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Serbian Anti-Corruption Policy. Welcome to Potemkin's Village?

Abstract *Law enforcement in Serbia concerning the offence of corruption is similar to a camera obscura: opacity prevails. This does not instil much trust in the population: surveys carried out by or on behalf of the UN reveal that only politicians and doctors are more distrusted than judges and prosecutors. Corruption is a very underreported offence, as victims have the feeling that the authorities do not care about corruption: why report?*

An extensive statistical analysis of corruption cases handled by the prosecution and the court showed that the camera obscura metaphor had to be refined: apart from being opaque, the law enforcement institutions behave like a random box. Neither in the prosecution service nor in the courts could a policy be discerned. The outcome of the judicial system in terms of prosecution and sentencing appeared to be statistically at random.

A qualitative analysis of the most serious corruption cases demonstrated to what extent these cases occurred in all layers of society. In such cases the government was non-responsive to complaints of its own institutions. Also in other matters the authorities demonstrated a lot of foot dragging. Despite the anti-corruption strategies one may wonder whether the government really cares.

Keywords *Corruption, Law Enforcement in Serbia, Anti-corruption Strategies, Public Policy.*

Corruption: a matter of general concern?

Surveying the numerous reports, memos and papers on corruption in Europe, one cannot escape the impression that it is a matter of real concern of all, whether institutions, the business community or the citizens. At present this is reflected in the National Integrity System assessments that is carried out in the EU, supported by the EU and coordinated by Transparency International in Berlin. Given this generally shared attitude one would expect a Europe-wide approach to this phenomenon. However, this appears to be too optimistic. As a matter of fact, given the fact that corruption is to a large extent (also) a political concern, political opportunism always slips in. While the European Union first allowed two highly corrupt countries, Romania (Nicolae 2013; Transparency International 2011) and Bulgaria (Pashev *et al*. 2007;

European Commission 2012), to enter the Union, and only then took severe measures against corruption in these countries, it turned a blind eye on corruption in Greece and Italy. The case of Italy hardly needs much illustration: for almost two decades the EU heads of governments and states were resigned to the presence of a(n allegedly) corrupt Prime Minister amidst their ranks. No token of concern was expressed though Italian corruption is very well documented while 'innocent until proven guilty' meant that in Italy the prime-minister could orchestrate his own innocence through an equally corrupt Parliament (Stille 2007). Given the blatant openness of Italian corruption, this indifference on the part of EU officials is all the more blameworthy. Does this also apply to Greece? Politically high-level corruption cases have come to light in the country, but systematic literature or research is very scarce. No general concern was expressed, until it was shown that Greece defrauded its national financial statistics, right 'under the nose' of Eurostat. Only then was Greece's rampant corruption and nepotism brought to the open.

What sparked the concern for corruption in these countries were the enormous financial risks which emerged and not the immorality of corruption itself. The same applies to Bulgaria and to a lesser extent Romania: (fear of) embezzlement evoked action from 'Brussels'. These observations shed doubt on the claim that corruption is a concern of us all: it is subjected to opportunistic political considerations instead of a genuine worry.

The EU gives important consideration to corruption in countries which want to join the EU. At the moment these are the countries of the western Balkan, the largest of them being Serbia. There are other concerns about this country, one of them about the relationship with the new state of Kosovo, the other being corruption, which is raised as a matter of great concern to the EU. However, where the previous passage cast doubt on the degree to which this is a genuine worry internationally, the same question has to be raised at national and local level: the daily level of policy makers and citizens. The relevance of this question is based on the plausible assumption that if anything is to be changed, it must find roots in the life and feelings of the common people. If it is not their concern, why should policy makers and politicians care? True, there is external pressure from 'Brussels' which matters, but only as external motivation. The internal motivation must come from the people: they can either be resigned to corruption, be part of it, or make their dissatisfaction known, for example during elections, assuming that there are

non-corrupt political alternatives. Few Serbian citizens think so: opinion surveys show that 77% of the respondents consider the political parties corrupt (UNODC 2011). This lack of trust is a recurrent observation over the past decade (Vuković 2002): in the perception of the people little has changed. Against this background Van Duyne and Stocco (2012) raised the question: "who cares about corruption?"

This paper will first address this question: "Who cares". Then the subject itself must be described: corruption, to the extent it was brought to light, and the way it has been handled by the institutions of law enforcement. Then we will return to the initial "who cares" question by comparing intentions, pretensions and reality.

After Milošević: a decade of hope, deception and indifference

The era of Milošević was one of decay and cynicism. The economy of Serbia was ruined, not only by the sanctions, but by a government under whose leader the economy was 'criminalised'. Interaction or even complicity of authorities with criminal organisations were hardly veiled (Logonder 2008). Corruption, nepotism and misappropriation of state funds were rampant while the population became impoverished (Pesić 2007; Begović and Mijatović 2007).

After the fall of Milošević, in 2000, there was new hope of a return to the 'rule of law': justice without corruption. People began to turn against the 'ugly face of corruption' and launched complaints against all kinds of corruption (Van Duyne *et al.*, 2010), covering all kinds of *abuse of office* as well as nepotism: for example against the judiciary, privatisation agencies, utility companies or the health service (Begović *et al.* 2007). Did this herald a reform movement against a general corrupt governance?

The picture is very ambivalent.Weighing progress and stagnation, the scales tip towards the latter. At the beginning this did not look so. There was improvement of some indices, however imprecise these were. These concern the World Bank rating of control of corruption in Serbia (since 2000) as well as the Corruption Perception Index (since 2003) (Sadiku 2010). Indeed, there was optimism in the air, if not a '*post-October euphoria*' as Begović et al. (2007) called it. Anti-corruption legislation was extended and various organs, such as the Anti Corruption Council (Oct. 2001), mobile anti-corruption teams were established and the role

of the state in the market was reduced, which also lowered its corruption potential. The perception of the prevalence of corruption became slightly more favourable. However, this did not last. Later Begović *et al.* (Begović *et al.* 2007) observed a waning of the anti-corruption spirit.

This is understandable as behind the stage decors of the reform much remained the same. The reformist premier Đinđić is said to have moved too fast to the taste of many and was killed by members of Belgrade organised crime, in 2003. Still, also under Đinđić, rich criminals were well served: 2001, the Extra Profit Tax legalised with one stroke of the pen, much crime-money by simply taxing (and effectively pardoning) those who had taken advantage of the corruptive previous regime. This did not eliminate the need for money-laundering, which continued unabated, irrespective of the Serbian Financial Intelligence Unit which proved little effective (Van Duyne and Stefano 2008). Public institutions continued to perform badly, whether for entrepreneurs or the 'sick and needy', creating a demand to buy those services that were delayed unreasonably or even denied. According to an early research, 89% of the entrepreneurs bought services from corrupt civil servants, acting as if they were the 'rightful owners' of their position, sometimes 'by heritage' from parents or other relatives (Vuković 2002).

On the other hand, foreign (EU) pressure contributed to a modest and steady progress, in particular in legislation and the establishment of institutions. As paper will not blush, much remained on paper: throughout the past decade and up until now, the laws have been fine but the implementation remains defective. Whether it concerned the National Anti-corruption Strategy, the Government Audit Institution or the Anti-corruption Agency, every development looks like a hurdle race, but then in slow motion. Or was it mainly a *Potemkin Village*-like acting? Or perhaps a bit of improvement and a bit of acting and pretending at the same time? I think that this is the most plausible interpretation, given the lower corruption perception data in the middle of the previous decade (Begović 2007 figure 7). At the political level, there was still stagnation in the fight against corruption, which is understandable if Pesić's (Pesić 2007) description of Serbia as a 'feudalistic state' is correct. In such a state political bosses act like medieval lords, bestowing favours (positions) to their political retainers. Likewise, in Serbia the political leadership grabbed the state as a property, divided it into 'fiefs' which were bestowed on followers as vassals. Small wonder that with so many broadly shared interests at stake, progress was smothered behind

the settings of laws and institutions. The latter proved to be ineffective, not only against political corruption, but also the lower level 'executive' corruption: bribery in the form of the selling medical services, school or university diplomas, or buying off traffic fines.

