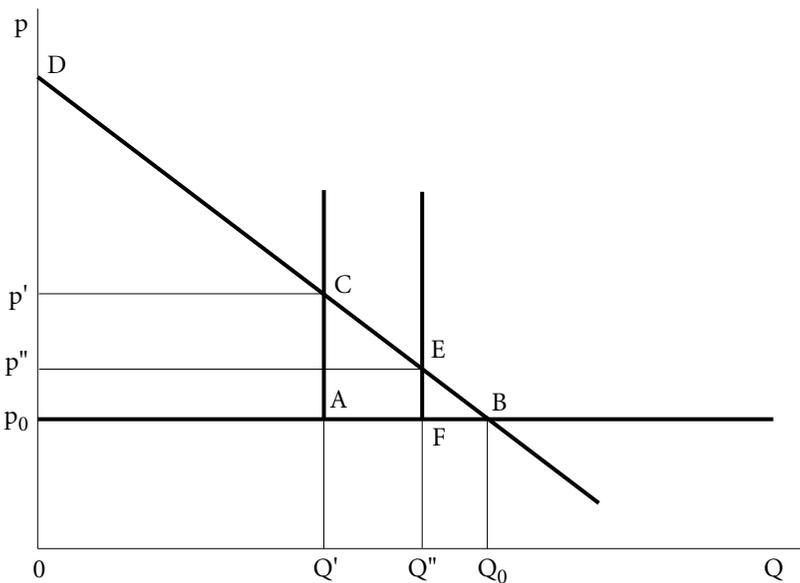
or kind of corruption, and therefore with a kind of corruption with the least negative effects. However, one should not have illusions that those effects are small. They are greatest in the field of squandering of the state and its efficiency, and especially regarding its credibility. If it is necessary to for the realization of a certain right, guaranteed by the state, invest money and time, then such a state is clearly not to be trusted.

### Corruption and circumnavigating of rules

The next kind of corruption is the one that leads to circumnavigating, or breaking of rules. Namely, every company that is importing bananas has an interest in increasing the quantity of bananas that it is importing (for every additionally imported banana, the profit is increased, as is the rent it is taking). This means they have an incentive to, by corrupting of government employees, increase the quantity of the allowed import of bananas for their company, by which they increase the overall allowed import quantity of bananas for the economy in general. Additionally, companies not on the list for receiving licenses, have an economic interest for import of bananas to be made possible for them. In other words, there is a demand for additional import licenses, or supply for corruption that will make possible the import of the additional quantity of bananas. If new, illegal licenses are issued, rules are broken and the state is no more in a position to effectively implement the rules, or laws, aimed, at least in principle, at maximizing the welfare of its subjects.

Let us assume that, by way of corruption, importers were able to increase the quantity of imported bananas for 25 tons. In the framework of this model it was shown that, because of corruption, the equilibrium quantity

**Picture 6.2.**  
Licenses for import – corruption and circumnavigating of rules



of supply is increased ( $Q'' > Q'$ ), equilibrium price is decreasing ( $p'' < p'$ ), the average profit of the importer is decreased ( $p'' - p_0 < p' - p_0$ ), or the rent he is seizing, and the welfare of the society is increasing ( $p''ED > p'CD$ ) and so is, of course, the welfare of government employees. It is interesting that in this theoretical, or hypothetical case, corruption leads to improved allocation of resources, or the increase of the overall social welfare, since by the use of corruption the counter productive state regulation is being circumnavigated. This only demonstrates how much totally unsuitable state intervention of this type is, from the standpoint of social welfare. At a first glance, corruption in this case is not all that bad (Table 6.2).

**Table 6.2.**  
Licenses for import – corruption and circumnavigating of rules

	No state intervention	State intervention with no corruption	State intervention with corruption
Equilibrium price	2.000	3.500	2.750
Equilibrium quantity	150	100	125
Total costs	300.000	200.000	250.000
Social welfare	337.500	225.000	281.250
Rent	0	150.000	93.750
Rent of the company	0	150.000	93.749-1
Amount of corruption	0	0	1-93.749

However, we should not celebrate too early. Negative effects of this kind of corruption are long term. Namely, the state, by this kind of corruption, is disabled in the implementing of its intervention in all cases, not only in those cases in which such intervention is counter productive. Therefore, the state is disabled in the implementing of any of its policies. More ever, this kind of corruption also disables the state in the field of classic state functions, which are not linked to intervention on the market of any sort, like, for example, the execution of laws. Additionally there is a loss of confidence in the state and its efficiency in, for example, protecting of private property rights, which in the long run leads to pulling out, or the fleeing of private capital, on one hand, or the decrease of the influx of private investments on the territory of such a state, on the other. This, which will be demonstrated later, leads to a long- term decrease in the rate of economic growth of such a country.

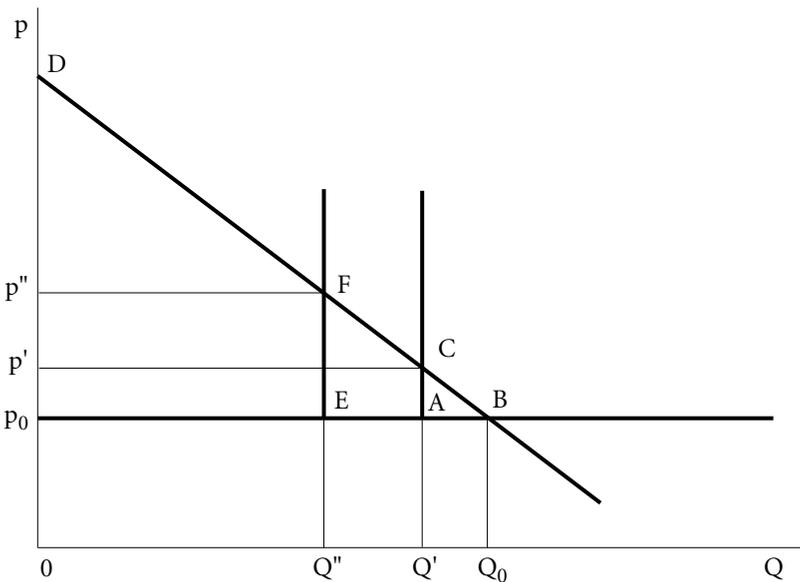
According to the results of the survey of private entrepreneurs in Serbia, they believe that a lesser part of corruption in which they take part is the corruption by which laws are broken, or corruption that circumnavigates the implementation of laws. Yet, they believe that the largest number of cases of this kind of corruption is linked to the customs service and tax administration, or the financial police. We have already mentioned that, pertaining to this question; the results of the survey of private entrepreneurs should be taken with a certain dose of reservation. In contrast, answers of those who participated in the public opinion poll demonstrate

that the public believes that this kind of corruption, or corruption which circumnavigates rules, is the most outspread kind in Serbia (46% of those polled) and that it represents a very great social danger (31% of those polled believe it is most dangerous).

### Corruption and the change of rules

The two previous kinds of corruption are so-called **administrative corruption**, or such corruption which, based on biased decisions, disables the full and unbiased implementation of state regulations. However, according to its economic and social consequences, the most dangerous kind of corruption so-called **political corruption**. This is the kind of corruption that leads to the change of rules, or the change of laws and bylaws in line with partial (private) interests of corruptors. In other words, this type of corruption instigates that the state intervention is formulated and implemented in line with partial (private) interests of corruptors. Shortly, corruptors, most often the financially strong of one society, take control of the state. In our hypothetical case of banana import, the rational interest of each importer is that import be even more limited, or that a new equilibrium on the market is established which secures maximizing of the complete rent, of course under condition that they continue to have a license for import of bananas. This means that companies will have an incentive to by joint effort (collective action) influence the elected representatives of the populace, or the legislative authority, so that by changing of the legislation, or rules, they limit the import of bananas even more. Their goal is that import of bananas be limited to 75 tons, since for that quantity, in the framework of this model and its assumptions, there is maximizing of the rent, or of their economic profit.

**Picture 6.3.**  
Licenses for import – corruption which changes rules



The consequences of this kind of corruption is the further decrease of the equilibrium of supply ( $Q'' < Q' < Q_0$ ), further increase of the equilibrium price ( $p'' > p' > p_0$ ), and the increase, or maximizing of the rent ( $p_0EFp'' > p_0ACp'$ ). Not only has the counterproductive state intervention on the market already decreased the equilibrium scope of supply and increased the equilibrium of the prices on the market, in regard to the equilibrium on the free, unbound market, but this kind of corruption leads to the strengthening of such a state intervention and intensifying of its bad effects. With this kind of corruption we have a drastic worsening of allocation of resources, or a significant decrease of social welfare. Namely, corruption of this kind leads to further strengthening of counterproductive state intervention. Corruptors want for their goals, to use the state, or its power of coercion to force intervention on the market in order to maximize of their economic rent.

**Table 6.3.**  
**Licenses for import – corruption which changes rules**

	No state intervention	State intervention with no corruption	State intervention with corruption
Equilibrium price	2.000	3.500	4.250
Equilibrium quantity	150	100	75
Total costs	300.000	200.000	150.000
Social welfare	337.500	300.000	253.125
Rent	0	150.000	168.750
Rent of the company	0	150.000	168.749-1
Amount of corruption	0	0	1-168.749

This kind of corruption is, according to its economic and social consequences, surely the most dangerous. Namely, in this way, the state, or the institutional framework for carrying out all economic activities, is shaped according to special, private interests of those people who are in the aim of promotion of their interests ready to bribe others, especially those who are powerful, and who could be useful. In this way, the state is no longer a “public thing” (*Res Publica*) and becomes a private playground of the financial power brokers. Unlinked to our hypothetical example, such a state becomes a real banana republic.

What part of corruption in Serbia is part of this, most dangerous kind? According to findings among the surveyed private entrepreneurs, a very small portion of corruptionist activities in which they took part was directed towards changing of laws, or bylaw regulations – almost never above 10%. However, based on this finding one should not make concrete conclusions that this kind of corruption is not outspread in Serbia. Namely, the named survey includes small private entrepreneurs, who do not have access to people who can influence the formulation and passing of such laws, or bylaw regulations in a biased manner. This kind of corruption is reserved for the “big” businessmen, or those who are close to the ruling circles (or are themselves part of those circles), and they can use

their position to through corruption, or bribery, influence the formulating and passing of laws and bylaw regulations, or regulations which are in their interest.

In contrast, the public opinion poll, or the survey of the perception of corruption in Serbia, presents completely different results. Namely, 24% of those polled believe that corruption aimed at changing laws and their readjusting to private interests is the most outspread kind of corruption in Serbia. Additionally, it is very encouraging that 44% of those polled believe that this kind of corruption is most dangerous for the society. Therefore, the consciousness about the great danger of this kind of corruption does exist in the public opinion of Serbia, although, obviously, much remains to be done to increase the presence of this position.

Therefore, it is certain that a large portion or registered corruption in Serbia was just this kind of corruption, or corruption directed at changing laws and other regulations. This kind of corruption in Milošević's regime was reserved only for the selected ones – close friends of the ruler and persons closest to him. Corruptors have been successful in formulating a legal framework, or an economic system in Serbia, which was in accord with their private interests. The very space for such changes of laws, or for execution of corruption was defined just as in any kleptocracy, by the ruler himself.

At the end of the examination of different kinds of corruption and their effects we should point out the fact that the example, or the hypothetical case of import licenses for bananas which we used during the examination, represents a typical case of counter productive state intervention. Not only does it form fertile grounds for formation of corruption – the state intervention of this kind, even if there was no corruption, is counterproductive, because it decreases the social welfare. By removing of such state intervention there is an increase of welfare of society in two basic ways, by removing the possibility for corruption and by the very abolishing of counterproductive state intervention.

## ECONOMIC CONSEQUENCES OF CORRUPTION

Economic consequences of corruption are numerous. They need to be examined in detail. Namely, for a long time, most of all in the circles of political scientists, like Huntington, a thesis is discussed that corruption can be economically beneficial. Supposedly, if the public administration, or bureaucracy, is too centralized and rigid, then it is better that it should be unfair, than fair. Namely, then corruption will become a means for “oiling of the wheels of business”, in other words, corruption under those conditions makes the very existence of economic betterment possible.

Such a thesis can be seductive – at least at first. The only problem is that those who support it are in for a big disappointment, but it is very hard to convince them *ex ante*, before they feel the consequences of their congeniality towards corruption. For this reason it is necessary to systematically study the economic consequences of corruption, both in principal, and those specific ones which are felt by Serbia. Those consequences can be rendered to eventual followers of Huntington's thesis in Serbia.

## Allocative economic efficiency

The previously stated theoretical models demonstrate some of possible consequences of different types of corruption regarding allocative efficiency, or the short- term change of social welfare. The hypothetical case that we considered has demonstrated that the consequences of corruption or the short- term can change of welfare can be different. The most serious consequences regarding society undoubtedly have the kind of corruption that changes the laws, or the situational framework, and leaves it as long- term, almost lasting consequences on society. The conclusion of the analysis of this hypothetical case is largely that all situations in which state intervention exists, or import limitation, lead to the decrease of welfare, and that the free functioning of the market leads to the maximization of social welfare.

For this reason it is very significant to answer the following question. Why does a benevolent state even introduce an import limitation? One possible motive is the protection of domestic manufacturers, or an incentive for the domestic manufacturing of the named good. In the case of bananas and a large number of countries, like Serbia, there is no domestic production of bananas, and this argument cannot stand. Protecting the balance of payment position of the country, by decreasing of imports, can be the next motive for such an intervention. This, however, can also be accomplished by introducing high customs tariffs, which would, in addition to the decrease of import, secure certain income for the state budget. Still, many countries, like ours (up to May 2001, when by new foreign trade regulations the licenses for the import of almost any commodity were lifted), keep introducing limitations of this sort. There are two possible rational explanations. First, a benevolent state does not trust its customs service, or her government employees, but thinks that, because of ineffective customs protection, there will be an increase of import, or that there will be no increase of budget influx. Second, a kleptocratic state wants the maximizing of its own income, or the income of those who are part of the plundering group, and the licenses are, in both named cases, a better mechanism than customs.

In the examined hypothetical case, deregulation, or abolition of state intervention is the only convincing, or efficient strategy in fighting corruption. Deregulation removes the possibility of generation and flourishing of corruption and necessarily increases the social welfare. It is a paradox, but corruption has in certain cases of the mentioned state intervention had a positive short term effect on social welfare, or it increased the short term efficiency of allocation of resources, since it partially or even in full prevented the implementation of counterproductive state intervention.

Although, at the first glance, there are but a few cases of this sort of state intervention, a detailed analysis of such a an intervention for many countries, and even of those most developed, not only in the economic, but also in the institutional sense, demonstrates an almost unbelievable cases of counterproductive state intervention. Some of them are shortly described in the introduction of this study.

However, the listed examples should never be generalized. There still exist those forms of state intervention, like economic regulation of natural monopolies, which, at least in principle, increase social welfare, and therefore

are not to be abolished. Therefore, deregulation in those cases is not socially justified. In those cases in particular, effects of corruption on the efficiency of allocation of resources, or the welfare of the society, are extremely unfavorable. Corruption adjacent to economic regulation of a natural monopoly opens up space for monopolistic behavior of a private entrepreneur, which causes exceptionally unfavorable consequences for social welfare.

### **Transaction costs of corruption**

The prior examination of consequences of corruption to allocative efficiency, or to the short term changes of welfare during the existence of corruption, were based on an assumption that transactional costs of corruption do not exist, or that they equal to or are close to zero. Transactional costs are those costs that have to be met for a given transaction (like corruption) to take place. If the transaction costs of corruption equal zero, corruption represents only the transfer of welfare, or the redistribution of the existing welfare that, by itself, does not change the overall welfare of the society in a short run.

The existence of transactional costs means that in corruption, or in its execution, real resources need to be invested, which have their opportunity costs. In other words, all of those resources, if there was no corruption, could be invested in other activities and in those that, in contrast to corruption, generate new value, or increase social welfare. Precisely those opportunity costs for allocating of those resources represent the transaction costs of corruption. Corruption is not free – in this case also, there is no free lunch. Therefore, the key question in examining the effects of corruption is what are its real transaction costs.