There are various interpretative models for corrupt behaviour. The more rational economic approach of the '*principal-agent*' model is attractive, but does not fully take account of the normative environment and irrationality (Jager 2004). The *decision making* approach of Van Duyne (Van Duyne 2001) is more cognitive-psychological but seems to be more relevant for corruption at managerial than at lower, executive levels. As a matter of fact, these are not competing models: while the agent (policeman) may have opportunities to grab some change, decision makers violate the integrity of decision making within a whole organisation.

From the decision making perspective, the anti-corruption policy in Serbia shows a faltering course: a mixture of some progress and much stagnation (Freedom House Report Serbia 2009), does not reflect much enthusiasm for fighting corruption, as observed by Trivunović *et al.* (Trivunović *et al.* 2007: 73). The authors remark with clear disappointment that "*there is little interest, both within the government, but also civil society in participating* [in the fight against corruption] . . . *let someone else do it.*"

With disappointment came indifference. Research on corruption disappeared from the Serbian academic radar: there were (and are) no funds nor interest. As one respondent conveyed to me: "*Corruption is no longer a sexy subject for my students. They do not care.*" Indeed, who cares about things which are not sexy?

We are not short of solemn official proclamations of how seriously the authorities take the issue of corruption. This chapter will investigate this claim later by comparing it with the latest research findings. For the moment it is informative to juxtapose this claim with the outcomes from opinion surveys discussed below. Of these the most important findings concern the *seriousness* ratings and the *own experience*.

– *Seriousness*

  Do the people think corruption is the most important problem of the country? No. In all the opinion surveys corruption as 'most important problem of the country' ended in *third* place. That was the case in 2001, 2006 (Begović *et al.* 2007) and with

the recent surveys carried out in the *TNS-Medium Gallup* and *UNDP* project (*TNS-Medium Gallup* and *UNDP* 2010), by Transparency International or UNODC. While poverty and unemployment, respectively, were rated by 20-30% of the respondents as the 'most serious' problem in the country, corruption achieved a rating of 9-18% with only in the UNODC survey exceeding the 10%-mark). In the 2001 and 2006 surveys the seriousness rating remained at 10%, while in 2006 only 5% thought it a problem experienced personally.

– *Own experience*

The above mentioned surveys also asked about personal experience, broadly formulated as "did you or someone of your household pay a bribe in the past . . . ." Depending on the project the period was set at 3 or 12 months. Alternatively, the score was related as percentage of the *real contacts* with civil servants. This method is realistic: more contacts, more exposure. While in the former method the direct and indirect experience approached 20%, relating the experience to the frequency of real contacts resulted in a lower figure of 8%. This does not mean that the other figures are wrong, but that other denominators were used.

Summary: a sizeable part of the population has personal experience with corruption, which they may consider as a nuisance, but not as the most prominent problem for themselves or society in general. But how bad is that experience? When bribes are not extorted, it is a voluntary barter transaction: indeed, 85% of 'own experience' respondents admitted to have taken the initiative, for example to get the desired medical treatment or to avoid problems with the police (TNS-Medium Gallup and UNDCP 2011).

Hence, many 'do it' – and as initiators! This must be weighed against statements of disapproval or resentment. To what extent do these statements reflect political correctness? This is important, because it is difficult to pursue an anti-corruption policy which is mainly based on political correctness. We meet here an ambivalent situation. On one side of the balance we have the political correctness: 'corruption is bad' and police, prosecution and courts should do something about it. On the other side it appears that citizens think these branches of law enforcement too corrupt to handle corruption cases: the perception of the morality of the legal professions is very low (only politicians and

doctors are less trusted). This is an enduring phenomenon reflecting a deeply rooted reputation problem (Begović *et al*., 2004; chapter IV; Trivunović *et al.* 2007: 21). This perception itself reinforces the attitude of the citizens concerning reported cases to the police: of the bribe payers 35% thought reporting to the police pointless: "*Nobody would car*e" (UNODC report, figure 22; p. 32). Perception creates reality which again reinforces perception. "*Many do it and few care*." This reflects the major obstacle of the past decade: indifference, displayed either openly or behind the stage settings of law and institutions.

Black box conception of the law enforcement

The previous section outlined a decade of expectations sliding down to indifference as far as the citizens are concerned. During the same decade a corruption policy has been formulated, related laws have been enacted and institutions established (e.g. Anti Corruption Council; Ombudsman; Board for Freedom of information of public interest), with the Anti-Corruption Agency as the last 'acquisition'. If all these measures and institutions are effective these constitute important developments, though they fail to impress the population as is shown in the opinion surveys presented in the previous section. Of importance are also the institutions of law enforcement, functioning as the '*ultimum remedium*' in the whole anti-corruption strategy. As a matter of fact, little is known about the functioning of the 'rule of law', except that in all opinion surveys the related institutions end invariably in 'the top five of distrust'. But these are no substitutes for a proper evaluation: they are subjective ratings and do not inform us about the real functioning of the law enforcement agencies, as far as it concerns tackling corruption.

This chapter will focus on the criminal law enforcement by the prosecution and the courts. Though we intended to involve the police too, the Ministry of Interior has such a 'byzantine' procedure that this intention was effectively blocked. As the Anti-Corruption Agency has a monitoring function in the implementation of the Anti-Corruption Strategy, also concerning criminal law enforcement, the chapter will also relate the Agency's findings in this field.

With so little knowledge it is difficult to formulate hypotheses about the functioning of law enforcement, let alone carry out meaningful tests. Even with the beginning of insight from our first OSCE supported research project (Van Duyne *et al.* 2010), the institutions of prosecution

and the judiciary are still a kind of *black box*. That may not look positive, though in experimental psychology it is a neutral concept used to denote the 'mind' which is closed to direct observations and therefore a 'black box'. All we can do is to observe what kind of stimuli are exerted upon someone (input) and what kind of conduct comes next (output). In between we must speculate about inner mechanisms. The same approach can be used to address the prosecution and courts embedded in a surrounding anti-corruption strategy. It is plausible to expect that this strategy exerts stimuli on the law enforcement and that as a consequence, there is a related output, consisting of prosecutions, verdicts and sentences. Of course, this output will be related to a description of the input of cases, which in its turn should be a function of the surrounding strategy.

Method of research

As remarked in the previous section, there is not much research tradition in this field in Serbia. Apart from the OSCE-project, there have been no research projects of any significance since 2006/7. In a country, generally characterised by opaqueness, when it comes to corruption one has to throw a wide net in a muddy pool and fish up bits and pieces of empirical evidence. In a way, the methodology is itself a kind of anthropological finding, which tells us about the corruption attitude of the people we addressed.

Given the state of the knowledge and the data management in the country, we had to knock on the doors of many institutions. Could their reactions be considered as a kind of attitude measurement? I think this is permissible with institutions and functionaries having a direct responsibility for the corruption policy. Can one scale this attitude? That would be too intuitive and a bit of 'wisdom by hindsight'. Lining up the addressed institutions we get the following:

- *Ministry of Interior*, essential for getting cooperation with the police: failed. To obtain a few obsolete and useless data the research team was sucked into a bizarre correspondence even involving the Dutch embassy;
- *Ministry of Justice*, important for obtaining access to the Republic Public Prosecution Offices (RPPO). The addressed persons, whether high-up or not, did not respond to our requests. The Minister is the national anti-corruption coordinator.

- The Republic Prosecution Office, *Anti-Corruption Department*: should have about 2.200 cases archived for inspection and coordination, but denied the possession of any data, except annual frequencies which do not match with any other data. Letters with requests, delivered in person, were not responded to.
- The *Anti-Corruption Agency*: the staff showed no interest in data or research, even if it has a *monitoring and coordinating task* (art. 66 Act on the Anti Corruption Agency). How this task is carried out without data is a mystery.

These are central organs, tasked with coordination and having as their mission to "*inform the general public*", as a glossy booklet of the Republic Public Prosecution states (The Republic Prosecutor's Office 2011). However, no trace of task fulfilment could be identified. Searching the websites of the ministries and RPPO with 'corruption' and all the synonym search words only produced blanks: no public informed and no evidence of coordination.