Transactional costs of corruption are made up of a very large number of costs and a significant number of these costs are rather high. This is natural, since corruption is by its nature an illegal, or hidden activity. This fact forms the significant increase of transactional costs in two ways.

First, since it is an illegal activity, for its implementation the legal institutions of the system in any one country do not have to be used. Namely, corruption represents a specific contract by which both sides are obligated to certain activities – the one corrupted, that for example, he will issue an appropriate import license, and the corruptor that he will pay an appropriate amount. If there is a violation of the contract, or if any one side does not carry out its obligation, there is no possibility of court protection of the contractual, or affected side. The one corrupted has no incentive to report the corruptor to the court authorities because, for example, he did not pay him the full amount of his compensation – he, of course, does not want to inform the authorities of the named transaction, since it is illegal, and he a participant. Therefore, the implementation of the contract is up to the signatories, and there exists no possibility of the institutionalized oversight of its implementation. In other words, it is necessary to establish an alternative manner of monitoring of implementing of a contract in corruption, and for that significant resources are needed.

Second, as in the case of any other illegal activity, it is necessary to invest resources so that this activity remains undiscovered. Since corruption is a

criminal act, punishable by law in a large number of countries, it is prudent, from the standpoint of participants in corruption, to develop very good protection for conducting of this activity, which also seeks additional resources. Those corrupted have to plan well the transaction itself, removal of proof, to invisibly keep and spend money, to resolve all the listed and many more problems, and all of this demands engagement of real resources.

Let us examine certain (surely not all) transactional costs of corruption. First, government employees have to be found who are ready to be corrupted, or the finding of the “right” people in the public administration, which demands time, additional engagement of one’s own people and very careful presentation of information, so that risk would be minimized in an attempt to corrupt government employees. Then one has to formulate an informal contract on corruption, or precisely define rights and obligations of participants in corruption, and manner of the implementing of the contract. In that implementation, the mechanism that verifies the meeting of obligations (especially by the one who is corrupted), or the manner of realizing of rights from the corruptionist contract is included. Finally, one needs to define control mechanisms for the implementation of that contract and allocate the resources that will serve that purpose.

All of the mentioned makes for high transactional costs of corruption, or high opportunity costs of resources that are used for implementing corruption. For example, as stated by Tanzi it is assessed that managers of companies in countries with a high levels of corruption use around 20% of their work time for negotiating of favors of corrupt government employees. This means that one fifth of work resources of this kind is allocated for the covering of allocative costs of corruption. To this surely has to be added the, for now unknown, part of work time which government employees spend in negotiating corruption, instead of carrying out of their real duty, implementing of state policy, or regulations.

Results of the survey of private entrepreneurs in Serbia have shown that around one third (34%) of those polled do not think that transactional costs exist which are covered by them, in the sense that not even one part of their work time is spent on implementing corruption (although it takes place), and around one in five (21%) state that they spend less than 1% of their work time. However, around one quarter (24%) of those polled calculate that up to 25% of their work time is used for dealing with corruption or its implementation, and almost 5% of those polled state that for dealing with corruption they use up more than 25% of their work time. These results demonstrate several important distinctions of transaction costs of corruption in Serbia. First, the working time that private entrepreneurs spend in implementing corruption varies significantly, but can generally be assessed as rather large. Second, the variations can possibly be explained by the fact that some private entrepreneurs are attempting to in every way avoid corruption, or paying of bribes. Such entrepreneurs spend a significant amount of time searching for a way to avoid paying of bribes, and that represents significant costs that corruption imposes on the private entrepreneurs. If an individual entrepreneur will spend his work time searching for a way to avoid paying of a bribe depends, above all, on the amount of that bribe, so it can be assumed that the amount of the bribe

differs from one entrepreneur to the other, most likely depending on the business activity he is engaged in.

Results of the survey of private entrepreneurs shows that their total expense for corruption varies between 1 and 10% of their overall income. It is likely that the variations of that participation leads to a variation of time spent on dealing with corruption, or, especially, dealing with ways to avoid paying corruption. Of course, the larger the amount of a bribe to be paid, the larger the incentive to private entrepreneurs to invest effort (their work time) to find a way to avoid that payment. Regardless of motives of private entrepreneurs, it is certain that their work time that is not spent in manufacturing activities, or activities which are generating new value, possibly represents the most significant transactional cost of corruption, and survey results show that this cost in Serbia is rather high.

When examining the size of transactions costs of corruption, or the effects of those costs on social welfare, it is necessary to differentiate between centralized and decentralized corruption. Centralized corruption is, theoretically, a more suitable solution from the standpoint of amounts of transactional costs. Namely, in a case of full centralization, there is only one contract on corruption, or only one transaction, and therefore the overall transactional costs are lowest. To, in line with our example, acquire an import license for bananas, only one contract on corruption is needed with the authorized government employee or, possibly, politician, for example, a minister – the rest is routine. Decentralized corruption, or the increasing of its dispersion, increases the number of needed contracts on corruption, or the number of transactions, and therefore unavoidably increases the overall transaction costs. By extreme dispersion, or by decentralization of corruption (everyone seeks his part of the cake), we arrive at an enormous increase in overall transaction costs of corruption, which means that a large part of resources of one society will be allocated in unproductive activities, or activities directed at the redistribution of welfare, and not generating of new value. Centralized corruption represents in a specific way a good thing in a bad situation. First, it generates smaller transaction costs. Second, it is relatively easier to fight centralized corruption. Of course a precondition for this is strong political will. The problem is that in conditions of centralized corruption this will, for understandable reasons, can often be lacking.

The most appropriate measurement (approximation) of the degree of dispersion of corruption in a society is the number of places a bribe needs to be paid for acquiring the same service. The results of the survey of private entrepreneurs in Serbia demonstrate that almost 65% of those surveyed were forced to pay two or more times. However, of the listed 65% responses, the frequency of double, or multiple payments, varies significantly, so that around 30% named that frequency as always, usually, or often. In contrast, according to results of the public opinion survey, experiences of the citizens of are somewhat different. From those who had experience with corruption, 63% have made the same corruptionist payment in only one place, 26% in two places, and 15% in three or more places. Therefore, it is as if there exist two different levels of dispersion, or centralization of corruption in Serbia. While the corruption facing the private entrepreneurs is rather dispersed, corruption facing the citizens of

Serbia is rather centralized. Without additional research it is not possible to offer a convincing explanation for these, at first glance, contradictory results. However, it is very significant to point out to the fact that the dispersion of corruption in the case of private entrepreneurs is an indirect confirmation of the high transaction costs of corruption, or the high participation of work time that private entrepreneurs spend in dealing with corruption.

An additional question arises if this type of market structure of corruption is in accordance with our basic hypothesis that Serbia used to be ruled by a kleptocracy, which, by definition, means centralized corruption? In other words, can previously stated results be interpreted as an empirical base for rejecting the hypothesis? The answer is a clear – no, not according to any one factor. Namely, kleptocracy means the centralization of corruption in the sense of its planning and general implementation, but the concrete execution of corruption in the framework of kleptocracy does not have to be unavoidably centralized. This, above all, depends on a large number of factors, and one of these factors is the number of people on the supply side of corruption (or government employees) that are included in kleptocratic corruption. It seems that in Serbia as part of kleptocracy, there was a division of two market structures, or industrial organizations of corruption. One is the one pertaining to corruption services for the economy, or for entrepreneurs that is relatively dispersed, and the other is the one pertaining to corruption services for citizens and which is relatively centralized. Based on this it follows that transaction costs of corruption are larger in the case of corruption for private entrepreneurs. This, however, has an influence on citizens, or consumers, since the private entrepreneurs certainly build into the price of their product a very high portion of transaction costs, and in this way transfer them to the citizens.

Transaction costs of corruption depend also on the concrete costs for implementing of this kind of contract, and those costs depend on the probability that the corruption contract will be successfully implemented. One can indirectly arrive at that possibility based on the data on the relative number of concluded and implemented corruption contracts. The results of the survey of private entrepreneurs show that they were, rarely or never in only 5% of cases left without the agreed on and paid service. This happened in 12% of cases, while all others received their paid corruptionist service (always, usually, and often). In other words, there is a very high probability that the paid service will be received. This holds true to an even larger extent for corruption services pertaining to citizens. According to results of our public opinion, 90% of citizens of Serbia that were in a position to pay a bribe received the service they sought from the corrupt government employee, or that service for which they paid for by a bribe. At first, it seems that transaction costs of implementing of an corruption contract are relatively small, since the probability of its implementing is rather high. However, this can also be misleading. Namely, it is fully possible that this high probability is only a result of high transactional costs, or large resources that are invested in the process of implementing of the corruption contract.

Regardless of the mentioned controversy, all of the listed results demonstrate that in Serbia transaction costs are rather high and that they

make up a very high part of overall costs that are generated by corruption. Those transaction costs have a highly unfavorable consequence on the allocation of resources and, accordingly, on the change of the social welfare. Transaction costs of corruption represent, in the short run, probably the greatest evil caused by corruption.

### **Long-term effects of corruption on welfare**

According to the mentioned characteristics, or the size of transaction costs, corruption is very similar to organized crime, because both activities are illegal (relation of corruption and organized crime will be discussed later). For this reason neither can use the legal institutions of the system, and have to conceal their activities. One common characteristic of these activities is exceptionally important. Both of these activities deal with the redistribution of welfare, and not its creating. No additional value, or new welfare is generated by these activities. For these reasons both of these activities are destructive for every society.

In examining the phenomenon of organized crime, Fiorentini and Peltzman point to the fact that in every society there are two kinds of activities: manufacturing, which generate, or increase the overall welfare of the society and redistribution (like organized crime and corruption), which only redistribute the existing welfare. The key question for the future of every society is: how are the available resources allocated between the two named groups of activities? If the largest part of resources is allocated in manufacturing activities, new value will be formed increasing the welfare of the society. Such a society has a future. If the greatest part of resources is allocated in the redistribution activities, no new value will be formed, or there will be no new welfare. There will be only one dirty pond with crocodiles in it. The water level in the pond will be ever lower, and crocodiles will become ever more aggressive, spoils will be increasingly fewer, and at the end the pond will go dry. There will be no more pond, no more crocodiles, nor other inhabitants of the pond. Societies that have fallen deep into corruption and organized crime have no future – they will implode.

How will the resources, or in what proportion, be allocated between the two listed activities depends on a large number of factors. However, the key factor is the institutional framework, or the extent to which that framework influences the productivity of resources in these activities. Namely, in this way the institutional framework forms incentives for economic subjects to allocate their resources in one of these activities. Reasons for the high economic, or manufacturing efficiency of certain societies are to be sought in the institutional framework that stimulated the allocation of resources in manufacturing activities and their efficient use in that regard. The low economic efficiency of other societies should not only be explained by insufficient resources they have at their disposal, but also by the institutional framework which does not stimulate allocation of resources in manufacturing, but in redistribution. The most dangerous factors that those who have already invested their resources in redistributive activities, or have specialized in those activities, like organized crime or corruption, want to influence further changes of the institutional framework in their favor, so

that they can increase the productivity of their already invested resources even more. This leads to further moving of resources from productive into non-productive activities – a certain road to a demise of society. Serbia had in the late 1990s already taken to that road.

This initiates the discussion of the long-range effects of corruption. Key questions connected to the long-range effects of corruption are: how to attract new resources and secure their efficient allocation? In other words, how to secure sustainable economic growth and long-term increase of social welfare, or long term economic welfare of the country?

Empirical research has without a doubt shown that countries in which a higher level of corruption was registered have lower rates of economic growth. There are a few reasons for these consequences of corruption or, several mechanisms for the working out of the mentioned relationship. The first mechanism has been already examined, and deals with the alternative allocation of resources to manufacturing and redistributive activities. The situation regarding this dilemma in Serbia can be seen from the aspiration of the youth concerning their professional careers. One has to hope that political changes in the second half of 2000 will lead to the change of the social system of values which was inherited from Milošević's Serbia and according to which criminals were respected citizens, and turbo-folk singers with no musical talent were respected citizens also, almost considered as artists.

The second mechanism pertains to direct foreign investments. Namely, because of the lack of capital in many countries, the basic factor of their economic growth is represented by direct foreign investments. The globalization process has already lead to establishment of strong ties between direct foreign investments and the rate of growth for a large number of countries, for almost all countries except those most developed. If there is a high level of corruption in a certain country, foreign investors hesitate in realizing their investments, or there is a decrease of the possibility for realization of those investments. At that, the amount to be paid for corruption in the realizing of those investments, although it increases the costs, is not of decisive importance. Far more important is the fact that a high level of corruption, or its outspread, increases the uncertainty, or risk the investor is faced with, not only during the investment itself, but also during the complete economic lifecycle of the project he is investing in. The increased risk increases risk premiums, which increases the price of the capital paid by the investor. Therefore, a higher expected profit rate is needed for the project he is investing in. If, because of corruption in a certain country, the price of capital goes up, it is possible that the expected profit rate is not sufficient to cover that price. Since foreign direct investors minimize the differences between the expected rate of return (profit rate) and the price of capital which they pay, they will chose a countries with a low risk of investment (low price of capital), so that countries with the high level of corruption remain outside of the flows of foreign direct investments, which brings down the rate of their economic growth. Moreover, since the large and high quality investors have an exceptional aversion towards risk, in the highly corrupt countries speculative capital will appear, or investors of dubious reputation, or quality. This additionally brings down the rate of economic growth in highly corrupted countries.

Besides direct foreign investments, corruption influences the securing of funds on the international capital market, or influences the acquisition of credits on this market. Access to the international capital market is beneficial for all countries in which supply of capital is scarce. In that way the local, rather high interest rate (consequence of the scarcity of capital) is decreased, which means more investments, or a higher rate of economic growth. However, a high level of corruption increases the risk of investing capital in a given country, which leads to the increase of the risk premium payment of which is demanded by the creditor. This unavoidably leads to the raise of the equilibrium interest rate for which capital can be borrowed on the international market. The increase of the equilibrium interest rate unavoidably decreases the scope of investments, and in this way decreases the rate of economic growth of subject country.

To what extent did the observed corruption in Serbia in the past decade influence the economic growth of the country, or the long-term change of the social welfare? This question can be divided into two: one about the influence of corruption on direct foreign investments, and the other on the appearing of Serbia on the international market of capital. As far as direct foreign investments are concerned, they did not come to Serbia in the past ten years for a number of reasons. Some of them are formal (ban on investment as part of the politically motivated sanctions against the country), some of them essential (exceptionally high investment risk, especially the so called noncommercial, or political risk). Thus, inherent political instability, followed by wars, changes of borders, and other extraordinary events have formed such risk for foreign direct investments that there was not a high enough profit rate which could compensate such risk. In such conditions, corruption simply was not relevant for investors. In other words, they decided not to invest their capital long before examining the risk pertaining to corruption. It is ironic, but the only significant foreign direct investment in Serbia during 1990s, the investment of Italian STET and Greek OTE, was maybe made possible with the aid of corruption.

As far as the presence on the international market of capital is concerned, Serbia, or FR Yugoslavia is a highly indebted country, so in the past ten years it did not have access to the international market of capital. It still does not have access at this moment, until it regulates its existing obligations to international creditors. Only when our existing obligations towards foreign creditors are regulated, our country will be able to be present on that market. Only then, based on the premiums for risk it will be paying, it will receive the real information on the effects of local corruption on the risk premium which we have to pay, or on the full interest rate, and therefore on the rate of economic growth of our country. This is still ahead in the future.

Finally, we conclude the examination of the long-term economic effects of corruption by examining the link between corruption and organized crime. Although there are significant differences among certain definitions of organized crime, it is clear that organized crime is based on the strong link between crime and the state, or in the taking over of certain state functions (above all, the implementing of laws) by organized crime. Corruption represents the basic mechanism for this transfer, or taking over of these functions. One is dealing with, above all, with the corruption

of the police, or the judiciary authority of the state. Organized crime is later present as the new state, or a state within a state, which has the monopoly on the use of force, or implementing of its laws in a certain portion of society. In normal circumstances, without corruption there is no organized crime.