The following organisations displayed more responsiveness and cooperation:

- The *Anti-Corruption Council*, which is a governmental advice body, but acting independently. The ACC collects and investigates cases with a team of experts. If its findings are relevant for further criminal investigation, it passes the case to the RPPO, which rarely responds. It also advises the government, which never replies (ACC 2011). We obtained full insight into the cases processed by the ACC.
- The *Special Prosecutor for Organised crime*, also competent for serious corruption cases provided us with the indictments of all 26 corruption cases.
- The *Courts*: the First Basic Court and the Belgrade Higher Court allowed us to study 65 verdicts, from which we selected 31. The Second Basic Court denied having any corruption cases, though from the database of the Statistical Office we could extract 109 processed by this court.

The *Statistical Office of the Republic of Serbia* cooperated fully by providing us with the raw databases for the years 2007-2009. From these databases we omitted the records of *un*known perpetrators. The remainder was converted into an SPSS database. The databases of the

Prosecution Offices and the Courts could not be integrated as their input format is different, excluding a fusion. The relevant offences were the articles 359-369 from the chapter "Criminal offences against official duty" which is a broader concept than corruption itself. These offences can be considered as an equivalent of 'violations of integrity in office'. There is no official definition: only two articles (367 and 368) deal with 'hard core' corruption in the meaning of giving and receiving bribes. As otherwise all relevant policy papers in Serbia, the EU and OSCE use the term 'corruption' in a generic meaning, I adopted that term in the analyses presented in the following sections.

Because of the low frequencies, the data from the Basic Courts had to be put together according to the District Court to which they belong. They will be called 'Court Regions'. There is no separate appeal database available.

Results: from black box to random box

From the perspective outlined above this chapter will first give a general overview of the past decade concerning the reported cases of 'crimes against official duty' and the decisions of the Prosecution and the Courts as presented in Table 1 and Figure 1.

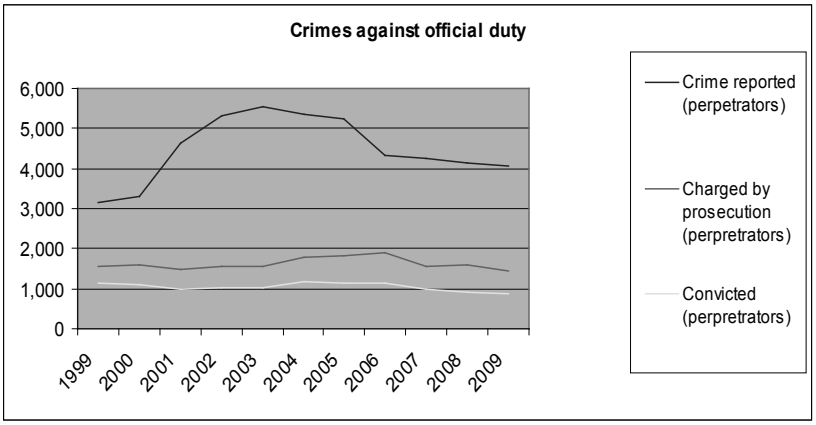
Table 1: Crimes against official duty: reported offenders, charged and convicted 1998-2009

	OFFENDERS			%		
YEAR	REPORTED	CHARGED	CONVICTED	CHARGED/ REPORTED	CONVICTED/ CHARGED	CONVICTED/ REPORTED
1998	4.303	1.860	1.242	43	67	29
1999	3.169	1.566	1.133	49	72	36
2000	3.312	1.583	1.101	48	70	33
2001	4.640	1.473	983	32	67	21
2002	5.312	1.553	1.031	29	66	21
2003	5.535	1.566	1.038	28	66	19
2004	5.356	1.796	1.170	33	65	22
2005	5.253	1.839	1.126	35	61	21

	OFFENDERS			%		
YEAR	REPORTED	CHARGED	CONVICTED	CHARGED/ REPORTED	CONVICTED/ CHARGED	CONVICTED/ REPORTED
2006	4.343	1.896	1.147	44	60	26
2007	4.244	1.564	994	37	64	23
2008	4.114	1.661	1.079	38	58	22
2009	3.980	1.833	878	46	48	22
Average	4.463	1.683	1.076	37	64	24

Source: Statistical Yearbook 2010

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



Do these figures tell us something about what happened in society and within law enforcement? Let us follow the timeline. With the regime change in 2000 we also see a change in reporting conduct: the frequency of reported offences rose steeply, till 2003. After the murder of Đinđić in that year the curve slides down steadily. In 2005/6 even markedly, corresponding with the growing disappointment (Begović 2007). And what happened with the Prosecution and the Courts? Almost nothing: a virtual flat line suggesting a non-responding black box. Of course, these numbers must be related to the total number of reported crimes, for which we only have the years 2006–2009. For these years the percentage

of crimes against official duty went gradually down from 6,8% in 2006 to 6,1% in 2009.

These are aggregate figures which may veil local differences between the Prosecution and the Courts. These will now be discussed in two sections.

a. The prosecution offices

Table 2 (below) shows the input of corruption reports, broken down by district. Differences between the districts are clearly present, though very unsystematically: at the low end of the range we find Pančevo (2,8%), Subotica (2,9%), Zrenjanin (3%) and Belgrade (3,5%). At the high end we have Vranje (11,4%), Leskovac (10,6%) and Požarevac (10,5%). But viewed over the years there are no regular high- and low-frequency districts. Jagodina being on top in 2007, with 15% crimes against official duty, Požarevac heading the year after with 10,2%, and in 2009, Leskovac with 14%.

When we look at the 2007–2009 database for a comparison of increases and decreases per Prosecution Office in the districts, we see a similar unsystematic variability. Between 2007 and 2009 Leskovac showed an *increase* of cases from 159 to 249, while in the same time span Negotin experienced a *decrease* from 155 to 81. In percentages: an increase of 57% versus a decrease of 48%. Table 2 provides the full picture.

Large increases (≥ 40%) can also be observed in the districts of Čačak, Kraljevo, Pito, Užece and Valjevo. Decreases of more than 30% are observed in Kragujevac and Niš. On average there is more decrease than increase resulting in a slightly lower figure in 2009 compared to 2007.

Table 2: Reported offenders against official duty at Prosecution and bribery cases: per court region 2007-2009

REPORTED OFFENDERS AGAINST OFFICIAL DUTY				DIFFERENCE 2007-2009 IN %	2007-2009	
DISTRICTS (REGIONS)	2007	2008	2009		TAKING BRIBES	GIVING BRIBES
Belgrade	426	473	436	2	35	24
Čačak	83	150	120	45	2	1
Kragujevac	123	94	85	-31	1	1
Kraljevo	73	55	112	53	19	15

REPORTED OFFENDERS AGAINST OFFICIAL DUTY				DIFFERENCE 2007-2009 IN %	2007-2009	
DISTRICTS (REGIONS)	2007	2008	2009		TAKING BRIBES	GIVING BRIBES
Kruševac	144	134	165	15	6	1
Leskovac	159	180	249	57	17	9
Negotin	155	103	81	-48	18	9
Niš	115	112	77	-33	6	5
Novi Pazar	71	46	60	-15	10	10
Pirot	50	35	70	40	0	1
Požarevac	195	218	198	2	26	23
Prokuplje	110	120	87	-21	6	2
Smederevo	179	182	131	-27	41	51
Jagodina	239	154	207	-13	25	10
Šabac	254	303	259	2	28	10
Užice	106	154	150	43	7	4
Valjevo	152	187	219	44	5	8
Vranje	388	315	361	-7	18	45
Zaječar	166	193	163	-2	9	2
Novi Sad	217	222	173	-20	12	5
Pančevo	66	59	54	-18	5	4
Sombor	95	75	102	7	8	14
Sr. Mitrovica	232	229	184	-21	16	10
Subotica	85	67	77	-9	5	2
Zrenjanin	98	91	77	-21	1	2
TOTAL	**3981**	**3951**	**3897**	**-2**	**326**	**268**

There are no explanations for these sudden increases or decreases which look rather like an unpredictable weather forecast in autumn than a trend of an underlying stable phenomenon let alone the outcome of an

anti-corruption strategy. Statistically the input of black box appears to be quite at random.

Given their relevance the frequencies of the reported bribery (taking and giving) are added in the last two columns, albeit measures by their numbers their relevance looks less convincing. That must be reduced with about 20% non-indictment. In about half the Court regions there are less than ten cases for both taking and giving bribes together. Some of the Court regions handle only one or two cases in three years.

Given this seemingly random input, what will the output look like? The output consists of the decision whether to pursue the prosecution by filing an indictment; dismissing the report; or by suspending or terminating the investigation. Looking for a 'system', the next question concerns the pattern of indictment rates differentiated per Court district. This is presented in Table 3 (next page).

Almost 60% of the reports do not result in an indictment. However, the picture is again very diverse with large differences between the districts. The indictment rate ranges between the extremes with on the low end Požarevac with 26,2% and at the other extreme Kraljevo with a 65,4% prosecution chance. Of course, we do not know potential underlying causes. Kraljevo has fewer cases reported than Požarevac. Is there an underlying policy? Such as: Kraljevo filters out weak cases resulting in a high indictment percentage. In Požarevac, on the contrary, the report frequency is high and therefore the likelihood of weak cases which must be dismissed for lack of evidence is higher. But this assumes that the inflow of cases is subjected to a management strategy. This assumption is not corroborated: neither in the previous research, nor in the present one did we ever find a trace of any strategy.

Table 3: Type of prosecution decision per Court district: 2007-2009

COURT REGION	DISMISSAL REPORT %	DISRUPT INVESTIGATION %	TERMINATING INVESTIGATION %	INDICTMENT %	TOTAL N 100%
Belgrade	31,8	1,4	9,0	57,8	1316
Čačak	41,5	0,6	8,3	49,6	337
Kragujevac	26,2	0	10,3	63,5	301
Kraljevo	32,1	0	2,5	65,4	240

COURT REGION	DISMISSAL REPORT %	DISRUPT INVESTIGATION %	TERMINATING INVESTIGATION %	INDICTMENT %	TOTAL N 100%
Kruševac	38,5	0,2	7,9	53,3	418
Leskovac	60,5	0	6,0	33,4	583
Negotin	66,2	0,3	3,3	30,3	337
Niš	65,3	0	4,3	30,3	300
Novi Pazar	44,5	0,6	2,3	52,6	173
Pirot	58,7	0	11,0	30,3	155
Požarevac	70,9	0	2,9	26,2	595
Prokuplje	46,6	0,3	14,2	38,8	309
Smederevo	34,2	1,3	6,7	57,8	479
Jagodina	64,6	1,0	3,4	31,0	594
Šabac	64,0	2,3	5,3	28,4	791
Užice	43,8	0	13,9	42,3	404
Valjevo	69,3	0	3,1	27,5	541
Vranje	50,2	0	12,8	37,0	1033
Zaječar	63,2	0,2	9,3	27,2	503
Novi Sad	31,2	0,5	6,2	62,1	593
Pančevo	33,5	0	9,1	57,4	176
Sombor	29,6	0	13,7	56,7	270
Sr. Mitrovica	47,9	3,1	11,3	37,7	639
Subotica	46,2	0	1,8	52,0	223
Zrenjanin	37,5	0	6,4	56,2	251
TOTAL	**5652**	**78**	**886**	**4945**	**11561**
	48,9%	**0,7%**	**7,7%**	**42,8%**	**100,0%**

The correlation between the percentage of indictments and the total case input is slightly negative (Spearman's Rho = -0,27, p = 0,18; Pearson = -0,18, p = 0,38), but not significant.

The large differences in indictment percentages may be related to differences in deciding on certain categories of cases: do the same offence categories have more or less the same chance of indictment or are the decision outcomes different per court. For this reason the extremes of Požarevac (highest) and Kraljevo (lowest) are compared, though their case frequencies differ widely: 595 against 240 cases. Table 4 presents the comparison.

Table 4: Type of decision of Požarevac and Kraljevo: 2007-2009

	POŽAREVAC				KRALJEVO			
TYPE OF OFFENCE	**DISMISSAL REPORT %**	**TERMINATING INVEST %**	**INDICTMENT %**	**TOTAL**	**DISMISS REPORT %**	**TERMINATING INVEST %**	**INDICTMENT %**	**TOTAL**
Abuse of office	67,2	4,4	28,4	*229*	26,6	2,3	71,1	*128*
Law breaking court	91,7	0	8,3	*241*	92,3	2,6	5,1	*39*
Dereliction of duty	84,2	0	15,8	*19*	71,4		28,6	*7*
Illegal collection payment	100	0	0	*1*				*0*
Fraudulent serv.				*0*	33,3		66.7	*3*
Embezzlement	17,0	13,2	69,8	*53*	4,0	4,0	92	*25*
Offence by civ. Servant	0	0	100	*2*			100	*4*
Influence trading			100	*1*				*0*
Taking bribe	57,7	0,0	42,3	*26*			100	*19*
Giving bribe	26,1	0,0	73,9	*23*		6,7	93,3	*15*
TOTAL	**422**	**17**	**156**	**595**	**77**	**6**	**157**	**240**
	70,9%	**2,9%**	**26,2%**		**32,1%**	**2,5%**	**65,4%**	

As can be observed in the findings given in Table 4, the main difference appears to be the decisions on *abuse of office* cases, with a low indictment rate in Požarevac and a high one in Kraljevo: 28,4% against 71,1%. With the exception of complaints against judges and prosecutors,

embezzlement and bribery, the other crime categories have too low absolute frequencies in either of the two regions (or in both) to presen their relative frequencies.

Bribery cases show also marked differences: in Kraljevo almost all cases are indicted, while in Požarevac taking and giving bribes are prosecuted in 42,3 and 73,9%. *Embezzlement* is also prosecuted more often in Kraljevo: 92% against 69,8% in Požarevac.

To explore a frequency effect (240 against 595 cases), the team also looked at the district with a similarly high prosecution percentage but with a comparable case frequency: Novi Sad, with 593 cases, does not differ much from Požarevac, but has an indictment percentage of 62,1%. The main difference is determined by *abuse of office* with also a high indictment rate in Novi Sad: 64,3%. Other categories do not differ essentially or the absolute numbers are so small as to make a comparison futile. For example, in Novi Sad there are only 15 cases of taking bribes and 5 cases of giving bribes over a three year period.

Inspection of the whole of the decision outcomes of the Court districts broken down per offence categories shows that the absolute frequencies are very low (making percentages meaningless) except for *abuse of office* and *embezzlement*. Their indictment percentages also display different but large ranges between the Court districts: *abuse of office* ranges from 27,2% to 71,2%; embezzlement starts with a much higher threshold of 50% with the maximum of 90% of the reported cases leading to indictments. The variance between the courts is similar, but the threshold differs.

Before we move on it will be useful to pause for a moment and look back: what do we see? Mainly a bundle of case processing institutions with a low frequency input for a high priority policy, with – unknown – differences in decision outcomes. The statistical view is somewhat troubled by the dominance of the 'umbrella article' of abuse of office, though this does not veil the very low figure of the key offences such as taking and offering bribes which then must be reduced with 20% non-indictment.

b. The courts

The above section looked at the prosecution output, which concerned the indictments that should be the input of the Courts: indictments out of the Prosecution and into the Courts should therefore match.

However, that is not the case: in this database there is a difference of 402 cases between Prosecution output and Court input. This difference is also unsystematic: some courts 'missing' more than others. This makes clear that the Prosecutor and Court databases must be treated as different – statistical – populations, even if dealing with the same suspects.

As is the case with the prosecutions, the 'turnover' of the courts went gradually down: from 2007–2009 a reduction from 1.558 to 1.420, a difference of 9%. And also with the Courts, the difference was not spread evenly over the local units: Niš saw a reduction of 63 cases while Zaječar had an increase of 42. The increases and decreases of the courts did not correlate with that of the related Prosecution offices in the same district (Spearman's Rho = ,05): within the same locality, the Prosecution could have an increase and the Courts a decrease.

The most important criterion variable is the decision outcomes of the courts: verdict and sentencing. The decision categories in the verdicts are very refined: 13 categories, which can then be broken down per year and municipality and district. Given the low frequencies in most of them, these were reduced to three categories (see Table 5 below). Noticing not much difference between the years (57,9% in 2008 to 63,6% in 2007), these categories were again fused. Concerning the District and the Municipal Courts, the percentage of guilty verdicts was 60,6 and 60,7 respectively for which reason we grouped the Courts again into regions (District plus Municipal Courts).