Accordingly, the interest of organized crime in Serbia, as in any other country, is for corruption to be increased and to through such an increased corruption take over ever more state functions, so to increase its power and social influence. The growth of corruption in society leads to the forming of preconditions for the growth of the role of organized crime. This undermines the basic role of the state, or the basic task of the state, and that is the implementing of laws. The complete society becomes an unorganized framework in which no one has an incentive to productively allocate his resources. Society becomes the already mentioned pond with crocodiles. If a turnaround does not happen, such a society is destined for obliteration – the pond will unavoidably dry out.

### SOCIAL ASPECTS OF CORRUPTION

Poverty, to a larger or lesser degree, is almost a general determinant of today's Serbia and larger part of South East Europe. The fall of the standard of living in the majority of these countries was drastic, and caused, above all, by dramatic political events in the last decade of the past century, which have, with the customary transition recession, lead to a drastic fall of the national product, which caused a great decrease of real wages. Abrupt poverty caused a number of problems, starting with personal and family, to the frustration of complete social groups. Many members of yesterday's, communist nomenclatures and public services, which used to belong to the middle class, have quickly grown poor and fallen on the hierarchical scale of position, power, and material standards. A consequence of this fall was the decrease of their prestige. The fall of the standard of living, combined with the increased insecurity and uncertainty of their positions, destroyed their former system of values. For many individuals and families things were turned up side down They have accepted with difficulty the described new circumstances, especially if one has in mind that their former (before transition) standard of living was not based on their work, but exclusively on the position which they had in the hierarchical structure of the nomenclature.

At the same time in Serbia, after fifty years of restriction, based on communist ideology, there is development of the private sector. Regardless of a number of unfavorable circumstances, the newly formed private sector began, step by step, to accumulate significant amounts of financial resources. This is supported by the fact that the participation of the private sector in the national product of Serbia is almost 40%. The development of the private sector leads to the increase of the material position of its members. Because of the transfer of power from the "social" into the private sector there is a transfer of members of the nomenclature into the class of private businessmen. In spite of the fact that those same members of the communist nomenclature were for fifty years the most ardent and ideological

opponents of private property and of the market. The described process causes social division. And thus is formed, on one hand, a small class of the rich, most often members of yesterday's communist nomenclature, and on the other hand, great masses of the impoverished populace. This is an additional reason for destruction of the prior value system.

How acute is the problem of poverty in Serbia is best illustrated by the results of our survey. As the three most important problems facing Serbian society, from ten offered, those surveyed name poverty, crime, and political instability. If we add the answers of the first and second rank<sup>1</sup>, then poverty as the greatest problem is perceived by 48,1%, crime by 35,0% and political instability by 31,0% of those polled. At that those less educated perceive poverty somewhat more and, those more educated political instability. From this it is more than clear that poverty, after a ten-year period of economic regression, is one of the key problems of Serbian society.

As the key problem that pertains to them personally those polled also name poverty. Namely, as the first problem it is named by almost one half (48,0%) of citizens, and as the second problems by almost one in five (18,1%). On the second place as their personal problem is unemployment: first rank 9,1% and second rank 14,1%. As the third problem those polled list the bad economic situation: first rank 8,5% and second rank 9,7%. In conclusion, according to the beliefs of citizens, poverty dominates as the problem of the majority of citizens of Serbia, and the next two, from ten offered alternatives, are those which directly or indirectly cause poverty: unemployment and a poor economy.

The relationship between corruption and poverty is doubtlessly very complicated and multi-dimensional. Some of those relations are mutual, some are of lesser, and some of greater intensity. Very often is the phenomenon of poverty is mentioned as one of the key causes of corruption. In is interesting that the public opinion poll in Serbia shows that a large part of the populace perceives poverty as the key factor of corruption in Serbia. However, for us it is much more interesting to examine (at this juncture) the consequences that corruption in Serbia has on poverty.

In examining economic consequences of corruption, or consequences on the allocation of resources (for the short term change of welfare) it was seen that corruption generates significant transactional costs, which to a great extent are transferred to the consumers, of citizens of one country. Simply, the prices of many commodities are higher, since the manufacturers, or importers and vendors to the greatest extent transfer onto the end user, or consumer the amount that they have paid for corruption. Therefore, there is a decrease in the real buying power of the population, since, because of corruption, the prices of commodities are rising. The price increase is, of course, the same for all consumers. However, this leads to the increase of economic inequality, or social differences. The same increase of prices of one item from the consumer basket leads to different relative decrease of the buying power of those rich and those poor, and in that way it leads to the increase of economic inequalities. Therefore, corruption of this kind leads also to the factual redistribution of income from

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1 In the survey it was foreseen to rank, from ten offered, two according to importance.

the poor towards the rich, or to the increase of the economic inequalities in a society. In other words, the poor will become even poorer.

In the long run, it was shown that corruption decreases the rate of economic growth of a country, or decreases the long-term growth of social welfare. In that way it decreases the possibility that by the growth of national product there will be an alleviating of the problem of poverty, regardless of the given distribution of income, or welfare. The smaller the cake that is being divided, the smaller its pieces, regardless of how it is divided.

It is of great importance that corruption restrains, or disables state intervention in the redistribution of income, or state aid to the poorest groups. For example, because of the decrease of fiscal revenues caused by corruption, the state is forced to decrease budgetary expenditures, most often, those items slated for the poorest parts of the population. This can be illustrated by the example that the previous (socialist) authorities in Serbia were two years late in the payments of child support. If the fiscal expenditures are not decreased, then they are covered by a general tax – inflation, which affects the poorest groups in society the most. In this way a redistribution is carried out again from the poor towards the rich, or there is an increase of economic inequality.

Finally, with the increase of poverty there is an increase of social anomy. Simultaneously, poverty and social anomy directly influence the increase of the level of accessibility to corruption. This means that poverty directly influences the expansion of corruption among public servants. Thus we reach the spellbound spiral in which one factor has an influence on the other: poverty on corruption, anomy on corruption, and corruption on poverty and anomy. Every subsequent circle of the spiral is greater.

## CONCLUSION

The consequences of corruption, or its economic and social effects, are exceptionally serious for any society. The gravity of consequences of corruption in any one society will depend on a larger number of factors. One is, of course, the outspread of corruption – the more corruption, the worse it is. Both of our empirical surveys (public opinion poll and the survey of private entrepreneurs) have directly indicated that corruption in Serbia is very outspread. One should have no illusions concerning this issue. We should not even compare it with other countries – certain results from our survey for Serbia are really to be very concerned about.

Next, consequences of corruption depend to a great extent on the type of corruption that dominates in a given country. At that the most dangerous corruption is the one that makes possible the passing and implementing of laws and other regulations according to partial (private) interests of corruptors. The survey has shown that this type of corruption in Serbia is more than significantly represented. Cleptocracy in which we used to live has made it possible for politically and economically powerful business people of the new kind to influence the legal framework, or the economic system, and to accommodate it to their needs – maximizing of rent and personal wealth.

Transactional costs of corruption directly decrease social welfare. The greater those transactional costs, the smaller social welfare. Our research has shown that in Serbia significant transactional costs exist, which is above all shown in the large amount of work time that private entrepreneurs spend dealing with corruption. All the resources used in the implementing of corruption cannot be used anywhere else – for generating new value and increasing of welfare.

It was shown also that corruption has a negative influence on poverty, or that one of its consequences is that the poor become even poorer, or that economic inequalities in a society are increased.

Long-term consequences of corruption are the worst for a society. At certain points in time societies are at turning points. Serbia at this time can choose between a decisive turnaround towards a productive society, which generates new value, or it can remain on the same path on which the country was lead by the previous regime –the path of corruption and organized crime.

## VII The Anti-Corruption Strategy

Corruption in Serbia is very widely spread and it represents a great social evil. Its roots are deep, and its claws have a hold on practically every field of society.

The great task of reconstructing Serbia, made possible by the political changes accomplished in September of 2000, assumes a radical break with the past, with the ways of functioning of the political, economic, and social life, with a change of behavior of individuals and their organizations. And above all else, the change of the state.

One of the important elements of reconstruction is the battle against corruption. We knew about it, have talked about it, and now is the time to fight it, knowing that in that fight there are no short cuts, not easy solutions. But, this battle is worth the effort, because corruption does not represent a threat only to human freedom and rights and democratic institutions, but also to economic progress and the decrease of poverty.

The battle against corruption must not be a one-time affair or a campaign, but constant effort, focused on maintaining the accomplished results and attaining of new ones. It is part of one larger strategy – the strategy of creating of efficient and honest government.

The new government of Serbia has several times stated its intent to severely and seriously deal with corruption, which the Prime Minister, in his inaugural speech, named as one of the priorities of this government and the first results are: several people were arrested and charged with corruption, or the misuse of public office; a commission was formed to investigate misuses in economy and financial transactions, its role is to investigate the corruption of the previous regime; prepared and forwarded to the Serbian Assembly are drafts of the Resolution on Struggle Against Corruption and the Tax on Windfall Gain Act; in the draft of the new Penal Code one segment pertains to sanctioning of corruption, and the like. Still, these are only first steps on a long road.

Serbia needs an all encompassing anti-corruption strategy, based on the dedication of the political leadership of the country to fight corruption, reform of institutions with a goal of prevention, passing of the anti-corruption legislation, implementing of laws, and a partnership between the state and the civil society. The most rapid road to failure is the lack of energy of the political leadership of the country, excess influence of the inherited bureaucratic structures, slow and uncoordinated reforms, focus on “small” corruption (while ignoring the large), and the founding of the anti-corruption battle on activities of political leaders, in place of institutions which will last longer.

## BASIC STRATEGIES

### Principles

Stamping out corruption in Serbia should not deal with external manifestations and symptoms of the disease, but must be based on the knowledge of its basic causes. The causes of corruption in Serbia are institutional, or they result from state institutions, as noted at length in previous chapters. When a state official or servant:

- has wide freedom of decision making,
- is not held accountable by the public,
- has no motive to work fairly,

corruption is unavoidable.

To the institutional causes of corruption one can also add social circumstances, although not as a cause, but as a factor which makes corruption easier, or the battle against it harder. In the past ten years, among citizens of Serbia a certain atmosphere of tolerance towards corruption was formed: it is, often, considered a necessary evil, the only way to get a certain job done, it is not even condemned strongly enough. Such perception of corruption was influenced by poverty, wars, personal loyalty to political leaders in political parties, low legitimacy of authorities (because they were repressive, inefficient, and did not deliver public goods). Additionally, the previous regime largely succeeded in representing *its* corruption as something unavoidable and it tried to convince the citizens of Serbia that there is no other way to do things at times of war and sanctions. More generally, the political process was rotten, and the rule of law was practically banned; laws were implemented selectively, according to wishes of the authorities. When the highest authorities break their own laws, then the citizens do not feel obligated to abide by them.

With the fall of the previous regime the possibility is most likely annulled for an organized, centralized corruption at the highest level, like the one that was present in the previous period. With the development of democracy and winning of freedom, it is less than likely that anyone will be in a position to operate a centralized organization whose basic task will be defending his own political power and attaining of personal wealth by misuse of office, or corruption whose important goal is attaining of loyal supporters for the purpose of remaining in power. In the future the game will most likely be the “standard”, decentralized corruption, although not only at the lower levels (with employees), but also with possible high corruption, at high state positions. It is not likely that the patron-client system will be developed, in which one advances by loyalty to those who are superior, at the expense of legality.

In the institutional sense, the three basic directions in the battle against corruption are:

- **reducing the role of the state**, by decreasing its discretionary power, which reduces the scope of its activity which can be contaminated by corruption; this reduction of the role of the state can be carried out either by deregulation (liberalization), or by introducing automatic rules; deregulation means lifting of regulations from a certain activity and leaving to the private decision makers the right to freely decide

about that activity, and a good example is the recent banning of licenses and other administrative limitations in foreign trade and the liberalization of trade in the sense that everyone can freely import and export goods and services, of course along with the payment of customs tariffs; in state affairs where deregulation is not possible, it is needed to establish, to the greatest extent, automatism of decisions through prescribing of conditions which need to be met when applying, so that meeting of a criteria is the base for the making of a decision, and not the free will or assessment of opportunity by a government employee;

- **accountability** means an obligation of government bodies and employees to inform and report on their work to citizens, and the right of citizens to take action against those officials whose behavior they do not find satisfactory; the most important guarantee for the responsibility of state officials and government in full is the right of citizens to change the authorities by elections, punishing them for bad behavior and misuses, and corruption in general; for citizens to be able to judge the work of state officials it is necessary to provide *transparency*, or public oversight of the work of officials through, for example, open sessions of the assembly and the government for the media, mandatory publishing of reports on work of government bodies, and the like; an especially important role should be the assembly supervision of the work of executive organs;
- **incentive structure** of people who execute state functions represents an important element of corruption, because it is the basis of the cost-benefit calculation by an individual; on one hand, the possibility that by taking a bribe one can secure a pleasant life is surely a strong incentive towards corruption, but an appropriate policy can influence the costs of corruption for an individual and destimulate bad behavior; examples of such policies are the increase of previously miserable salaries of government employees, regular career advancement, a combination of strong supervision and effective punishment, development of ethic norms and the feeling of public service, personal example by management and the like; the goal of these measures is that the combination “little risk, large gain” for the government employee be changed into “great risk, little gain”; a special significance has the regulating of the conflicts of interests (situations in which an official has a significant amount of personal interest linked to official businesses that he can influence for personal gains); since in Serbia there is no sufficient understanding of the depth of this problem, a more detailed legislative regulation is needed.

In addition to the institutional changes, which we will discuss more, the anti-corruption battle must make an effort to change the position of the public towards corruption, or to influence that it be changed from mildly negative towards very negative. The basic erroneous attitude of many citizens is that corruption represents a simple and ordinary redistribution of income between the citizens (or companies) and a government employee, and that there are no negative economic and social effects; in other words, proceeds believe that for society it is irrelevant who will have the money in question, which is totally wrong. Therefore it

is necessary to constantly point out the negative social, economic, and political effects of corruption, or the price, which Serbia pays for this phenomenon. The increase of the consciousness about these, social costs of corruption, or their exceptionally negative effects for the society, should lead to the change of the environment in which corruption takes place, to growing of hostility towards corruption and to public demand for reforms so that it can be prevented. The understanding of corruption and its negative consequences can be influenced in several ways: by media campaigns, investigative journalism, civic society organizations, seminars, lectures, and other ways.

The most important element of the anti-corruption battle is political will, or the desire of authorities to really fight corruption. That political will should be and has to be influenced by the public, by applying constant pressure on authorities and political parties. Namely, if there is no political will, or not to the sufficient extent, then the fight against corruption cannot accomplish sufficient results, but will be scaled down to a few attractive court processes and external manifestations and declarations, like a few fiery and empty political speeches, and will be without real results. One should not follow the example of Kenya, at the moment when the International Monetary Fund held back a loan because of significant corruption: the state prosecutor issued a statement literally saying that the “Government has this morning established an anti-corruption unit to oversee the work of the anti-corruption committee, which follows the action of the anti-corruption working group, which was previously established to investigate the working of the government’s ad hoc committee, formed earlier this year to investigate the problem of corruption of high style among corrupt government officials” (1997). Corruption in this way cannot be wiped out.

Serbia does not need to be told by the international community, or international financial institutions what needs to be done with the problem of corruption – we should know this by ourselves and do so because the battle against corruption is one of the key national interests of Serbia. In other words, we need to fight corruption for ourselves and because of our interests, and not to meet the demands of the international community.