Table 5: Category of verdict: guilty or not guilty

	CATEGORY OF VERDICT			
REGIONS (DISTRICT + MUNICIPAL COURTS)	**GUILTY %**	**CHARGE LIFTED/ DENIED %**	**OTHER END NOT GUILTY %**	**TOTAL = 100%**
Čačak	56,8	34,8	8,3	132
Kragujevac	41,6	38,3	20,2	243
Kraljevo	63,9	23,6	12,5	144
Kruševac	62,8	23,0	14,2	113
Leskovac	52,9	39,2	7,8	204
Negotin	54,9	33,3	11,8	102

	CATEGORY OF VERDICT			
REGIONS (DISTRICT + MUNICIPAL COURTS)	**GUILTY %**	**CHARGE LIFTED/ DENIED %**	**OTHER END NOT GUILTY %**	**TOTAL = 100%**
Niš	69,4	17,6	12,9	255
Novi Pazar	63,4	26,8	9,8	41
Pirot	45,6	30,4	24,1	79
Požarevac	73,0	16,4	10,7	122
Prokuplje	66,7	29,4	3,9	51
Smederevo	82,9	17,1	0	105
Jagodina	62,9	31,7	5,4	224
Šabac	63,1	23,6	13,3	195
Užice	65,4	26,2	8,4	107
Valjevo	56,3	30,4	13,4	112
Vranje	72,1	24,5	3,4	265
Zaječar	63,0	20,3	16,7	227
Novi Sad	53,5	29,8	16,7	467
Pančevo	70,4	18,4	11,2	152
Sombor	69,2	26,6	4,2	143
Sremska Mitrovica	65,8	16,9	17,3	266
Subotica	56,8	24,2	18,9	95
Zrenjanin	62,6	28,7	8,7	115
TOTAL	**2.759**	**1.141**	**652**	**4.552**

First we have to look at the comparison of the guilty verdict rank order of the Court regions with the rank order of the indictments of the Prosecution Offices: is a high (or low) indictment score indicative for a high guilty score? Not necessarily: prosecutors may charge too many weak cases resulting in a higher percentage of non-guilty verdicts. That would result in a negative correlation. The comparison between the rank order of indictments and guilty verdicts (Spearman's Rho) shows a

slightly negative correlation of -0,091, but it is non-significant. There is no support for the hypothesis of coherence between the decisions of the Prosecution Offices and the Courts, lending support to the hypothesis of a *random* functioning of the institutions of criminal justice.

Subsequently there are the differences between the Court regions. As can be seen in Table 5, around an average of 60,6% guilty verdicts, the interregional differences are again large, ranging from 82,9% (Smederevo) to 41,6% (Kragujevac). These differences are compounded by differences between the offences. The guilty verdict rate of abuse of office, being the most prevalent offence category, scores with 55% below the average of 60,6%. This can be observed in all Court regions, though the largest differences in percentage can be observed in Belgrade, Zrenjanin and Pirot (-15% to -16%).

Comparing guilty verdicts against the Court regions is made difficult by low frequencies of most offences per cell (< 10). Only *abuse of office* and *embezzlement* have sufficient frequencies for further comparison. Concerning abuse of office with an overall 55% guilty verdict, Pirot has the lowest guilty percentage, 30,2%, against 77% for Smederevo. For embezzlement the overall rate of guilty verdicts is 75%, with a range from 56% (Prokuplje) to 97% and 100% (Požarevac, respectively Smederevo, though only 15 cases). It demonstrates again the large differences between the court regions.

Are such differences also to be expected when it comes to sentencing? Given the previous findings, such disparity would not come as a surprise. There are many sentencing modalities, which can be simplified to: prison, fine and a (suspended) punishment on parole or one that is conditional. The fines can be discarded, as only three fines have been imposed. Hence, with prison as the main category, we can differentiate between an unconditional and a conditional prison sentence: 78,6% (2167) of the prison sentences were conditional (probation). In this modality we find again the usual differences. Four Courts are the most *lenient* by meting out mostly conditional prison sentences:

- Prokuplje 94%
- Valjevo 94%
- Vranje 92%
- Subotica 91%

The three most *severe/strictest* courts in terms of lower conditional sentences are:

- Čačak 45%
- Sombor 51%
- Kraljevo 64%

Further breakdown per offence category is again hampered by low frequencies, with the exception of abuse of office and embezzlement.

In *abuse of office cases* Sombor and Čačak, with 50% and 52% unconditional sentences, respectively, are the most strict, against 100% conditional sentences in Prokuplje, and Novi Pazar.

Regarding *embezzlement,* Čačak was even more implacable, with only 21% conditional punishments, making it the most severe score. It was in this regard followed by Niš: 45%. In contrast, Subotica with only conditional sentences handed down, was very lenient, followed by the other lenient courts: Vranje and Valjevo (95%). And Prokuplje? It had only five embezzlement cases, three of them conditionally punished. Small frequency constraints prevent us from further breaking down the data.

These findings seem to point at some within-court consistency. Is that also the case if the length of prison sentence is taken into account? To make comparisons on this dimension all the crime types are put together, which produces the following picture for *unconditiona*l prison sentences.

Table 6: Unconditional prison sentences per court region, all years

	LENGTH OF PRISON TERM									
COURT REGIONS	**TILL 30 DAYS %**	**1 - 2 MONTHS %**	**2 - 3 MONTHS %**	**3 - 6 MONTHS %**	**6 - 12 MONTHS %**	**1 - 2 YEARS %**	**2 - 3 YEARS %**	**3 – 5 YEARS %**	**5 - 10 YEARS %**	**TOTAL COURTS = 100%**
Belgrade		2,6	5,1	30,8	43,6	15,4	2,6			39
Čačak		2,4	19,5	34,1	19,5	12,2	12,2			41
Kragujevac		9,1	9,1	36,4	45,5					11
Kraljevo		3,1	12,5	37,5	21,9	18,8		6,3		32

	LENGTH OF PRISON TERM									
COURT REGIONS	**TILL 30 DAYS %**	**1 - 2 MONTHS %**	**2 - 3 MONTHS %**	**3 - 6 MONTHS %**	**6 - 12 MONTHS %**	**1 - 2 YEARS %**	**2 - 3 YEARS %**	**3 – 5 YEARS %**	**5 - 10 YEARS %**	**TOTAL COURTS = 100%**
Kruševac			11,1	66,7		11,1	11,1			9
Leskovac	6,5	12,9	16,1	45,2	12,9	6,5				31
Negotin		7,7	15,4	46,2	23,1			7,7		13
Niš		1,3	11,7	46,8	31,2	6,5	1,3	1,3		77
Novi Pazar				66,7	33,3					3
Pirot			44,4	22,2	33,3					9
Požarevac			9,1	40,9	45,5	4,5				22
Prokuplje			50,0			50,0				2
Smederevo			18,2	36,4	36,4			9,1		11
Jagodina		6,7	13,3	20,0	33,3	16,7	10,0			30
Šabac		4,8	23,8	52,4	9,5		4,8	4,8		21
Užice			13,0	43,5	26,1	17,4				23
Valjevo			25,0	50,0		25,0				4
Vranje			23,1	46,2	23,1	7,7				13
Zajecar			26,1	43,5	30,4					23
Novi Sad			4,9	21,3	29,5	23,0	14,8	4,9	1,6	61
Pančevo			6,3	56,3	12,5	25,0				16
Sombor	2,0	2,0	10,2	26,5	24,5	26,5	4,1	4,1		49
Sr. Mitrovica			5,6	44,4	33,3	5,6	5,6	5,6		18
Subotica				50,0	50,0					4
Zrenjanin			25,0	41,7	8,3	16,7	8,3			12
TOTAL	**3**	**14**	**76**	**216**	**155**	**72**	**25**	**12**	**1**	**574**
	0,5%	**2,4%**	**13,2%**	**37,6%**	**27,0%**	**12,5%**	**4,4%**	**2,1%**	**,2%**	

Though sentencing intervals used by the Statistical Office are unequal, while for a number of Court regions the absolute numbers are very small, it seems that Belgrade, Kragujevac and Požarevac tend to impose more unconditional prison terms in the 6–12 months category, while Novi Sad imposed prison sentences of more than one year in 44,3% of the cases, mainly pertaining to *abuse of office*: of the 56 unconditional prison sentences for this offence, 43% were longer than one year. This Court region can be considered as one of the severest in Serbia: in terms of the length of prison sentences, but not regarding the conditional/unconditional division.