### **Politics and the struggle against corruption**

In Serbia the sphere of politics was the most significant generator of corruption in the previous period, and at that not only through restrictive legislation and lack of interest toward good operations of government, but, above all, through a centralized system of corruption (cleptocracy) aimed towards both acquiring of personal wealth by members of the nomenclature, and towards manufacturing of loyalty of individuals and lower levels of authorities through their inclusion in a broad system of corruption.

The previous regime was irresponsible, both towards its electorate, and towards the law. It usually won elections by electoral fraud and media manipulation, while it misused laws or simply broke them. It controlled the legislative, executive, and judicial authority, and made impossible the oversight through the division of power.

The downfall of the previous regime expanded the field of political freedom and opened a road towards democracy. Both will be protected the best by good institutions and responsible government, and not by trust in the good intentions of the new generation of politicians.

There are two basic methods, which increase the responsibility of government bodies and officials and influence their behavior: the first is political competition, and the second supervision by the public.

**Political competition** influences the everyday work of the officials through the pressure brought by the approaching elections and the need of the ruling party (or coalition) to go before the voters with a convincing balance sheet. When elections are free, then the government answers to the voting public and loses elections if its “guilt” is great and obvious. The voters then punish the government for failures and bad management, including corruption, which becomes an issue in the election campaign.

In all elections in Serbia from 1990 to the present corruption did not represent an important issue, which was natural having in mind the political situation in the country and the region. However, this should not remain so. With the calming of political passions, importance will be gained by the “day-to-day” issues, among which corruption takes a significant place. Citizens will have ever less understanding for weaknesses of the state organs and individuals in them.

Since political competition increases the level of responsibility of politicians, for Serbia it is important to construct a stable political order based on few large parties, supported by wide public support. A large number of small parties make the political system fragmented and unstable, which decreases the legitimacy of political institutions and leads to increased radicalism of political conditions. A smaller number of larger parties always aim at the average, moderate voter and for this reason are focused on the center of the political spectrum. Unfortunately, Serbia is at present moving away from the ideal. Small, sometimes marginal parties are growing stronger now, using, and even misusing their participation in the victorious DOS and are winning over citizens by offering positions in the newly won authority in exchange for the joining of the party. This is corruption in action. Serbia, therefore, needs a more mature political scene and enlargement of parties – either by their unification, or by holding of competitive elections.

An especially important aspect of the functioning of political parties and party activities, but also of politicians individually, is their financing and covering of costs of election campaigns. Experiences of developed countries clearly demonstrate that corruption, to a large extent, is linked with financing of election campaigns, and not only to direct receiving of bribes by politicians. In Serbia corruption was also linked to parties, both in financing of election campaigns, and with personal interests of party members. Besides the parties of the former regime, certain democratic parties from DOS have, more or less, been a part of the circle of corruption.

By appropriate legislation and intensified oversight of the financing of parties it is necessary to secure the following:

- *transparency and legality of funding*, in such a way that the legal funding can be followed through valid documents and be made public, while prosecuting any informal funding without paper traces (like

- cash donations and the like); in Serbia, there were many harsh words said during the political struggle, but financing of parties did not represent a political issue during the previous decade, as if a (silent) agreement was reached between parties on not attacking each other;
- *state funding of parties* to a certain extent, since the party activities, in spite of all shortcomings, are still things of common interest, and because competition brings solutions which are less bad; state financing reduces the need for private sources of financing, which can be based on dubious motives; the existing Serbian legislation is obviously not a good one, and it is necessary to carry out the old intent of DOS and pass a new one;
  - *limiting the level of expenditures* is an additional possibility; by doing so it would be attempted to make politics inexpensive, which would, again, lead to a decrease of corruption in politics; on the other hand, if this limitation becomes a regulation, it would be in conflict with political freedoms and the right of every person to by the use of his funds backs the ideas he supports; it is possible to additionally expand the free propaganda time for relevant political parties available on the state TV network, which would decrease the need to collect financial funds;
  - *limiting the right to granting donations*; granting of donations by state and private companies should be made illegal, as it was done in some countries; this would prevent the most direct linkage of parties and private interests; it is possible to forbid the financing of parties from abroad, because this too can be a way to circumnavigate the rules;
  - *ban the use of the state for party purposes*; parties in power should not use state money and property (cars, offices, ect.) for party purposes.

**Transparency** and public control of the work of officials represents both an element of democracy, and its supplement. Under the previous regime there was almost no public control over the activity of the regime, and all-important decisions were made in secret and in a very small circle of people. The rest was propaganda.

Public control over the work of politicians and government employees was shown to be in many countries an exceptionally important tool not only in fighting corruption, but also for attaining good governance in general. Transparency of public affairs can be increased in numerous ways: opening up of the sessions of assemblies, the government, executive councils, and courts for the public; publishing the voting records of representatives and delegates, publishing of annual reports of state bodies and court rulings, etc. In this way, with the help of the media, the pressure is increased on the officials and their potential corruptionist activity is made more difficult. Of course, the penal policy remains as the last resort.

Special importance is affixed to **regulating conflicts of interests**, or situations in which an official possesses such (substantial) personal interests linked with the official activities that he can, or it seems that he can, influence his personal gains by carrying out those official activities. In Serbia the sufficient understanding of the depth of this problem does not exist, not in the public, nor among the members of the political elite – either former, or present. Many do not understand the lack of ethics in exerting influence from a public office onto a beneficial outcome of a personal

business, nor do they link it to the idea of corruption. Numerous members of the previous government in Serbia have kept their positions of directors of companies, and have directly used public affairs for private gains.<sup>1</sup>

There are several legal ways to limit conflict of interests. In Serbia, however, there is a ban for ministers and other high state officials to hold other public offices,<sup>2</sup> but this regulation is not enough. It is necessary, first, to expand it and make it more precise and, second, to resolve the legal problems of sanctioning, which exist now, and primarily in the domain of legal legitimacy for initiating of proceedings. Then, laws need to be passed on the obligation of officials to register their wealth on entering of a public office, which would make possible the control of their wealth at the beginning and the end of public service and destimulate corruption.<sup>3</sup> Also, it is necessary to legally regulate the obligation to register gifts received by the officials, and to limit their value, so that corruption could be separated from signs of attention. The passing of such a law in the parliament is not enough: it is necessary to secure its implementation, which was not done up to now.

### **Ethics and fighting corruption**

The low level of trust of citizens in the authorities and state officials represents a great challenge for the new democratic regime in Serbia, even more because from the ethical behavior of government employees depends the quality of the democratic institutions and economic development. When they act wrongly, the state institutions become inefficient, and the trust of citizens and economic actors in state institutions decreases.

Independent activity of government employees in Serbia has increased with the political changes. The recent strong control by political leadership of the country over the work of all subordinate bodies and individuals, based on party membership and loyalty to the leader, is now replaced with a decentralized approach and much larger autonomy of state bodies and employees. This result was not attained as part of a plan, or of a different approach, but as a result of democratization, the character of political authorities (coalition of eighteen parties), the youth of democratic institutions, and lack of experience of the new authorities in managing the state. Government employees are faced with new and different goals and conflicts of interest because of the reform of public administration, devolution of responsibility, larger administrative discretion, changed relationships between the public and the private sectors, and increased focus on the market. Additionally, the rapid changes of the surroundings, including the change of the fundamental values and institutions, add to the uncertainty about the future behavior of state employees.

With political changes the character of corruption in Serbia is changing. While under Milošević the *large*, centralized corruption dominated

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1 For example, Simpo company has increased the prices of its products several times precisely before the general limitation of prices. The director of Simpo was Vice President of the Government of Serbia and has used inside information.

2 Law on Public Administration.

3 Several ministers from DOS governments have publicly, at the time of taking office, listed their material possessions, but it was not done precisely enough, nor did everyone do so.

in favor of the political nomenclature (cleptocracy), in the future there will probably prevail the ordinary, smaller bureaucratic corruption. Therefore more significance will be given to the battle against this kind of corruption.

Ethic standards are one of the basic tests of the arbitrary misuse of discretionary power. Without an “ethical barometer” it is hard not only to measure the level of corruption, but also to wage a battle against it. Ethic standards place barriers to the motivational system of an individual, or they suggest and determine what is good, and what is not. If a government employee is not abiding by the ethic standard and basic values of the administration then this represents breaking of the rules and a sign that corruption is possible, and even probable.

In addition to agreeing to the goals and the need for building of good ethic standards, in the contemporary world two somewhat different approaches are used in implementing of ethic standards: the first is based on the strict following of rules with prescribed administrative procedures, control mechanisms, and detailed rules of what a government employee should do, how to do it, and what he must not do; the second approach is based on principles and goals and on professionalism, and is strengthened by incentives and the encouraging of good behavior.

Serbia needs both approaches. The present public administration has learned to obey orders, but without the application of procedures based on laws and professionalism, supplemented by incentives. For this reason it is necessary to establish written rules of conduct for the administration, which should be strictly followed, while breaking of rules would be punished. On the other hand, it is necessary to strengthen consciousness regarding the principals and goals of public administration, introduce appropriate incentives and spread among the government employees the sentiment of serving of the people and the state.

Modern ethic principles in the working of public administration contain the recommendations of the OECD to governments of member countries and other governments:

- *ethic standards must be clear*, so that employees can understand and implement them; for this reason, it is necessary to formulate and publish basic ethic principles and standards,
- *ethic standards must be contained in laws*, because the laws establish the basic, minimal mandatory standards of behavior of a government employee; ethic standards thus represent a framework for investigation, disciplinary action, and punishment,
- *government employees should exactly know their rights and obligations*; to be able to react in a right way when exposed to wrong actions, they must be aware of all the prescribed procedures and of the special chain of responsibility, as of their rights to protection from their superiors,
- *political leaders are responsible for keeping of high ethical standards*, especially by giving a personal example in carrying out of their duty,
- *higher civil servants are also responsible for maintaining of ethic standards*, by way of their leadership role in the administration, by which they are in a position to present a model of ethical behavior for lower employees and citizens,

- *work conditions should encourage good behavior*; it is needed to develop encouraging conditions for ethical behavior, as are positive conditions for advancement, personal development, reimbursement, training and similar.

The ethical approach to the problem of corruption, as to other problems, cannot be sufficient by itself, not only in Serbia but elsewhere. However, disregarding it cannot be productive either. It is certain that only a combination of different methods in fighting corruption can give good results, and the ethical approach has its significant place in that combination.

## DEREGULATION OF ECONOMIC LIFE

### Introduction

It is very hard to propose a correct (in other words realistic and practically usable) answer to the question in how it is possible for a society to successfully fight mass corruption. We can see that we are dealing with a very serious problem by the fact that corruption represents a serious and constant problem in all societies, also in those, which are democratic in their structure and with an efficient and stable market economy. Corruption, therefore, also functions in those countries, which have all the relevant, and century old institutions.

We can differentiate, along with simplifying, two possible approaches, or two global strategies for fighting corruption. One of the solutions for the problem of corruption, which is often proposed, is additional bureaucratization. It boils down to institutionally organized strengthening of the process of oversight and control of the work of government employees. This approach in reality does not represent anything else than an attempt to “put out the fire”, but the activity is not aimed against the very causes of the fire. Inclination toward this strategic approach in searching for a solution for the problem of corruption could be deduced from the position of the majority of citizens of Serbia towards the causes of corruption. They, as we saw in survey results, believe that lawlessness and the lack of the rule of law are the most significant causes of corruption. The second strategic approach originates at the position that one should act against the very causes of corruption, or that it is necessary to establish institutions of a free market economy. Such a strategy means among other things a high level of deregulation and liberalization of economic life.

It is interesting that the majority of citizens are in reality skeptical towards the possibility that corruption can be fully wiped out. Thus 40.5 percent of those polled think that corruption in Serbia will always exist, although simultaneously they believe that its level can be somewhat decreased. Only 4.9 percent of those polled are fully optimistic, or believe that corruption can be fully abolished. Our position is that a strategy of acting against the causes of corruption would be acceptable, or that it would give better results for Serbia than additional bureaucratization. We are in particular inclined to this position by results of the survey conducted with private entrepreneurs.

## **Powerness of bureaucracy**

Is it realistic to expect that additional bureaucracy, or increased oversight and control can resolve the existing problem of massive corruption in Serbia? It is possible to list several open issues that bring such an approach seriously under question. Above all, one should have in mind the problem which arises with every constructivism: human actions have both the intended, but also the unintended effects, therefore actions of the bureaucracy, even those well intentional, are not free from unwanted and unexpected negative consequences. This is not the only problem that arises in the implementation of this strategy. If one attempted to solve the problem of corruption in Serbia by only adding control and punishment, then the problem would only be transferred from the existing, to a higher hierarchical level. This would demand further enlargement of the control chain. The process of enlargement of the control chain would in reality establish a need for “new bureaucrats” who would have the task to control the already existing controllers. Then soon the need will arise for controlling them. The circle goes on. Bureaucracy would in this way systematically be encouraged and enlarged.

All that we said is nothing new and represents an already identified problem in implementing of this strategy in developed countries, although they have very developed systems of internal control of government employees. The implementation of such a strategy would be made especially difficult having in mind the existing institutional, and before all the legal-political, framework in Serbia. Let us repeat that 67,1 percent of citizens believe that the judiciary system is unreliable, and 58,1 percent believe it is unable to execute its own decisions. Both citizens and private entrepreneurs gave the same assessment. This strategy would accomplish only that corruption would be positioned on higher levels, which would become even less accessible to public control. Bureaucracy of social and especially economic relationships, as was seen earlier, in reality represents the basic cause of the problem of mass corruption in Serbia and therefore it cannot be an efficient solution and the strategy in a struggle against it.

## **Deregulation and liberalization**

Corruption, therefore, having in minds methods of its development, its skilful and hard to catch “disguising” and growth, cannot be efficiently dealt with by administrative measures. The list of efficient measures for preventing the development and spreading of corruption should be based on removing its very causes. Economically speaking, it is necessary for the incentives for corruption to be removed. This solution is in line with the thinking of the liberal doctrine and assumes the deregulation and liberalization of the market in the real sense of the word. The mentioned activities more precisely mean the opening of room for private initiative, decrease of state interventionism, and of different kinds of arbitration in economic life. To the smallest possible level should be brought down all of those incentives, which lead to the appearance of the actors ready to corrupt (demand), and also those who are ready to be corrupted (supply).

This means the removal of the economic-systemic preconditions for the appearance of actors of corruption.

Every loss of economic freedom generates, as we have shown at length, preconditions for generating, continuing, and expanding of mechanisms of corruption with all negative effects that follow. This simultaneously means that only by institutional (legal, political, economic) arrangements that protect and expand the economic and political freedom, which is based on it, is it possible to develop necessary preconditions for decreasing and stamping out of corruption.

Having in mind the present state of society in Serbia, it is essential to simultaneously establish elements of a free and market economy and elements of a democratic society. In this way, measures for fighting corruption in Serbia simultaneously represent the measures for the necessary social and economic reforms. When we limit our attention only to the economic system, the change actually means that it is necessary to create conditions that will result in an advent of competitive economic order. This means opening of the room for free private initiative, with transparent, defined, institutionally protected, and strictly respected rules of market activity.

To eliminate causes leading to corruption in Serbia it is necessary to revitalize or, more precisely, again formulate the standard assumptions for a market economy: stable institutional framework, private property, freedom of agreement, and individual entrepreneurship. Deregulation of economic life does not mean anarchy, as is interpreted by certain individuals or political groups either maliciously or unknowingly. Spontaneous market competition in Serbia should take into account the existence of a strong and inviolable system of market rules. This means that it is necessary to establish institutions, which support the market economy and which grant the full economic freedom to its active participants.

A significant measure which is necessary to carry out the reform of the economic system, and which is significant for removing of causes of corruption, represents the liberalization of prices. This is unavoidable for several reasons. Above all so that it could finally be made clear in Serbia which manufacturer is able to bear the pressure of competition, and which is not. Liberalization of prices should end the existing confusion on the market regarding the level of success of certain companies and industries, and make it possible for them to identify those production programs that represent a real comparative advantage. Such a state – in which efficiency is measured only by the success on the open market – at the same time, will decrease the incentive for lobbying in any sphere of economic activity. The demand for services of corruption will be decreased.