c. The time variable: justice delayed is justice denied

Time is a very important variable in all legal matters: being tried within a reasonable time is a basic right. But what is reasonable? There are complaints about the slow functioning of the Serbian justice system. These are moral issues, which must come after the facts. Our question is: what is the processing time of our judicial black box of cases concerning crimes against official duty. Of course, answers to this question must be related to the total processing times in all criminal cases as a base line. The Statistical Office reported as follows:

- for *all* criminal cases finished in 2007–2009 by the Courts around 45% lasted more than one year. Half of these lasted more than two years (23% of the total number of cases);
- acquittals last systematically longer: For the non-guilty verdicts only 39% were processed within one year. Of those 60% lasting more than one year, 40% of the defendants had to wait for more than 2 years for an acquittal. The guilty ones were served quicker in relative terms: 59% of the *guilty* verdicts were pronounced within one year. Still, 20% had to wait for more than 2 years.
- the average duration of criminal proceedings in the Basic Courts is 1,47 years; in the Higher Court in the first instance it is 1,6 years and in the second instance it is 1 year.[1] There is no information about the accumulation of processing times in cases of more instances.

1 Answers given to the European Commission questionnaire: question 23. (EU *Commission Staff Working Paper. Analytical Report.*)

Not all the raw time data could be converted into time variables within the SPSS programme. But we could retrieve the *date of receiving the charge* and the *date of decision* as a full day-month-year time variable. This was not possible for the *offence* and the *finalisation* date: these were only available as a full *year* variable. This entails some rough rounding off.

There are some additional *caveats* to mention: (a) the year of finalisation may sometimes be the following year; (b) the year of offending is not necessarily the year in which the case was registered. In addition, we do not know the investigatory or procedural part of the time span before the day of receiving the charge: the pre-charge phase. Naturally, this pre-charge phase has also its division of 'time slices': the 'police time' and the 'prosecutor time'. This precludes attributing the length of the procedure to either the police or prosecution. This makes it impossible to answer the "who delays" question.

Nevertheless, we have three interesting time spans: (a) the *total time span* from the year of offending to the year of finalisation and within that (b) the time span *before* receiving the charge (pre-charge) and (c) the time span from the day of receiving the charge till the day of the finalisation (post charge). How do these relate? Table 7 provides an interesting insight.

Table 7: Processing times in years: from year offence until finalisation: from year of offence until receiving of charge and from year receiving charge until finalisation.

COURT DISTRICT	N	MEAN: TOTAL TIME	MEAN PRE-CHARGE	MEAN POST-CHARGE	MAXIMUM TOTAL TIME
Beograd	592	5,20	2,60	2,95	18,00
Čačak	132	5,62	3,16	2,84	14,00
Kragujevac	242	5,59	2,65	3,31	13,00
Kraljevo	164	5,99	2,88	3,32	14,00
Kruševac	113	4,53	2,24	2,69	11,00
Leskovac	204	4,72	2,55	2,51	13,00
Negotin	102	4,59	2,23	2,79	12,00
Niš	255	4,72	2,39	2,68	17,00

COURT DISTRICT	N	MEAN: TOTAL TIME	MEAN PRE-CHARGE	MEAN POST-CHARGE	MAXIMUM TOTAL TIME
Novi Pazar	41	3,83	1,68	2,68	9,00
Pirot	79	5,23	2,30	3,49	14,00
Požarevac	122	4,13	2,23	2,18	13,00
Prokuplje	51	3,82	2,68	1,61	10,00
Smederevo	105	5,58	2,72	3,18	12,00
Jagodina	223	4,49	2,66	2,06	15,00
Šabac	195	4,78	2,73	2,26	18,00
Užice	107	4,63	2,81	2,22	13,00
Valjevo	112	5,39	2,64	3,07	12,00
Vranje	265	4,89	2,22	3,01	17,00
Zaječar	227	4,17	2,67	1,84	12,00
Novi Sad	467	5,64	3,09	2,93	14,00
Pančevo	152	5,01	2,78	2,53	14,00
Sombor	143	6,57	3,20	3,57	14,00
Sr. Mitrovica	266	6,76	2,87	4,24	16,00
Subotica	95	5,36	2,79	2,75	15,00
Zrenjanin	115	4,48	2,59	2,31	11,00
TOTAL	**4569**	**5,16**	**2,67**	**2,83**	**18,00**
MEDIAN		**5.00**	**2,14**	**2,00**	

Despite the fact of high maximum total processing times for single cases, the median is close enough to the mean to use that index.

A few observations can be made. In the first place, the difference between the averages of these cases and *all* criminal proceedings is very wide: 5,16 versus 1,47 years for the Basic Courts and 1,6 for the Higher Courts. A methodological warning must be made: our Court regions (District Courts + Municipal Courts) are not the same as the Higher and Basic Courts after the judicial reform of 2010, while many corruption cases are not handled by the lower courts. Nevertheless, assuming

that the answers of the Ministry of Justice given to the EU Commission are correct, we must face the hypothesis that in corruption related cases the procedures last much longer than in 'normal' cases. This is an important finding which needs to be investigated in-depth by applying the analysis of this research on all other criminal cases. As we do not have the total criminal database, we have to continue with this subset which is likely to consist of another statistical offender population.

In the second place, the difference between the means of the two processing time spans should be noted: the difference between the pre-charge phase and the charge-end phase was significant (T-test, two tailed, p < 0,000). This means that the processing time of the Courts deviates not just 'by change' from the prosecution-and-police time. If justice is delayed, it is significantly delayed by judges.

Further observations concern:

- the *total* processing time: the between-court differences range from 3,8 (Prokuplje) to 6,8 years (Sremska Mitrovica), a two years difference;
- the time span of the *pre-charge* ranges from 1,68 (Novi Pazar) to 3,2 year (Sombor), just more than one year and a half;
- the processing time *from charge to finalisation* ranges from 1,61 year (Prokuplje) to 4,24 years (Sremska Mitrovica), a difference of 2,63 years.

Apart from Prokuplje, every time a different district appears to be at the low or high end of the division. Where is the 'system' or coherence? In statistical terms there is none. The correlation between the two processing time spans (pre-charge and post-charge) was r_{xy} 0.021 and not significant (Pearson, 2 tailed, p = 0,16) for the whole database of single cases. When we do the same for the 25 Court districts and compare the pre-charge and post-charge means, there is some trend (Spearman's rho as well as Pearson: 0.17 respectively 0.15) but statistically also not significant (p = 0,05): police, prosecution and judges, they all can be delaying factors in all *at random* combinations. Finally we checked whether there is a correlation between the *number* of processed cases per Court region and the processing times: the turnover volume which tested against the total time, the pre-charge and the post-charge means. Here we found stronger, but statistically still not-significant trends (p = 0,05).

- total time and N cases: Pearson .29 and Spearman's rho .27
- pre-charge time and N cases: Pearson .22 and Spearman's rho .24
- post-charge time and N cases: Pearson .38 and Spearman's rho .31

Taken together, these findings do not appear to represent a coherent ordering of the lengths of the processing times, either in the pre-charge phase or the charge-to-end phase (the 'Court time) or between them. In fact, nothing correlates (significantly) with anything. In the correlation between total turnover and processing times some trend seems to dawn, though: if cases can drag on for years, the more so in 'busy' districts even if statistically not-significant.

Once the charge has been received, it is of interest to learn (a) how long it takes for a (not-)guilty verdict, (b) for what crimes and (c) with what punishments. This implies that we shrink our database to the post-charge phase while using the full day-month-year measures. Changes in missing variables may cause some variation in totals.

First, we dichotomize the type of sentence into guilty and not-guilty. This results in the following average case processing time:

- Guilty: 2,48 years
- Not-guilty: 3,36 years

Apparently, reaching a guilty verdict takes less time than a non-guilty verdict (t-test $p < .000$). This is in line with the observation of the Statistical Office for all criminal cases. Also according to this criterion variable no such correlation between the turnover of the Court regions and guilty/not-guilty verdicts was observed. (Spearman's rho, -0,034 for the 'guilty'; 0,317 for the not-guilty. sign. = 0,123; two tailed).