On the other hand, economic policy should also follow this process. This means, first and foremost, creating conditions where the government restrains itself from active participation in the economic processes. It is especially important to ban its power to redistribute profits from some participants to others. It is necessary to make it institutionally impossible to conduct discriminatory economic policy. Government employees in case of the deregulation of economy will not have the power to influence economic processes, and therefore will not be objectively able to offer services of corruption. All together these measures should, although not in

a short time, encourage the formation of a different business ethics that would not have crime as its base.

Deregulation of economic activity would cause, therefore, the decrease of economic power of the political elite. It would be reasonable that processes of deregulation be followed by both political and economic decentralization, which also means the strengthening of the local government. We will revisit this part of the anti-corruption strategy in another part of this study.

### **Individual recommendations**

Every institutional limitation of freedom almost as a rule leads to corruption. This effect especially holds true for limiting economic freedom. One should not neglect the fact that without the existence of economic freedom, the political freedom by itself (expressed in a high level of democratization of a society) is not able to prevent corruption.

For the existing statist manner of managing the economy in Serbia, which is the basic reason for mass corruption, to be replaced by a competitive economic order, it is necessary to carry out significant institutional changes, which are reflected through the necessity of a rapid change of certain significant economic-systemic laws. They should promote and protect economic freedom.

1. To arrive at the deregulation of the economy in Serbia, it is necessary, above all, to privatize the social and state capital, and assets. Without privatization, which would encompass a rapid, compulsory, and massive privatization, it will not be possible to establish a new institutional infrastructure. Without the new institutions it is not possible to encourage and maintain efficient and free entrepreneurship. Only private property can in the given conditions initiate the true market mechanism in Serbia and thus overcome the destructive and deeply rooted economic statism, which we have identified as one of the most significant institutional causes of corruption. It was demonstrated, also, that private property in the past represented a very strong barrier against corruption.

The new Law on Privatization represents a step in the right direction, because as the basic methods of privatization it foresees the sale of social and state capital and property by competitive techniques – tenders and auctions. This should exclude the possibility of corruption, because, in general, competition of interested investors disables the seller (state and her employees) from discretionary decision-making and from taking bribes.

However, even competitive techniques are not always resistant to corruption. They are not when the bidding is not based on one criterion, for example price, so that the winner can be easily and exactly determined. During privatization the price is usually the most important criterion, but others are also used, like the readiness of the buyer to invest in the company, or to retain a certain number of employees. When there are several criteria, then the singularity of the solution to the question of the winner is lost and the decision is often based on an individual feeling of the one or those who make the decision on the importance of individual criteria. Or it is based on a bribe.

The privatization strategy of the Government of Serbia is based on sale by tender of the larger and best companies, and the criteria for choosing the best proposal is the price, scope of investment in the company, and preservation of employment. Therefore the possibility for corruption is introduced. Economic logic states that it is best to rely on only one criterion – the price – but the social and political circumstances and beliefs induce the inclusion of the other two mentioned criteria.

The only cure against corruption during the tender sale could be the transparency of the decision making process, but it is interesting that the Law on Privatization does not determine who makes the decision on the chosen bidder – the managing body of the company or the Agency for Privatization – but leaves this issue to other regulations, which is not good.

2. Parallel with the change of the privatization law it is necessary to initiate the change of the existing legislation governing the creation of new companies. It needs to be simplified, from the formal and legal aspect. This means significantly shortening of the procedure and, therefore, the complete bureaucratic procedure to register a new company. The process should be faster, more efficient, and unbiased. Particularly numerous licenses of a technical nature should be banned, like those pertaining to sanitary, power and other issues. The positive effect from such a change could be many-sided. This would, above all, decrease the possibility for the misuse of office by government employees who participate in the existing complicated bureaucratic chain. On the other hand, such legal simplification of the procedure for opening of new companies would lead to formation of a different market environment. In this way conditions would be developed for decreasing of the existing level of highly concentrated market structure in Serbia, or it would develop a much more competitive market structure than in the past. This would lead to elimination of a significant part of the existing causes of corruption in Serbia since there would be left ever less room for administrative regulation.

3. All dealings pertaining to public procurement should be made much more transparent. This means that they have to be accessible to the control of the public opinion, as of appropriate institutions which should follow their legality. On the other hand, the processes of public procurement should not be limited only to local companies, or it would be advisable that they also include interested foreign companies. In such a situation competition would be strengthened, which would lead to arrangements under most favorable conditions. This, of course, does not mean that this is enough to fully eliminate corruption in these activities (which is illustrated well by the collective resignation of the members of the European Commission over corruption), but it would in the mentioned way be significantly decreased.

4. The mentioned changes that influence the formation of room for new entrepreneurs should be followed by changes of the Law on Labor and Employment. The present state of highly formalized level of protection of workers and the nonexistence of the free competition between workers in one company, as between the unemployed and those employed

is unsustainable. It is necessary to go towards the establishing a labor market in its real sense, or establishing of mechanisms for allocation of labor according to knowledge and abilities of workers, or processes where knowledge and abilities will be the only criterion for selection. In such conditions when the criterion of market efficiency is the only relevant one, there is no free space to acquire by corruption a quality work position. The affirmation of the “hard” labor market and rigorous insisting on respect for laws would lead to the decreasing of the “gray market” of labor and therefore to a lesser amount of incentives for corruption.

5. Changes are necessary in taxation. The tax system was, as we have already seen, to a large extent directly responsible for the encouragement of mass corruption in Serbia. Above all, it is excessively complicated and inappropriate for unambiguous implementation. It is necessary, therefore, to significantly simplify it, and make it transparent to decrease the need for its “additional” interpretation and in line with that decrease the possibilities for its misuse. It would be desirable that discretionary rights of the state in this domain be fully eliminated. In other words, it is necessary to decrease to the lowest possible level the space for, present massive, evasion of taxes by privileged companies and individuals. The change of the structure of the tax tariff, especially the decrease of the taxation of salaries, would lead to the decrease of the “gray market” and its quicker inclusion in the formal market.

6. Also the field of foreign trade should be regulated differently then in the past. Deregulation of this sector means liberalization of the domestic market, or the need for banning of foreign trade barriers. Liberalization means banning of the quantitative import-export limitations and lowering of the level of customs protection. This means among other things banning of the system of export licenses, as of all other protectionist measures of economic policy. It is necessary that the system of foreign trade policy much like the tax system be as transparent and as simple as possible, and to contain as little discretionary authority as possible. In this field legislative regulations used to be an especially great incentive for corruption in Serbia. It is no accident that citizens saw the customs service as the activity with much corruption (4,47), and 31,7 percent of those polled named the customs service as the institution where corruption is present the most. The survey of private entrepreneurs has shown that import and export licenses are at the very top of the causes of corruption. They are ranked on the second and third place. Deregulation and liberalization of the market would ban these corruptionist activities almost over night. During the past months significant steps were taken towards the reform, or liberalization of foreign trade, but there is much room for further changes.

Establishing of these few listed measures of deregulation in Serbia will not be simple at all, since massive corruption in the previous decade caused a serious social problem. It has, on one hand, induced processes which have resulted in social inertia, and, on the other hand, it has formed financially powerful and influential lobbies which are preventing, or are opposing, any kind of deregulation and liberalization. These lobbies, which are not hard to identify, will most certainly be the cause of the greatest resistance to

deregulation and liberalization of economic activity, because they will attempt to retain the previous privileged position.

The above mentioned problem at the same time represents a great test which will verify the power and determination of the new authorities in Serbia to carry out radical economic reforms and to justify the high expectations of voters (as much as 60 percent of citizens expect from the new authorities a significantly lower level of corruption) which have voted for them. Also there is a high level of confidence that private entrepreneurs have expressed towards the new authorities. It is their turn now to justify this trust.

## REFORM OF THE JUDICIARY SYSTEM

### Introduction

There are a number of arguments for the assumption that key causes of the phenomenon of corruption in the judiciary are exogenous, that its massive scope is a result of overall social and economic crises, erosion of public morality, flaws of the legal system, and crises of institutions. From this follows the assumption that the battle against corruption in the judiciary cannot be won only by making changes in those exogenous factors that make corruption possible and encourage it. Still, the institutions reform in the judiciary represent a significant precondition for eliminating or decreasing of corruption.

The text which follows, and which will be focused on the reform of the judiciary much more than on other factors or subjects, will outline the direction of the wanted reforms, with concrete suggestions, based on concrete facts, ranging from the position of the judiciary institutions to the human factor.

The basic premise is the one contained in the current constitution (article 96 Constitution of the Republic of Serbia) and international documents<sup>4</sup> – independent judiciary – that, however, does not mean it is uncontrolled and irresponsible.

### **Relationship of the judiciary and other authorities in fighting the corruption in the judiciary**

The judiciary is best defended from corruption by its independence. There are two dimensions of that independence: independence of the court as an institution and the independence of the judge as a person. The independence of the court, as an institution, is reflected in its independence concerning bodies of the legislative and executive branches of government and other organs, organizations, and individuals. The independence of judges, as individuals, is represented in their freedom to pass unbiased decisions, based on personal judgment of facts and personal understanding

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<sup>4</sup> See for example *Basic Principles of the Independence of Judiciary*, confirmed by the General Assembly of the UN, 1985.

of the law, without limitations, influences, inducement, incentives, pressures, and interventions, direct or indirect, exerted by anyone for whatever reason. Various influences always aspire to reach the court, and if they do reach it or not depends exclusively on the judge. For a judge there must be no authority besides law and justice. Judges must not be directed by rulers or leaders, army or police, party or mafia, relatives or friends, best men or acquaintances, etc. By no one, apart from their conscience. While routine is enough for doing many other state job, for the successful carrying out of the judiciary authority one needs an almost a God-like power of reason, because a judge decides on life and death, freedom and lack of freedom, ownership and property, damage and compensation, truth and lies, law and lack of law, justice and lack of justice, use and misuse of law, hence about the most significant and most subtitle goods and interests of people and their communities. For this reason a judge must become worthy of the office he executes. In this way he will gain the trust of the people in whose name he passes decisions. Trust is gained: by strengthening of respect, honorable life, unbiased rulings, personal integrity, dignity, and bravery. And by the codex of the judiciary which, whose canons instruct: be independent, be just, be professional, be free, be brave, be appropriate, be incorruptible, be committed, be apolitical, and be true to the code.

The judiciary must become free from politics, which has to a largest extent corrupted it, after first infecting it with class prejudice. The judiciary must not belong to a class, as it did in the party state, so it can become just, as it has to be in a democratic state. The road from a class court to a just court transforms a class judge, a lackey of the party state, into a just judge, an apostle of the rule of law. A just judge does not search for the will of the ruling class, but grants everyone that which belongs to him in the same proceedings with the same things, in unequal proceedings with unequal things in accord with their inequality in proceeding towards another as towards himself. A just judge is able to resist all pressure and influence. For this reason he must be of strong character.

In the Yugoslav and Serbian law the principle of the division of power is proclaimed: courts are autonomous and independent. The principle, however, was not fully operational, and a number practical deviations bring to question the independence of judges and courts from other branches of government in a way where it is possible to defend a hypothesis that they are necessarily subject to influences of representatives of the legislative and executive power, political elite, in a way and scope that one can talk about corruption. This is manifested:

- in the manner of election of judges and heads of courts, in which the decisive role is played by the legislative authority, the assembly and its working bodies, with an indirect influence of the executive authority (ministries);
- in the manner of financing, since the courts and judges are financed from the (general) budget, which at the proposal of the executive branch is passed by the parliament, and the funds are managed by the minister. From the budget and its status depends the financial position of courts as institutions and of judges. The material dependence is even larger because this financing includes also the privileged financing, for example (surely not in the last place of importance) the

granting of apartments and credits for purchasing apartments. The author of this text wrote twenty years ago that any “redistribution” of social and state-owned apartments (which today also means to “purchase” them under privileged conditions) is unjust, regardless of the planned and implemented “criteria”; simply, during the competition, one gets all, the rest get nothing.

This material dependence of the judiciary and judges also has a number of more subtle forms, in which a significant role is played, by distributing and directing the funds between the executive authority and the judges, by court administrations, for example through (quasi)specializations of judges by participating in congress tourism, acquisition of equipment and renovating of offices, and the like.

It is logical that all of this results in accessibility of judges to the influence of the executive branch, or political factors that form it, to an extent which can be marked as corruption.

Institutionally this state can be changed by introducing of a separate court (judiciary) budget, with court autonomy in planning and the realizing of its use. It is possible that one part of this budget can be secured from court taxes.

The material status of judges in any case must be significantly improved, independently and faster from the general increase of the standard of living in Serbia (Yugoslavia). Very low salaries are not, of course, an excuse for corruption, but are doubtlessly a condition which is favorable, especially when they are on the brink or below the existential minimum and when the income of judges (to whom law forbids alternative additional sources of income) is in the total amount lower than guaranteed for other categories.

### **Election of judges and heads of courts**

This very significant issue was brought up in the previous section and pertains to the initial election into the title of a judge, the permanent status of judges, and conditions and procedures for removal from office, as also to the advancement of judges, or election to the higher and the highest courts. It also has a special dimension, the issue of transition, the change of the existing situation, both when talking about the existing judicial human resources, and when dealing with the institutional organizing of this field.

1. The existing judicial personnel, at least according to the majority of appraisals, is not satisfactory. The appraisal can be defended by logical analysis.

First, if there is any sense in discussing the need for changing of the manner of recruitment of judges, the premise is that the present manner is not satisfactory. If it is not good, then it could not have provided quality judges and presidents of courts.

Second, if appraisal stands that corruption in the judiciary is extensive – which is true, judging by the survey results given in this study, and by results of several earlier surveys (this appraisal have among other things given the judges themselves in a survey organized by the association of

judges in 1998) – then a question can be put forward is it not the elementary condition for fighting corruption the change of the judicial personnel, in a way and in scope which overcomes the “regular” changes.

Finally, it is known that the judiciary in the past ten years has significantly changed itself, that the office of judge was vacated by a large number of judges, that new judges were recruited, that the political criteria played a great part in this, that economists without judicial experience and needed knowledge were elected to the highest judicial offices, according to political and similar merits; the fact that the present president of the Constitutional Court of Serbia is an economist and was previously a “social-political worker” is paradigmatic (of course this generates susceptibility to all forms of corruption).

If previous assumptions hold, then a question can be put forward is it not necessary to examine the judicial personnel, remove from the judiciary those who have shown themselves to be lacking quality, those who have misused the office of the judge. This is a question, which was raised in many countries in transition, and somewhere (The Czech Republic, for example) it received a positive answer: a general re-election of judges was carried out.

In our law this idea has a constitutional barrier; the constitution proclaims the permanence of judges, a judge can lose his office only for precisely named reasons (article 101 Constitution of the Republic of Serbia). The thesis that the change for this reason and the “effort” for the dismissal of judges who have, according to the constitutional and legal condition, “unskillfully and unscrupulously performed their function of a judge” does not seem encouraging: in the procedure for the dismissal the decisive role, according to the Law on Courts, have the judges themselves (general session of the Constitutional Court of Serbia), so it is probable that they will not vote for their own dismissal. The constitutional reform does not seem like a very attractive idea, not only because the Constitution of Serbia is hard to change; in a society like ours, the permanence of judges represents a (relatively recently established) heritage which is dangerous to sacrifice.

For this reason there appears a practical idea: as part of the judicial reform, which is necessary anyway, abolish the existing courts, and therefore their judges, and establish new ones. This circumnavigating of the constitutional solution, not too elegant, could be practical, if the (re)election of judges is carried out in line with all election principles that have to be contained for the reformed judiciary.

2. The manner of the election of judges, as was said previously, is characterized by a formal domination of the central legislative authority, with a hidden influence by the executive authority, and through them the unallowed influence of political criteria. There are several ideas to reform this: (1) direct election of judges, elections to be carried out by citizens like elections for other representatives of authorities; objections are that this is not in accord with continental law tradition to which we belong, that there is no logical link with the permanence of judges for which it is taken that represents the bases of their independence and, finally and most important, the expert, professional criteria in direct elections will unavoidably be in the second plane or at least endangered; (2) decentralization, in the framework of the generally existing system, so that judges

would be elected by representative organs of the territorial unit (local government, provinces, or republics) which the court covers; objections are that the influence of political power, in a smaller surroundings, would be even greater; (3) election of judges by an independent professional body, for which it is said that it is against the constitution which grants the national Assembly the authority to elect judges, and (4) form an independent expert body which will have a decisive role (as the only one authorized to propose candidates) in the election process, while the formal election would be left to the national Assembly.

For the author of this text the last possibility seems most attractive. First, it is in line with the general tendency that certain traditionally state functions are granted to independent bodies (for example, regulating body for telecommunications, media...). Representatively organized and autonomous, this body would, if it has sufficient institutional capacities and guarantees, support and develop the highest professional and moral standards (of course, if by other elements: social respect, financial standard, the vocation of a judge becomes attractive for best candidates). Ideas exist on members of this body: it would be made up of distinguished and experienced judges, law professors, lawyers, and possibly distinguished representative from other fields of the legal profession.

Still, it is also necessary to point out the weaknesses of this proposal. First, the idea about an independent body is not coherent; a certain institution has to name this body and regarding this institution the body is not fully independent. (This flaw could be decreased by diversifying of the system of proposing members, and by separating it from decisions on the appointment of judges. For example, candidates for the body would be named individually by the association of judges, or the organization which encompasses judges, the law school, the lawyers' organizations, association of legal professionals).

Such a body would have a strong mandate (members would be hard to dismiss), without the possibility of reelection, as one of the guarantees for full independence. The Assembly, which finally decides on the proposal, could move only in the bounds of the proposal formed by this body.

### **Organization of the judiciary and the court control of the judiciary**

Traditional organization of the judiciary in Serbia (with a domination of courts of general competence with only one kind of specialized courts, commercial), with the rules of competence and some rules of procedure, demonstrates certain weaknesses which can be qualified as an appropriate milieu for the generating of corruption as a phenomenon, and not in individual cases.

As a bad consequence of the existing organization, which can support the generation of corruption, are noted:

- non existence of specialized courts or at least of institutionalized specializations of judges, which causes the insufficient efficiency of courts, excessive role of court experts on whom the outcome of a case depends – and all of this is space for the appearance of corruption;
- excessively easy and inexpensive access to the court (low court taxes, non existence of mandatory professional representation or defense

except in certain cases), which leads to numerous low-cost lawsuits which block the court, cause inefficiency, and again form an environment for corruption;

- wide open doors for revision and other extraordinary legal remedies, which means that the Supreme Court practically lost the role of cassation, and that courts are de facto three-level, but it also makes that the court process, until it reaches the final decision, lasts too long (Serbia would hardly stand up to the control of the European Court for Human Rights in the implementation of article 6 of the European Convention on Human Rights), etc.

For the reform position it is worthy to focus on the last point. A clear division of appellant and cassation role of the highest court would increase its authority. Simultaneously, one could expect the formation of the unified judiciary practice in the narrow sense of that idea. One of the positive consequences would be that incorrect court decisions (as a consequence of corruption) would be more visible, and therefore also made more difficult. The social and judicial reaction to such cases would be more probable, which would lead to stamping out of corruption in the judiciary.

The judiciary is also defended from corruption by establishing of a legal order in which courts will act in a more organized manner and more efficiently. And they will act in this way if the bottleneck of the original jurisdiction becomes passable; if specialized courts take their part from the general arsenal of competence; if the appellant courts take over the complete second-level jurisdiction; if the administrative court takes over the solving of administrative cases from the Supreme Court and the regional courts; if the Supreme Court finally becomes a cassation court. All of this is expected from the announced Law on Courts and Judges.

A reconstructed judiciary will strengthen the immune capability of judges to stand up to temptations of corruption.

## Lawyers

Lawyers in our country are traditionally organized as an autonomous and independent activity, organized in a bar, and in that sense no reason is visible for significant institutional changes. Still, certain issues demand attention.

Traditionally, the bar was in this country open for admittance, with a system of registration, if traditional conditions were met. A tendency toward limiting admittance were caused most likely by (anti)market reasons: a great number of legal professionals became lawyers, many for reasons of economic nature (leaving the badly paid government services, demise of commercial companies which had developed legal departments, ect.), even for lack of political suitability for other legal professions. Of course one can think about professional standards in setting conditions for inclusion in the registry of lawyers, about the manner in which the bar exam is organized, but those are questions of taste and lesser importance; one can see no reasons for establishing significant barriers in this form of legal activity, regardless of the sad statement that sometimes legal representation is refuge for those who cannot find another job in the legal profession. Closing of the bars for

new members for reasons of competition (“there is not enough work for so many lawyers”) is not acceptable; this is a question that needs to be regulated by the market of legal services.

Nevertheless, two issues initiated by the public deserve attention.

The first is the question of the possibility of former judges becoming lawyers. It is pointed out that there is an excessively large possibility of unfair competition here, and of special status which such lawyers have in courts where they used to work. This, essentially, implies the possibility of various kinds of corruption. For this reason a ban is proposed on the inclusion of former judges in the register of lawyers, for a certain number of years (3 to 5), on the territory covered by the court in which they used to work. This at the first glance acceptable idea has flaws. First, the work of lawyers in this country is not linked with the territory of one court so this limitation would be easy to evade, or it would be necessary to establish a more serious system of limitation, control, and exceptions. Second, if enforced in full, it would be a serious barrier for crossing over of judges into this profession, since in this country the territorial mobility is traditionally small, and was made even more difficult for economic reasons. Third, a strict limitation could be undermined from the standpoint of constitutionality, the availability of professions to all under equal conditions (article 35 Constitution of the Republic of Serbia).

The general trend is more often in the opposite direction, a desire for a transfer from a lawyer to a judge, as a result of professional advancement.

The second question is the one of the control worthiness for the profession of a lawyer. It could be shortly defined as: for the inclusion in the register of lawyers is it possible and desirable to introduce certain eliminatory conditions, pertaining to the person of the candidate, or to his previous life as a guarantee that in this profession, as a profession of special trust, will not be entered by those who are ethically controversial and have inclinations towards breaking of legal and moral norms, and even towards corruption.

A general positive answer opens up a number of other issues, for example:

- is the unworthiness for the profession of a lawyer to be foreseen by a general flexible clause, with leaving of discretionary assessment to the bodies which determine it or by decisively listing the reasons, for example by linking them to a certain committed criminal offence; the first method carries a danger of arbitrariness, and the second, besides that it is necessarily too narrow for the goal it has in mind, opens up the question of rehabilitation of the perpetrator of a criminal offence, clearing of the penal register, etc.
- does the rule and its implementation have to be part of autonomous rights and decision making of the bar, or on the other hand a legal rule, with court control of the decision. The choice among the alternatives has not only formal consequences, but in a new way opens up the issue of the autonomy of the bar.

It is interesting to link the two previous problems: can one who was dismissed enter the profession of a lawyer from the office of a judge for unskillful and unscrupulous performance? If he was a bad judge – to the extent he had to be dismissed – what are the guarantees he will be a proper lawyer? A positive answer could, however, lead to an even more restrictive

implementation of the conditions for dismissal of judges: we would be dealing, practically, with professional elimination.

We are dealing, obviously, with a complex reform issue, which demands subtle measuring of arguments. Yet, this option deserves full attention.

### **Public Attorney**

The public Attorney is an “independent state body that prosecutes the perpetrators of criminal and other acts punishable by law and uses legal means for protection of the constitutionality and legality.” (article 103 Constitution of the Republic of Serbia).

In the reform of this delicate organ the appropriateness could possibly be examined of the two of its jurisdictions: prosecution of punishable acts and protection of legality and constitutionality by uses of extraordinary legal means (request for the protection of legality) in the public interest, and at the request of the interested parties in the proceedings.

When one determines the points which connect the two jurisdictions, the question will remain is it appropriate that the same organ is, on one hand, specialized, and, on the other hand, able to deal with illegality in all branches of law and all types of proceedings.

Attorneys will probably be partially relieved from carrying out of the second function when the ombudsman is introduced to our legal system. In designing of its jurisdiction, as in the reform of the position and jurisdiction of the state (public) prosecutors there should be found the real role for the attorneys in the “general” protection of legality.

When discussing the basic jurisdiction of the attorney, few issues warrant attention:

- Deciding, in certain circumstances, on initiating criminal proceedings according to the principle of opportunity, by discretionary judgment. In the best case, we are dealing with rules that must be an exception, clearly stated.
- Establishing of centralized and hierarchical organization of attorneys (by itself not unacceptable) by mandatory instructions. Having in mind the need for the equalizing of the interpretation and for identical implementing of the law, mandatory instructions are a dangerous instrument, which can always have a tendency to grow into a parallel and uncontrolled source of law, which weakens legality, allows different measures and generates a milieu for the influence of corruption.
- Precisely defining the complicated relationship, before initiating of a bill of indictment, in the triangle investigative judge, attorney, police. Although the attorney is under obligation to initiate activities of criminal prosecution as soon as he learns of the criminal act, or perpetrator, the attorney often explains the lack of action by the non-existence of criminal charges by the police. Also, the attorneys explain the lack of criminal prosecution by the “lack of corporation by the police”, by the fact that the police does not initiate investigative acts that the attorney has demanded. Therefore one should think about the introduction of a criminal police force that would be more directly linked to the attorney, like the one that exists in

some countries. In this way the negative conflicts of jurisdictions of attorney and police could be avoided behind which may stand a willful exemption from criminal prosecution (corruption). This can be true for the relationship between the attorney and the investigative judge. After making of a decision on initiating of an investigation, the investigative judge is the one who heads the procedure, and the attorney based on that investigative procedure should decide on initiating of an indictment and its content. “Thin indictments” and requalification during the main proceedings in favor of the accused are justified by the lack of coordination between the attorney and the investigative judge. This creates a room of discretionary decision-making and manipulation: a clear ground for corruption.

The reform of the attorney’s office is necessary and it must be approached in a very careful and balanced manner.

### **Court administration, court experts and other participants in proceedings**

Expertise, professionalism and modernization are important features for the necessary reforms of the court administration, which would significantly influence the decrease of the possibility for corruption. Since this chapter deals with the reform of the judiciary system, we will mention only certain needed changes which also have a legal dimension, beginning with cases of discovered corruption in practice, with all reservations regarding the number of cases, and of the modes of operation.

- Reform of rules on process activities performed by court clerks, so as to decrease the possibility of discretionary decision making and evading of the law. For example: reform of the rules on delivery of documents, on official records and archives, including modern means of official record keeping (computerization, etc.).
- Simplifying of technical rules of the executive procedures and greater responsibility of executive staff.
- Precise authority of the court management regarding court administration.

The institution of court experts, as one of the sore points of our judiciary, can hardly be changed by institutional means. The problem is contained in the professional and ethical standards and it is possible that certain advancement would be attained through professional organizing of certain professions (medical associations, organizations of bookkeeping professionals, and similar), under a condition that the organizations have functioning professional and ethical control mechanisms. Possibly those professional organizations should be granted the right to participate in forming of lists of permanent court experts.

### **Conclusion**

If the hypothesis is correct that the key causes of corruption in the judiciary are exogenous, that they originate, on one side, from zones which “enter” the judiciary, interests which are achieved by means of the judiciary, and , on the other side, that the legal origins are linked to the overall

shortcomings of the legal system, the reform of the judiciary system is only one of the elements of the anti-corruption strategy in general and in the judiciary.

From the analysis it follows that such a strategy has to be based on the following:

- “cleansing” of the existing judicial cadre, or the legal and constitutional removal of those who have misused judiciary functions of whose professional education and experience are not a guarantee for successful execution of this function,
- strengthening of the independence of the judiciary from other branches of the government, by various institutional measures, including financial independence,
- change of the legal system of election of judges and other holders of judicial functions, also with the aim of strengthening of its independence,
- more efficient and transparent organization of the system of courts, technical modernization of courts,
- strengthening of professionalism and responsibility of other participants in court proceedings.

## REFORM OF THE FISCAL SYSTEM

Collecting of income and state expenditures represent the basic element of demonstrating the power of the state, but also an important or basic cause of corruption in many countries. Over the centuries many methods for defending of the state from corruption were developed, and especially on the side of collecting duties, like bookkeeping and audit methods, but the success is not great, especially on the side of public expenditures.

Evasion of taxes, customs duty, and other duties is high in Serbia. It would be hard to say that this would be possible without the responsibility of the tax and customs administration, or employees of those services, or that this guilt is solely reflected in inferior work and bad organization.

The greatest source of corruption in Serbia is, at least up till now, is the customs service. A fully non-transparent and uncontrolled system was formed, under the direction of only one man, director of the customs service. The privileged could do anything, from the import of forbidden commodities, to not paying customs duties. The rest could not, when a good deal was in question, import even those things that represented legal import. Also small corruption grew rapidly.<sup>5</sup> Even the honest customs officers were hurt.<sup>6</sup>

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<sup>5</sup> The following joke is popular: one customs officer asked another: – what should we give our colleague for his birthday? A Mercedes? – No, answers the other, it’s not enough. – A house? – No, it’s not enough. – Should we let him work by himself for one day? – No, it’s too much.

<sup>6</sup> One anecdote known to the author: a young customs officer gave to his superior, whom he trusted, a list of license plates of trucks (probably with cigarettes) which crossed the customs line without any papers and without control; he did not attempt to do anything more, because he knew that it was smuggling supported by the heads of the customs service and the state; soon he was arrested for a couple of days, just as a lesson.

In the field of collection of taxes and other duties corruption has been present. It is less developed in the process of determining of taxes, and more in collection and control of collection. Large businessmen linked with the previous regime did not pay taxes, nor did the financial police control them. Because of their interest even the annual income tax for citizens was not introduced. They represented a taboo. Also for smaller players, it was possible to avoid paying of taxes, either by decreasing the calculation, or by simply not paying (this remained unsanctioned, and by the paying of a bribe).

Also the expenditure side of the fiscal system was subject to corruption. However, in Serbia during the past decade there was no significant state investment or purchasing of most valuable equipment, and therefore the chance for the greater corruption was connected with public procurement. In the future things will change, along with economic growth and the increase of state expenditures. However, the smaller corruption during smaller state procurement is a daily occurrence, and especially popular and well known on the local level.

### **Public revenues**

Every successful anti-corruption strategy in the tax sector, as in any other, must originate from motives and possibilities of corruptionist behavior. For motivation, it is necessary to develop a feeling of a mission and camaraderie among government employees, but this is not enough. It is good to introduce both positive and negative stimuli.

Among positive incentives, the most important is the mechanism of determining of salaries based on performances of every individual tax collector and financial policeman. This mechanism of compensation already exists in Serbia, but it is not used often enough; either the bonus is distributed equally, or the boss distributes it based on personal likes and dislikes. It is necessary that the process of stimulation be made transparent and public, so that unfair distribution would be stamped out and good work be rewarded. When determining the amount of stimulation it is necessary to strike a good balance: on one hand it has to be encouraging enough, but on the other hand it must not represent an excess burden for the budget and must not encourage the employees “too much” so they would not, because of being over zealous, make the citizens worse off.

Punishing for corruption represents negative stimulation. Punishment should be made public, so it would act as a deterrent for other potential perpetrators. Punishment as the only remedy for corruption cannot give positive overall results, because it will bring not only the decrease of corruption, but also of work enthusiasm; and therefore it should be combined with positive incentives.

Influencing the motivation of the employees in the Public Income Administration and the “Financial Police” is not sufficient for stamping out corruption, and it needs to be supplemented by a system of measures, which will decrease the possibility of discretionary decision making by these officials.