Differentiating according to the type of offence reveals considerable variation. In cases of fraud-within-service or taking bribes it takes respectively 5,5 and 3 years before being acquitted. For staff of Courts or Prosecution Offices this takes only 11 months. Also, when awaiting a prison sentence the 'waiting time' for the sentence increases with the length of the prison term imposed.

Table 8: Average processing time and sentence modality

PRISON TERM CATEGORY	N TOTAL	MEAN ALL	MEAN PAROLE	MEAN NOT PAROLE
up to 30 days	36	1,81	1,85	1,43
1- 2 months	63	2,15	2,26	1,77
2 – 3 months	415	2,43	2,45	2,35
3 – 6 months	1411	2,40	2,35	2,65
6 – 12 months	631	2,60	2,54	2,78
1 – 2 years	147	3,10	2,79	3,60
2 – 3 years	25	2,64	2,41	2,64
> 3 years	12	3,07	1,85	3,07
TOTAL AVERAGE		**2,48**	**2,26**	**2,75**
TOTAL N	**2.740**		**2.167**	**573**

Justice delayed, justice denied? This question can only be raised, as there are no standards for a fair term within which a case must be processed. Nor does the European Convention of Human Rights or the European Court provide general standards. This notwithstanding, the high average and extreme maximum processing times as well as the lack of consistency between most variables should raise concern. From the perspective of rule of law and equality of justice, these findings more than justify deeper and more detailed research.[2]

Summarising the outcomes of this statistical analysis of the input and output of the judicial black box, we find an overwhelming inconsistency: hardly anything correlates with anything. Whatever may go inside the black box, in its outward functioning it behaves like a slow *random (black) box*. This applies to the general patterns as well as to the Prosecution and the Courts: the two random boxes interacting as two different entities without coherence and together producing this total randomness. We can identify one consistency: above average and often extreme processing times, but also randomly distributed. This refutes the priority claim of the anti-corruption policy: 'high priority', yes, but: 'haste slowly'.

2 A more extensive analysis can be found in *Criminal corruption policy in Serbia* (Van Duyne and Stocco 2012)

One of the aspects of this black box characteristic is the rate of responsiveness, as we have already outlined. The next section will address whether this pertained to this particular research or should be considered as a basic characteristic.

The non-responding random black box

We are not alone in our attempt to make the black box 'speak'. The agency which supported us throughout, the Anti-Corruption Council, has been knocking on the doors of its own government as well as the Republic Public Prosecution Office since its beginning. It reported more than two hundred cases of highly dubious financial dealings to the Government. The reports were summarily neglected, something that was also noted by Transparency International (2011). Do the authorities share the "who cares?" attitude of the people? Sometimes the reverse occurs and the authorities do care, albeit in a nefarious way: the authorities turn actively against those who blow the whistle, as illustrated by the following ACC report.

> Zoran K. submitted criminal complaints four times (2004, 2005 and 2006) to the II Municipal Prosecution office in Belgrade against officials for dereliction of duty and corruption related to building permits in his building, which is in private ownership. These criminal complaints were not processed. However as soon as Zoran K. had gone public in the news paper DANAS, the President of the Executive Board submitted a criminal charge for slander. In this case the police reacted without delay and called Zoran immediately for an interview.
>
> Likewise, in the case of JUGOREMEDIJA, the prosecution did not process the criminal charge that the Association of Small Shareholders of that company filed in 2004 against the director of the company for abuse of office and falsifying official documents. The conflict escalated and became violent and in the end the prosecution proceeded at short notice against the strike committee. The complaint of the Association of Small Shareholders was investigated only after two years.
>
> The President of the ACC added: "*This example is not the only one; the same situation can be found in many cases the Council is familiar with, from the complaints of citizens.*" The President can draw on her own experience: the response to her efforts against the machinations around the Port of Belgrade was a criminal investigation against herself. (Letter to the Government 26 October 2009).

Compared with the long processing times discussed in the previous section, the authorities do show a capacity to act fast and firmly – against those who act against foul play.

How does the ACC work and what happens next? The ACC regularly receives complaints from concerned and/or aggrieved citizens and carries out an investigation by its own experts to determine the seriousness. From 2001 until 2009, 212 complaints were considered to be serious enough to be presented as criminal charges to the Republican Public Prosecution Office (RPPO). The complaints were classified as represented in Table 9.

Table 9: Complaints from the public to the ACC about law breaking

SUBMITTER	FIELD/SUBJECT OF COMPLAINT	N
Unions/small shareholders	Privatisation & bankruptcy	46
Tenants ass. & individuals	Urbanisation and construction	55
N.a.	Courts: intentional stalling procedures	51
N.a.	Economy	23
N.a.	Other economic and public interests	37
TOTAL		**212**

Source: ACC report 2009. N.a. = not available

Apart from informing the government (which does not respond), the ACC sends its reports to the RPPO. It is interesting to look at the persons and institutions who were accused of wrong-doing.

Table 10: Persons and institutions being accused.

	2001-2007
Municipal management	16
Directors	28
Representatives of elected bodies	31
Judges and prosecutors	35
City planning management	10
Other	25
TOTAL	**145**

Source: Anti Corruption Council

Indeed, this represents the very social-economic elite.

How did the RPO respond? The special Anti-Corruption Department was most reluctant to inform the research team, but eventually informed us that of the 147 cases sent to the Prosecution Offices, only 22 cases were given a response: 11 of which mentioned a *rejection* of the charge; the other reports were either forwarded to the Prosecution District Office, sent to another agency for information gathering or even fused with an existing file. There were no reports about the finalisation of these cases, unless rejected.

The underlying material is poor in terms of content and does not allow far reaching conclusions, though it certainly justifies further investigation if only to exclude the not all too implausible hypothesis of an apparent *elite class bias*.

There is little doubt about the flow of communication between the ACC and the RPPO: RPPO's side reflects anything but responsiveness or a sense of urgency, except when moving against complainants.

The Anti Corruption Agency: monitoring and coordination in Potemkin Village

The situation described in the previous section may be puzzling against the background of a multitude of coordinating actors: the Minister of Justice, the specialised Anti-Corruption Department within the Republic Public Prosecution Office and above all that the Anti-Corruption Agency. Together they should be able to turn the *random box* into a more coherently operating apparatus. Is this the case?

In order to look at the latest institutional body to emerge from the Anti-corruption Strategy, the Anti-Corruption Agency (not to be confused with the Anti Corruption Council), we have to rely on its own task description and account of its functioning, as described in its annual report. In its annual 2010 report, Annex I, ACA mentioned 21 tasks entrusted to it. From our perspective the most important ACA task concerns the "*monitoring and coordination of the work of state authorities*" in the fight against corruption. That is a potentially powerful role, because it also implies the monitoring and coordination of the organs of criminal law enforcement: the police, the Republic Prosecution and the Courts. As the ACA became operational in January 2010, it cannot be held accountable for the 'random black box' performance uncovered in

our research. But how would it fulfil this function at present, assuming that the criminal justice institutions still operated at random? During the conduct of the research project no sign of monitoring or coordination could be observed, so we have to turn to ACA's annual report to find information we may have missed.

In its report (Annex I) the ACA accounts for an important monitoring fulfilment: a survey, the methodology of which was described in 28 lines. It sent out a questionnaire, which is not presented in an addendum, to an undisclosed number of 'implementing entities' (implementing the National Strategy), of which there might be 11.000. In total, 78 entities replied (0,7%) and not even on their own, but only after some prodding by the ACA. This 'observation instrument' did not appear to be working very well: the ACA complained about "*uneven usefulness and meagreness . . . . diversity and lack of relevant databases . . . most entities gave descriptive answers i.e. without providing valid data and sources to support their assessments. The reporting was thus reduced to self-evaluation.*" To make up for these deficiencies (which should have halted the whole undertaking), the ACA interviewed 'experts' without mentioning who and how many.

It should be remarked that ACA's task of assessing the implementation of the recommendations of the Strategy and the Action Plan is certainly unenvious. Nevertheless, ACA's staff made a valiant attempt while also being frank about obstacles. However, given these adverse circumstances, a responsible Board of ACA should never have pursued this undertaking.

Given the methodological qualities of this survey, what relevant observations were communicated about the fulfilment of the National Strategy and the related Action Plan activities against corruption? The police, prosecution and the judiciary are taken together, which obfuscates the account, as they operate independently.

As far as the *National Strategy* recommendations for the police, prosecution and justice sectors are concerned, 29% were listed as completely fulfilled, 13% were not fulfilled, 46% only partly, giving one 'a glass half full or half empty' impression. Below we will give reasons for considering the glass half empty, if that. The remaining 13% was qualified as "permanent tasks", though unspecified.

Of the *Action Plan Activities* 30% were fulfilled, 19% not fulfilled, 12% partly, and for 21% there were no data. The remaining 18% were unspecified 'permanent tasks' (p. 37).

Implemented activities were only clarified with a few examples, and these were far from reassuring. One example: the judicial reform counts as a fulfilled activity, which is only formally correct. Actually, this reform was criticised from virtually all sides: the 2010 Serbia Progress Report of the EU (p. 10) as well as GRECO expressed great concern, which makes one think of a fulfilled failure.

Another fulfilled strategy recommendation is the special Anti-corruption Department within the RPPO. We have encountered this non-responding body several times in the previous sections and could not but get the impression of a lasting non-functionality (see also Van Duyne *et al.* 2010)

The same impression is conveyed by the ACA report when it describes the fulfilment of the recommendation of the *ex post fact checks*: the extra control in case of dismissal or other discontinuation of prosecution. Not only we, but also the ACA could find no trace of this fulfilled recommendation except for the mentioning of its existence: "*The Agency, however, was unable to obtain data whether a system to review reports of such* [political] *pressures* [not to prosecute] *has been introduced.*" (p. 40) According to our estimate the Anti Corruption Department of the RPPO would have handled or at least archived more than 2.200 cases between 2007 and 2009.[3] In view of this important information gathering role this department could not fail to have the relevant information. But it failed: the RPPO denied having any cases on their premises.[4]

Unless proven differently, we must apply here the principle of *esse est percipi*, or to be is to be perceived, implying that we are dealing here with a ghost-fulfilment we cannot see. Or we are looking at the stage decor of a Potemkin village.

All together, I share the reservations of the EU in its 2010 report. The ACA methodology casts great doubt on the reliability of its mentioned achievements, in particular if they are described as "partly fulfilled". It

3 *Work of Public Prosecutions in combating crime and the protection of constitutionality and legality in 2009*. (page 29 of the electronic version of report. Section: *The Work of the Anti Corruption Department*). A high representative of the RPPO requested us not to disclose the actual figures, for which reason we rounded them.

4 In the previous research project (Van Duyne *et al*., 2010), we basically asked for the same information. After first stating there were no files, we unexpectedly got a handful of them. Then we got a whole collection of unsorted, partly irrelevant reports "from the field" about 2007 and 2008, after which the flow of information dried up again.

would be more realistic in these cases to consider the glass less than 'half empty'. Nobody knows: the glass is stained.

Europe: welcome to Potemkin Village?

The title of the concluding section is not a rhetorical question: it is intended as a factual question and needs to be investigated and answered from a fact based perspective, even if it is a historical metaphor. Because it is so sensitive, it is best to give the floor to the institution which is supposed to be the most knowledgeable: the ACA.

Though this study criticised ACA's survey and consequently the execution of its monitoring and coordination task, this does not imply that the agency fails to shed any light on the broader landscape which I also highlighted in the first sections. Connecting beginning and end we come full-circle.

Reading the account of the ACA of its ill-fated attempt at fact finding, one must allow for ACA's sensitive position. The ACA is independent, but to what extent can it play a hard game? Regardless, there is a clear feeling of disappointment from the ACA's report.

In the first place, the ACA reports "*direct and indirect challenges*", which is a euphemism for serious societal and political shortcomings, "*the most important being the low anti-corruption activism in the society as a whole.*" [. . .] *"lack of incentives to fight corruption at the state administration level.*" [. . .] "*the bureaucracy lacks the will to change.*" (p. 6) This is important for a realistic valuation of the many *partly* implemented recommendations: how many of these are carried out half-heartedly or mentioned only for social-desirability reasons?

In second place, the ACA encountered the same indifference as we did on many occasions during this research project: "*Not one of them* [of the obliged 'entities'] *fulfilled the obligation to report* [. . .] *at their own initiative*." Information is provided reluctantly, bit by bit, which 'eats away one's time'.

In third place, whether this is due to understaffing or a general disinterest, this finding has the methodological consequences mentioned before: the quality of the given information is of questionable quality: "*Most answers were descriptive and assessments were not corroborated by valid data and sources*." What was the proportion of such low-grade responses to the whole and what has finally been used for ACA's

assessment? This may compromise parts of the report, though one cannot know to what extent.

In fourth place, the ACA observed that the Strategy failed to focus on two very important fields, namely the education and health systems, while additionally characterising its Action Plan in all regards as "*too broad and too vague*", whether it concerns recommended activities or the formulation of indicators. In our metaphor: in the absence of clear indicators the ACA had to assess the random box of the criminal law enforcement administration while being surrounded by fog.

Still, within this fog the ACA still records an achievement of 30% recommendations 'fulfilled'. Is this genuine or is it just another house front in the foggy main street of a political Potemkin village? What does 'fulfilment' really mean against the background of a steady decline of registered and processed corruption and abuse of office cases and above average processing times, of which nobody appears to be aware or concerned? If so few care to look into these matters, one has to wonder whether this is not just another façade.

After having compared intentions, claims and a portion of reality we have to return to the question "who cares?" Based on the direct experience of the author and this research group's experience, as well as other concerned people involved, it remains difficult to answer that question positively. On the one hand, various captains of industry and a former minister have been arrested recently; on the other hand, grave doubts are expressed by worried experts, such as by the Public Information Officer, Rodoljub Šabić who complains about the lack of progress in the past six years: "*Over the past ten years, we have established new institutions, we have witness protection, we have ratified international documents, joined all associations* [the Potemkin village]*, and what we need is genuine will and desire to do something about corruption. It takes an effort not just from the state, but from our society as a whole.*" (*Politika*, 18 March, 2013) And if the 'society' does not care sufficiently, one can hope the impetus must come top down. Does it?

The following example illustrates how the lack of concern and care can manifests itself at central policy making level. The outcomes of this research convinced the Dutch Embassy of the importance of transparent criminal statistics. To that end it funded a small project to draft the outline for a new criminal statistical system, to be carried out by the Center for Liberal-Democratic Studies, which submitted its report to the

Ministries of Interior and Justice towards the end of 2012. It fell on deaf ears. While finalising this article I inquired about the state of affairs. The author of the outline answered: "*Silence, just silence*".

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Petrus C. van Dujn

Anti-korupcijska politika u Srbiji – dobrodošli u Potemkinova sela?

Apstrakt

Organi zaduženi za sprovođenje zakona u Srbiji se mogu okarakterisati kao *camera opskura*: neprozirnost preovladava. Ovo ne uliva mnogo poverenja javnosti: istraživanja koja su sprovele ili naručile UN otkrila su da se samo doktorima i političarima manje veruje nego sudijama i tužiteljima. Korupcija predstavlja prekršaj koji se veoma retko prijavljuje, budući da žrtve imaju osećaj da vlast ne mari za korupciju – zašto je onda prijavljivati?

Obimna statistička analiza slučajeva korupcije koje su obradili tužilaštvo i sudovi pokazala je da se metafora *camera obskura* mora preraditi: pored toga što su neprozirne, institucije zadužene za sprovođenje zakona se ponašaju kao proizvoljna kutija (*random box*). Antikorupcijska politika se ne može razaznati niti u tužilaštvu, niti pak u sudstvu. Ishodi sudskog sistema u pogledu gonjenja i kažnjavanja su izgleda statistički slučajni.

Kvalitativna analiza najozbiljnijih slučajeva korupcije pokazala je u kolikoj meri se oni takođe pojavljuju u svim slojevima društva. Po pitanju ovih slučajeva država nije reagova na žalbe koje su joj upućivale sopstvene institucije. Vlast je bila troma i po pitanju drugih problema. Uprkos strategiji za borbu protiv korupcije, uputno je pitati da li vlast zaista brine.

Ključne reči korupcija, sprovođenje zakona u Srbiji, strategije za borbu protiv korupcije, javne politike.