Simplification of tax laws and procedures is most likely the best way for limiting the possibilities for corruption. The present fiscal system in Serbia is

very complicated and it includes more than two hundred different taxes and duties, with numerous exceptions and exemptions, which decreases the transparency of the system and grants a wide maneuvering room for discretionary decision making, and thus for corruption. The change of numerous tax laws in March 2001 represents a first step in a good direction (especially in the sense of widening of the tax base), but not enough in the direction of decreasing of the number of tax forms and more significant simplification of procedures and removal of discretionary decision-making.

It is also necessary to strengthen internal control, so that it would not happen, for example, that a taxpayer gains a profit because of the inactivity of the administration or because of the lack of control of business dealings, and because a bribed inspector has failed to follow the prescribed procedure. It would be useful to form special anti-corruption units in the Public Income Administration and the Financial Police, whose task would be to fight corruption.

Control of the collection of state revenues, and the handling of budget funds, should not be subject only of internal control (from appropriate organs or ministries), but also of external control. The fiscal system of Serbia lacks an institution, which exists in many countries, and is an oversight and an expert body, which would be independent of the authorities and linked to the Serbian assembly, similar to the General Accounting Office in the US. It would have several functions, and one of them should be expert and analytical oversight of activities of the tax administration and controls, including the anti-corruption component.

It would be useful to accept the Fiscal Transparency Code of the International Monetary Fund, by which numerous information about the fiscal system would be made public and, first of all, accessible to the assembly, whose one of the basic functions is the supervision of the executive power.

### **Public procurement**

Public procurement was always a field sensitive to corruption. In the more recent history of Serbia the first corruption scandal, almost century and a half ago, was linked to military procurement, the army minister, and his relatives the merchants. Reasons for the attractiveness of public procurement for illegal activity is easy to see: on one hand, they usually represent a significant part of public expenditures and of the social product of a country, and the value of individual contracts is often very high, and, on the other hand, the potential bribe for the one who makes the decision on procurement can several times exceed his life time earnings. Temptations are great, and the risk is, in too many cases, too small.

The largest corruption “potential” is to be found in large construction projects – highways, dams, waterworks, airports, government buildings, etc. – not only because investments are large, but also because they are complex undertakings, suitable for varying of the quantity of material and quality of provided services. This is followed by purchases of large equipment, like airplanes, military technical equipment, buses and trucks, construction equipment and generators, and the like. However, smaller acquisitions of office expandable supplies, uniforms, fuel, and the like are also interesting.

The largest procurements do not have to represent the largest problem, because they are easiest to control, if there is a will to do so. It is most difficult to secure fairness of smaller procurements, which are larger in number and cause less interest.

It is usually believed that corruption takes place in the final phase of negotiating a deal, or that the two sides reach agreement on corruption directly before making of a business deal, when all offers are known. However, the agreement is often reached much earlier, in the early phases, at the time when the government employee formulates the request for the purchase (and when specifications are adapted for a certain party) or when the list of qualified suppliers is made (and when a certain party is included, and another is not). Of course, corruption is also an agreement of potential suppliers on a joint strategy, which secures a higher price than would be reached under competitive conditions. Corruption also exists after entering into the contract, because the service provider or supplier is attempting to “break even” for the costs he had incurred by giving bribes or to make additional income, which can result in an insufficient level of quality of services or extent of supply of some goods.

A good system of public procurement secures a sufficient level of goods or services needed by the state for meeting its functions supplied at a favorable price, on time and of good quality. It is effective and economical. Conditions for the acquisition should be widely publicized, and the contract should be granted to the one who satisfies all the requested standards and demands and who offers the best offer. Rules of procurement should be clear and fair, the procedure of procurement transparent, and results predictable.

Most favorable results, both from the standpoint of economic efficiency, and the minimizing of corruption, are attained through competitive bidding of a larger number of bidders, under an assumption that they are qualified, or that they passed the test of capability, and dependability. The basic elements of such a competitive method are:

- public notice of the competition, with a call for participation,
- documents that should clearly state the kind of procurement, describe the competitive process, contain conditions of the contract and list the criteria for electing the winner,
- offers are forwarded in closed envelopes, which are opened at a previously known time and place, in the presence of representatives of bidders,
- an unbiased evaluation of bids is carried out by a competent person, without influences of bidders or other parties,
- contract is granted to the bidder, which meets all the conditions and has the best bid according to the previously published criteria.

Competitive procurement limits the power of government employees and in this way protects the state from corruption. Such procurement removes to the greatest possible extent discretionary decision making about the selection of the bidder and commodity, because it is based on the process of competition and establishing of clear procedures and criteria for selection.

The above-mentioned demands are best achieved by an open tender. Only in a certain class of procurement it is not possible or it is not advantageous

to use the full tender system. Instead either the limited tender or another technique of procurement is used.

Many multilateral and financial organizations develop and offer competitive methods of public procurement. The World Trade Organization encourages countries to use its rules, while the international development banks (World Bank, European Bank for Reconstruction and Development, ect) use (and condition) loans, which they give with following of those rules. Their goal is the most efficient use of loans, including the fight against corruption.

Since FRY became a member of the European Bank for Reconstruction and Development (EBRD) and since it already begun receiving credits from this institution, we will examine its rules, and note that they apply to both the projects fully financed by EBRD, and also projects it finances only partially. Simultaneously, this will be a good example of rules for public procurement.

EBRD asks from its clients that during public procurement they use an open, competitive tender. Only in special cases contracts can be made on the basis of a selective tender or on individual offers.

An open tender is a procedure that means 1) that all interested bidders be previously appropriately informed about demands of the future contract and 2) all bidders have an equal chance to submit an application and to win the competition. In this way the widest competition is secured, with positive effects on economy and efficiency.

The Bank does not even allow discrimination of participants in regards to the country of origin. All companies have a right to participate in tenders, regardless if they originate from Bank member countries or from other countries. The only condition for participation is the ability of the company to carry out the contract.

The EBRD reserves the right, in case of corruption, to reject the proposal of the project, discontinue payment of the installments of the credit if the recipient does not undertake prompt action and disqualifies from future tenders the companies that participated in corruption. At the same time, the Bank includes in its contracts a standard clause by which it reserves the right to send auditors to companies which were granted contracts for public procurement, which will examine their invoices and books.

Open tenders are mandatory for negotiating goods and services valued above 300 thousand Euros and for constructions valued above 5 million Euros. To discourage the tactic by which large procurements are divided into smaller ones, so to avoid open tenders, EBRD states in its rules: "no demand for procurement must be divided with an intent to decrease the value of the contract under the limit so that this rules be avoided". For procurement below these values the Bank "encourages" clients to continue to use open tenders, but they can use other procedures based on competition and transparency.

Standard procedure of competitive procurement include the following five steps: 1) informing those interested of the possibility to forward bids, 2) pre-qualification, when needed, 3) a call for bids and provision of tender documentation, 4) submission of bids, their assessment, and choosing the most favorable bidder, and 5) administration of the contract.

Informing about the future tender is aimed at offering a chance to interested parties to prepare well for the tender itself (agreement with

subcontractors, securing bank guarantees, ect.). The goal of the pre-qualification is securing of, especially in large and complex projects, bidders which are really capable to carry out the contract, and taking in account their experience, personnel and technical capabilities, and financial ability.

A selective tender, where state bodies previously conduct a selection of bidders and invite only them to offer bids, is possible in specific circumstances: when the product is highly specialized and very complex, when the list of possible suppliers is limited and when the acquisition is urgent. It is possible to put forward a bid by only one supplier, but only when dealing with additional procurement of a same commodity or service, when the product is exclusive and for standardization with the existing equipment.

The EBRD allows tenders for domestic manufacturers when dealing with a small value of procurement, when domestic prices are lower from international and when it is clear that foreign companies have no interest to participate in the tender. These tenders are carried out according to rules of open tender.

For goods of standard specification and small value, it is possible to use the method of common purchase on the market, which means acquiring of three bids with specified prices.

The procedure of public procurement that EBRD demands from its clients if based on the Agreement on Public Procurements, accepted by the World Trade Organization (WTO), where the formal acceptance of this agreement is not a condition for joining the WTO. Also, the World Bank prescribes similar procedures for projects it finances in full or partially.

Accepting of these or similar rules for organizing public procurement decreases room for discretionary decisions by state organs and their employees, and therefore the possibility of corruption, but does not ban it in full. There is always certain room for agreements and bribes, because the rules cannot foresee every situation, nor can discretionary decision-making be fully excluded. Best results are achieved by a coordinated effort aimed at corruption. Everyone must be aware that breaking of rules of public procurement represents a violation, which will be discovered and punished; there is a need for effective monitoring of the process of procurement from another body, made up from independent professionals; there is also a need for a subsequent audits of the process of procurement; an independent judiciary system is necessary, which will not be corrupted and which will unbiasedly assess eventual breaking of rules and pass punishment for the perpetrator; also decent salaries for government employees are needed, which will reward honesty and decrease the need for the practice of corruption.

Certain changes in the system of public procurements in Serbia took place during the past six months. Individual authorities are implementing competitive techniques of procurement at their own initiative, the best possible way they know. Usually bids are collected, which is a significant step forwards compared to the previous period, but is in no way enough, because it is the least transparent and least competitive method. Therefore, it is necessary to pass a law on public procurement, which would prescribe mandatory tender procurement and transparent procedures for all valuable acquisitions.

## PUBLIC ADMINISTRATION REFORM

Public administration must serve the citizens and the people, and not its own interests or interests of the ruling individuals and parties. For this reason it must support democratic values and principles established by the constitution, adhere to the highest ethical standards, provide services in an unbiased and just manner, efficiently use the available funds, encourage the participation of citizens in decision making, be subject to supervision, make its work transparent by providing correct and timely information, be professional and based on law, and have career advancement based on accomplishments and abilities.

Public administration must be to the highest degree depoliticized. The highest echelons of public administration will always be made up of the representatives of parties in power, but the rest, lower level officials, and ordinary employees, should be politically independent professionals. They should secure the continuity of the public administration, so it would not be undermined during every future change of government, and should collect and expand professional knowledge so they could do their job in the best way and advise politicians (ministers). Politicizing of the public administration opens the door for breaking of procedures and laws, and therefore to corruption.

Public administration must implement its discretionary power in a positive manner, which means to attain only those goals for which it is authorized, to be unbiased and to use only those factors which are relevant in a certain case, to respect the principle of equality before the law, to make decisions promptly and to respect general principles, but to have understanding for special situations.

When deciding on a certain case, public administration must adhere to valid procedure: to inform parties on the manner of decision making regarding the demand; to hear out the party and take under consideration its statement and fact it has brought forward; to make public the reasons why a certain decision was made; to inform the party on the appeal procedure against the decision. In general, the procedure of activities of the administration must be written in the law, and not arbitrary or left to the will of ministries or other state bodies.

An audit is necessary and in line with that precise implementation and adhering to the law on general administrative procedure and special administrative laws, especially in the field of taxes, customs, and internal affairs. The process includes internal administrative procedures, demanding that all procedures be saved in written or electronic form. Rules on informing on corruption (whistle blowing) are also needed, to encourage government employees to discover and turn in, in specific circumstances, the violations of their superiors.

A successful state anti-corruption policy of the government is made up of a combination of instruments and activities that are mutually consistent and correspond to circumstances in the administrative surrounding. All methods of prevention and control mechanisms should be organized in the framework of the current, economic, political, legal, organizational, and operative structures. In answering the current needs, these mechanisms should be planned and applied for future needs of a modern, society of

European orientation with efficient state mechanisms. Due to this it is necessary to have a well organized internal control of the administration and external supervision. Also there is a need for adequate leadership and management, based on international experience and standards. The legal framework is in the center of all anti-corruption strategies. Laws, especially the criminal law and the public administration law, define the basic standard of behavior and work of government employees. For this reason, detailed review of these documents is necessary to harmonize the system. Laws, rules, and regulations are implemented by the method of investigation and criminal prosecution. The review of the policy of implementation of laws is also necessary. The process of turning in and finding out, investigation, prosecution and punishing of bad behavior and corruption should be based on strict adherence to legal rules, which are in accord to determined European standards. Internal procedure is necessary to determine the facts, and not to take the place of the law.

The draft of the new criminal law introduces a number of new articles pertaining to corruption, misuse or pilfering of public funds from the budget, public procurement, privatization, corruption in the judiciary and public administration, corruption connected to lawyers practice, the system of medical protection, education, public information and mass media, and forging results in sport competitions. A group of articles of the law (articles 256-265) represents the current situation in the country, and not an adequate systemic answer to problems connected to corruption, bribery, and various opportunistic activities in public services. Unfortunately, draft criminal law leaves much unfinished. It seems a bit draconian, unbalanced, so it needs further elaboration and perpetuating. Legal instruments for stamping out corruption would have to be more encompassing, more systematic, mutually more strongly connected, directly regulating other problems also, like the conflict of interests and the like. Therefore, if the criminal law secures the protection in a way that is envisioned now, then a new law on corruption and conflict of interests is necessary. The new law would mark specific and incriminating procedures for the complete public service, but especially for higher government officials, public figures and managers of public services, when they act in the framework of the conflict of interests and other kinds of corruptionist behavior.

A new law on the performance of government employees, based on the experiences of other countries, should be passed. Besides passing of this law on performance, which would provide ethic guidelines for all government employees, the government should undertake measures for securing of synergy between a concept of public administration based on obedience and prescribed procedures and the concept based on ethic management and integrity. Therefore, to stamp out corruption, the government should focus not only on the strict respect for the letter of the law, but also on promoting of the law on performance, which provides the ethical bases for all state services.

It is necessary to understand the linkage between a) a strict, centralized public administration based on laws and obedience and 2) a public service based on process and integrity. On the other hand, the ethical framework, based on the hard to catch aspirations and encouragements in a developed, result-based model of public administration, represents the heart of

a modern public service. The state *imperium* is not a base for change – we must accept ethics, and not only secure the functioning of law.

Impartiality, professionalism, and integrity are basic values of all modern public administrations. This signifies equal access to public services, the protection of minorities, and equality before the law. Old values of the public administration (legality, discipline, and loyalty to work) should also be added to the new values (efficiency, transparency, and awareness for rights of citizens), which depict social demands, changes in expectations of the population, and changes of methods and techniques of public management.

Ethic law or law on performance. Taking into account the conditions in the country, a regulation on the behavior of government employees is necessary. It could be passed as a government decree. Forming of an ethic infrastructure demands constant effort in training, establishing of standards, and management of social institutions in an ethically focused administrative surrounding. A positive influence on the relationship between civil society and public services will rapidly be seen. Citizens trust public institutions and their founders when they see that the public services are used for the common good. In our situation, certain innovations would be necessary to construct an all-encompassing ethical framework. The decentralized organization of our society in the past century, could provide certain ideas, which represent tradition and are constructed in our memory.

Integrity, public administration without corruption and daily work of government employees based on ethics are essential for constructing of a modern, decentralized system which will create a personal identity for the lower levels of public institutions and strengthen the trust of citizens in those institutions.

Strong and unbending political determination of the present government is of vital importance. It should be made official and pursued by appropriate activities. Reform of the administration cannot be implemented without organized activities for stamping out corruption.

In our greatly secretive surrounding, strong support should be given to transparency. Several key measures are necessary:

- all activities by government employees should be based on rules and reasons for making a decision, except in certain strictly limited cases when a discretionary right is allowed, for reasons of protection. Authority and scope for the use of discretionary right should be brought to a minimum, because it could provide fertile ground for corruption;
- it is necessary to make possible administrative correction of the majority of decisions, which could be accomplished by adequate decentralization;
- determine standards for administrative time limits;
- obtain a legal and organizational procedure, which secures access by media to the activities and results of the work of the administration.

An all-encompassing anti-corruption strategy followed by an action plan should be developed, with the participation of the central (state) bodies. They are the Ministry of Internal Affairs, Ministry of External Affairs, Ministry of Justice, Ministry of Finance, Ministry for Foreign Economic Relations, and the Federal Customs Service. The process of implementa-

tion should include good communication, training, and mastering of the anti-corruption strategy.

An adequate training plan with specialized programs for government employees on all levels and in all sectors is an important element of the reform of public administration, as is the strategy for fighting corruption.

Employment of new employees should be regulated to accomplish equality. Yet, it should be selective in certain sectors. The process of orientation for a new job of these beginners should include the basic mandatory training in ethics, law on good behaviour, and anti-corruption. A comprehensive training program and an adequate educational program should be constructed for government bodies and agencies susceptible to corruption. Specialized and intensive training is necessary for organs included in activities of fighting against corruption, as are the police, judiciary, and defense force.

The selection based on clean criminal records would precede employment in certain government agencies. Then a comprehensive training should be secured for especially sensitive services like: tax administration, customs service, public procurement, public investments, and services for cooperation and trade with foreign companies in the state owned or controlled companies.

Liability mechanisms should be regulated by law and fully transparent. Corruption should be easy to identify. The legal framework for accountability is necessary, so that it could represent a framework for the activity of all public services, determine the results of the anti-corruption effort, and secure the implementation of the appropriate legal proceedings.

A Parliamentary anti-corruption committee should be formed, and it should be authorized to appoint ad hoc working groups for battling corruption in certain sectors. The committee would undertake its activities either independently or in support to activities of other executive bodies.

Combining of procedures is necessary having in mind the general surrounding of public services. The anti-corruption strategy on the state level should also include the potentials of certain non-government organizations (NGOs) and trade unions. Cooperation of the government, NGOs, and unions would secure strong joint action, attaining of quality, learning from comparative experiences of other countries, and would accelerate the implementation of measures for fighting corruption.

The new law should also require that all higher-level government employees register their material status, income, real estate, and business capital.

The need exists for development of a thorough detailed and comprehensive administrative and oversight procedure, which would identify responsible personnel to discover substandard behavior, and initiate preventive and penal procedures.

Reform of public administration should be implemented on the bases of experience of other countries with developed system for fighting corruption. Therefore, all the active and passive forms of corruption should be declared criminal offences. Additionally, all other forms of corruption, like direct and indirect corruption and in some cases attempted corruption, should also be declared criminal offences. The new law should secure appropriate regulations.

The results of the work of internal control auditors inside ministries, sections, and other organizations should be available to the public. The procedures, which make possible this process, should be included in and protected by law.

Independent and detailed examination of activities of the public administration on all levels must be institutionalized in several ways. In addition to the parliamentary commission, it is necessary to have external, independent checking of accounts, to be carried out by a best audit agency and the ombudsman. The jurisdictions of both institutions have to be expanded to the complete public administration. At least once a year results of an independent audit and ombudsman should be published.

A full analysis should be undertaken of the failures, criminal trends, and unethical behavior of the previous regime. An anti-corruption program should be launched after the completion of this analysis. This program should be suitable for rapid action and be merciless: if all main types of corruption are not identified, causes and results studied, and sanctions determined and implemented, then the anti-corruption strategy cannot be successful.

It is necessary to determine a central institution to coordinate the implementation of measures connected with corruption, based on a harmonized legal framework, and provide guidelines, on the national level, and for the development of a policy of prevention in all bodies and organizations of public administration.

It is also necessary to include all of the relevant non government and other organizations of civil society in preparations of the appropriate policies and building of public consensus on prevention of corruption and the strategy of repressive action on the central and local level, and if needed also on the level of individual organizations.

There is a need for establishing a Public Administration Institute. Education, which increases knowledge and develops skills in public administration, is the basic element of the strategy of the reform of public administration. New skills should be developed to achieve essential changes and changes of behavior. The anti-corruption strategy needs a careful, coordinated, centralized, standardized, and specialized system for the immediate, effective formation of skills and knowledge. This would greatly strengthen the government in its activities in implementation of the anti-corruption strategy. Additionally this would aid ministries and other agencies in envisioning and implementing a new policy of fighting against corruption. The Institute would develop an educational plan for the complete public sector, including in it elements of the anti-corruption training program, based on similar programs of other countries. The Public Administration Institute would also be in a position to develop various specific, educational programs, based on international experiences and adapted to the needs of certain institutions.

**In the police** of Serbia it is necessary to cleanse the MUP workforce by separating from service those policeman who have engaged in crime and corruption. Their place is no longer in an institution whose task is fighting crime and corruption. The courts are the place for those for whom corruption can be proven. This would give a strong and convincing signal to others that corruption does not pay, or that the leadership of the police force has seriously decided to stamp out corruption.

It is necessary to additionally develop the system of internal, disciplinary control, which in the past, if it was used, could have given better results. In the long run, it would be more advantageous to transform the existing system of internal control into a special organizational unit inside of MUP (“police within the police”), which would exclusively deal with discovering illegal activities of members of MUP.

In this domain a great barrier to discovering and stamping out corruption represents the so called *code of silence*, or professional solidarity and the unwritten rule that a colleague is not to be turned in for a disciplinary violation or criminal act, and that testimony is not to be given against him.

For fighting corruption in the police force it is necessary to activate the existing mechanisms of external control and establish certain new forms of civil control, like the ombudsman. Serbia should introduce this institution and within its framework one ombudsman should be responsible exclusively for the police.

One of the means for fighting against corruption is the so-called codex of police ethics passed by the UN, and then by a number of countries (Canada, France, England and Wales, Slovenia, ect).

It is necessary to improve methods and program contents of institutions for education of policemen. Even Archibald Raise pointed out that educating a policeman should be “more careful than with others”, because their responsibility is greater, their profession is “difficult, delicate, and often dangerous”, so a policeman cannot be “be created quickly”.

Of the utmost importance for preventing and stamping out corruption in the police force is the existence of political will to do so. Without it, even if specific action is initiated, real success cannot be expected. The battle against corruption can be won only if the leaders and government have the will to undertake political risk to make a break with the past and to build institutions through which a modern economy with a free market can be developed.

The joining of Yugoslavia in the international anti-corruption programs will surely benefit the stamping out of corruption, which is in great part present in organized crime, both transnational and national. Corruption stimulates organized crime and represents its second phase.

**In health care** a number of measures need to be implemented similar to those in other fields of public administration and domains of the society, but also a number of measures specific for health care.

In addition to escalating punitive measures, to decrease the level of corruption in health care it is necessary to reform the system of health insurance and health protection, so as to change the character of this discipline towards competition. For health care to function in an unobstructed way, it is necessary to decrease the role of the state and encourage competition. The role of the state would be brought down to regulating of this domain and monitoring of implementation of legal regulations. The state would determine the rules of the game by passing a law on health insurance and health protection. The job of the state is to be an unbiased arbitrator who will demand that all actors follow the rules, and not favor certain participants, as it does today. For competition in the health care market however it is necessary for the health insurance funds to be independent financial institutions, in which their assemblies will name executive councils, make

decisions on the amount of the insurance premiums and levels of benefits in respect of the chosen insurance plan. It is also necessary to establish competition between state medical institutions, as well as between the private and state medical sectors. Also, by changing the way of paying a medical staff, those employed in medical institutions would be encouraged towards competition. In this way conditions are formed so that medical staff be motivated for higher quality, and therefore economically more profitable work. Their salaries would not be fixed, but would depend on real expertise and quality of work.

A medical practitioner is the one who has to provide support to the patient, to heal in accord with the medical doctrine, to demonstrate real care for the process of medical attention. A patient has to trust the doctor. This establishes in full an ethical relation between a doctor and a patient. Not everyone can answer the demands that arise from practicing medicine. For this reason it is necessary, as one of the basic criteria in the selection of medical students, to establish the psychological ability, or the strength of moral character, the readiness to be deprived of many things, and dedication to work.

Passing of ethic codes should confirm what a medical worker must do, and what he must not do under any conditions, without previously selecting those who practice medicine will not give positive results in a fight not only against corruption, but also against unskilled medical practice.

## INDEPENDENT ANTI-CORRUPTION INSTITUTIONS

In addition to the state bodies which regularly, in accordance with their functions deal with corruption, like police and the judiciary, it is necessary to establish new bodies, which will in a specialized way deal with this problem. The reason for establishing new bodies is to be found in the lack of sufficient readiness of the regular ones to successfully deal with corruption, which is the result of either 1) their lack of ability and training for a conflict with ever more sophisticated corruption or 2) their participation in corruption. The second reason is dominant in Serbia, although the first one has significant influence, too. In such a situation it is good to form new bodies, with clean records and equipped with specialized knowledge and abilities.

### Agency

Many countries have, in recent years, formed anti-corruption agencies or commissions, seeking new ways to stand up to corruption. Success was partial, and failures occurred when agencies (commissions) were badly organized and/or when the reasons for their formation were mostly promotional.

The basic question during the establishment of an anti-corruption agency is how to secure its independence from politics, or from political factors, which can be part of the circle of corruption. Full independence is, of course, not possible, because someone has to establish it, prescribe the rules of operation, finance, and control its work. For the success of the agency it is good if it is linked to an influential individual (president or

prime minister) who is dedicated to fighting corruption, but, at the same time, this is also a danger because someone else can take his post, someone less agile, or someone corruptible. Then the agency can be used as a tool against political opponents or even, as a mean for coercion and corruption. Therefore, the anti-corruption agency should be linked to the Assembly of Serbia, and its activity subject to oversight of higher courts. A positive circumstance for the establishing of such an agency in Serbia today is the fact that no party has the control of the assembly, so no one is in a position to name an obedient party worker to head the agency, which would automatically lead to its discreditation.

The next important issue is the authority of the agency. It can be educational-preventive and/or investigative. It is the best if it has both, according to the Hong Kong model. The investigative function means the right to have access to documentation and a right to question witnesses.

For the agency to be successful in its work, it is necessary to secure strong political support, or independence so it can investigate activities in the highest levels of power, sufficient resources, and the necessary process rights.

Similar units should be established in those branches of public administration, which are prone to corruption or are already corroded by corruption. Their independence would be less from the independence of the main agency, but it is still possible, if there is good will by the appropriate minister and the corresponding influence of the main agency, that they play a positive role in resisting corruption in the public administration.

### **Main Control**

The executive branch of government, which is usually under the strongest corruptionist pressure, and has the greatest potential to engage in corruption, needs external oversight. The assembly has the authority, but the representatives are usually not competent enough for this task and the executive branch, on the basis of its better access to information and greater knowledge, could mislead the assembly. For this reason the assembly needs a body that will permanently deal with state income and expenditures and carry out their audit. The state budget is an overly important thing in every country for its spending to be left to the honesty of the government and its employees. Due to this in many countries such a body was formed, independent of the government and with a primary function to supervise the spending of budget funds, not only of the central, but also of local authorities, and state companies.

This body could be called the Main Control, according to an old Serbian institution formed almost a century and a half ago. The election of the Main Controller, as the head of the Main Control, would take place at the assembly, which would decide on funds needed for the functioning of the Main Control. In addition to controlling of spending of budget and other state funds, it could also be the budget court, a very useful expert-analytical organ of the state, and the like.

To safeguard the independence and secure the efficiency of the Main Control, it should have a legal base in the constitution and laws, and possess functional, organizational, and financial independence, have process

rights and sufficient resources to audit all state accounts, and to freely make known its findings to the assembly and the public and use international standards for audit.

## **Ombudsman**

The new government of Serbia has indicated the introduction of the institution of ombudsman for several reasons, but its role in fighting corruption can be significant.

The ombudsman is a protector of the people, he is contacted by citizens with a complaint on the work of the state administration or other institutions when they are not working like they should, when regular ways in attaining of a certain right or obstructing or violating of a right and justice were shown to be slow or impassible. The ombudsman investigates decisions, which are against the law, other rules and regulations, and not in line with customary procedure; decisions that are biased, unjust or discriminating; not passing of needed decisions, delays, lack of attention, incompetence and inefficiency in the work of the administration. It has the access to government documents, so it can investigate the complaints. The ombudsman does not undertake typical investigative or prosecution activities, but attempts to examine the mistakes of the administration so that they can be corrected.

The ombudsman must be fully independent, especially from the official authorities, so that it could be successful and that citizens would trust it. The trust of citizens is the basic condition for the success of the ombudsman.

## **ACTION PLAN**

A successful struggle against corruption demands a comprehensive approach, consistency, and permanence of action and strength in implementation, based on previously determined responsibilities and rules. Basic elements of an anti-corruption program are:

- 1. Resolve:** the basic precondition for fighting corruption is the resolve of political leadership of the country and all of subordinated bodies and their clear determination to fight corruption, based on the awareness of negative influences of corruption on the efficiency and integrity of the work of the public administration, and therefore on economic, social, and political life;
- 2. Responsibility of the Assembly of Serbia:** the Assembly of Serbia, as an expression of the public will and sovereignty, represents the basic barrier to corruption and the most important factor in the fight for good management and against corruption; its two key functions are the legislative and supervision of the work of the executive branch;
- 3. Responsibility of the Government:** the operational fight against corruption is the responsibility of the Government of the Republic of Serbia, and the federal government in the domain of its authority, and they have to designate the fight against corruption as one of their priorities, to conduct it permanently both through the state institutions, and also by proposing institutional reforms;

4. **Break with the past:** that the government investigates all important, known and unknown corruption affairs from the previous period, so that perpetrators would be punished and thus give a strong signal to all potential violators;
5. **Transparency:** make the work of all state organs and individuals maximally transparent and public, by way of the presence of media on sessions, publication of reports on the work of state bodies and the like;
6. **Accountability:** secure the accountability and responsibility of everyone in the public administration, from the government and other state bodies, through parties and political leaders up to every public employee;
7. **Decreasing of discretionary decision making:** execute maximum deregulation of rules, wherever possible, so to decrease the discretionary rights of the public administration and reduce the potential field of corruption;
8. **Legal regulation:** pass anti-corruption legislation and supplement the criminal legislation, so that corruptionist activity and attempted and prepared corruption are precisely sanctioned;
9. **Public procurement:** pass a law on public procurement, based on competitive methods (tenders, auctions, ect.), which would pertain to all institutions financed from the budget and state funds, and for state companies;
10. **Independent central body of control:** establish the Main Control, an independent body linked exclusively to the Assembly of Serbia, which would supervise and audit the financial transactions of all budgets and public companies, and conduct other related tasks; investigating and punishment would be independent from the Government and subject to public inspection;
11. **Anti-corruption agency:** at the Assembly of Serbia form a specialized anti-corruption organ, which will lead and coordinate the fight against corruption;
12. **Other anti-corruption bodies:** in certain branches of the public administration to form a special anti-corruption bodies, in the police, customs, tax administration, health care, etc.,
13. **Reform of administration:** reform the public administration, based on new laws on public administration and on administrative procedure;
14. **Change the personnel:** replace one part of government employees, especially in sensitive services (customs, police, judiciary, administration, ect.),
15. **Reform the judiciary:** reform the judiciary towards greater independence from the executive branch and political parties and leaders,
16. **Reform the police:** strengthen internal control, special training, ethical standards,
17. **International law:** join the Convention Against Bribery of the OECD from 1997;
18. **International cooperation:** secure the cooperation of state and other institutions and organizations of the civil society with international partners during the struggle against corruption,

19. **Education:** long term and short term activities of training of specialized services, government employees and citizens about the causes, harmful effects, and methods for fighting corruption; introduction of certain contents in educational programs in schools;
20. **Ethic standards:** developing of ethical standards of good behavior and incorporating them in the legislation,
21. **Independent media:** independent media play an important role in forming of anti-corruptionist pressure on government officials and represents the best actor for developing the awareness about the kinds, scope, and harmful effects of corruption; it is possible to organize media campaigns, specialized programs, documentary series about the phenomenon of corruption in the society; reports on activities of competent organs, finding of investigations, etc.
22. **Promotion activities and field campaigns:** for the promotion of the fight against corruption (posters in critical institutions, badges with appropriate messages, flyers and other propaganda material; “the anti-corruption week”, and the like;
23. **Research activity:** promotion of continued research and expert activities on the problem of corruption, symposiums, meetings, publications, and the like; a special role for empirical determining of progress in fighting corruption by periodic public opinion polls.