

Excerpts from
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"National Integrity
System Study"
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**MEASURES, RECOMMENDATIONS AND THE STRATEGY FOR THE
FIGHT AGAINST CORRUPTION**

The meeting of the Focus Group was held on 12 April 2005 in the premises of Transparency International Croatia. During the meeting, the Focus Group discussed measures, recommendations and the strategy on the fight against corruption.

Participants of the Focus Group were:

Mr. Andrija Hebrang, Prof, PhD, a Member of Parliament
Mr. Sergej Abramov, journalist for the Novi list
Mrs. Andreja Tonč, Academy for Educational Development (AED)
Mr. Nikola Vuljanić, a Member of Parliament
Mr. Velimir Čolović, Assistant to the Minister of Justice
Mrs. Danijela Babić, Executive Director of the ZaMirNET
Mrs. Nataša Đurović, performing duties of the Deputy Head of USKOK, Deputy County Attorney
Mr. Dragan Novosel, Deputy State's Attorney
Mrs. Zlata Đurević, M.Sc., assistant lecturer at the Law Faculty in Zagreb
Mr. Zorislav Antun Petrović, President of Transparency International Croatia
Mrs. Snježana Vasiljević, project manager of the National Integrity System Study
Mrs. Ana First, Executive Director of Transparency International Croatia

Moderators:

Mr. Zorislav Antun Petrović, President of Transparency International Croatia
Mrs. Snježana Vasiljević, project manager of the National Integrity System Study

Minutes Recorder:

Mrs. Ana First, Executive Director of Transparency International Croatia

The aims of the Focus Group:

Define the current situation in the Republic of Croatia as regards fighting corruption, make recommendations for the more efficient way of fighting against corruption and identify priority areas in fighting corruption.

Specific aims:

- Check the hypothesis running through a few texts of the Study that the legislation in the Republic of Croatia has been incomplete and imprecise and that there is a need to carry out a legislative reform in order to make it better for fighting corruption. In practice there remains the problem of its enforcement - it is necessary to determine the reasons for that, e.g. inefficacy of the institutions, defects of the implementation measures.
- Provide expert opinion on the prevailing texts of the Study.
- Point out reform measures for each area (the so called pillars of society)

1. Andrija Hebrang

Corruption is the worst obstacle in creating a free market. All Governments that I have been a member of so far, either as a Minister or as the Vice President, have tried to tackle the problem of corruption, i.e. they have tried to face this problem

and find the adequate measures for its solution. I think that corruption is deeply rooted in the history of the Croatian society; 50 years of communism/socialism which tolerated such behaviour and the tradition of non-compliance have left trace.

None of the Governments had much success in fighting corruption; this is not to say that there was no political will to do so, but that the approach to fighting corruption was not systematically efficient. I reckon that a big part of this problem would have been solved by introducing property/tax cards for the state officials. The American model of tax cards where any procurement of assets is automatically related to tax paying would have been of great use. It is necessary to synchronise services in the systematic fight against corruption, because fighting individual incidents is not a final solution. I also think that the efficient fight against corruption is not a political, but a technical problem that could be efficiently solved by creating a system i.e. a network based on the said American model.

2. Nikola Vuljanić

As a Member of Parliament, I can confirm that all parties in the Parliament support fight against corruption on the declarative level. I welcome the idea of introducing the property cards and I cannot believe that such a system could not be implemented in Croatia as a computer literate country.

Lately the Parliament has been overflowed by a bunch of draft legislation containing “gaps” serving as means of introducing the unwanted consequences. Allow me, please, to illustrate: the Government of the Republic of Croatia has recently made a Draft Proposal of the Court Register Act which should no longer contain information on the companies that have not paid tax regularly. In my opinion such Draft Proposal is not good and the Government should try harder on working out the Draft Proposals. I also have to point out that the opposition has no power to enforce certain legal solutions which could increase transparency of the public authority bodies.

3. Dragan Novosel

I think that the constant amending of legislation is not a good approach to the creation of the efficient fight against corruption. As regards any legislation, it is necessary to check first whether it is good or not through its implementation, prior to any process of amending. In my opinion very often the problem is not in the legislation itself, but in its implementation, i.e. non-implementation.

As regards the level of computerisation and opening of the State’s Attorney toward the general public, I have to point out that in the State Attorney’s Office there is only one IT professional working on this and that is inadequate – considering the whole equipment there should be at least 5 to 6 people in order to perform these tasks. It is correct that the introduction of property cards would have removed many difficulties from the process of prevention of economic crime and corruption, but however I would like to point out that it takes two for corruption! Corruption has to be proved, firm evidences are necessary for criminal prosecution because criminal prosecution is formal and the process of proving can very often be hard and complex.

Talking about the cases that draw significant attention it is necessary to point out that there are only 3 to 4 criminal charges for money laundering, i.e. for the so called “big cases” in Croatia per year. This does not mean that “small” cases of corruption are not to be reported, because if there are 5 to 6 “small” reports on

the corruption of a certain civil servant, for us this is an indicator that there are reasonable doubts that this servant is being corrupted and if so we are obliged to take further measures.

In conclusion: Croatia has a good legal framework, good laws and good possibilities to make special investigations on criminal acts by limiting temporarily the constitutional rights and freedoms (putting under surveillance, ears dropping etc.). However, when implementing these measures there is also the other side of the coin -- the protection of personal data and rights.

Now I would like to point out a few things regarding the work of the Office for Prevention of Corruption and Organised Crime (USKOK).

After opening the Office there was a great number of charges for corruptive acts. At one point of the time the increasing trend was stopped and the work of the USKOK was accompanied by a bad media campaign. It was said that the Office was a failure not performing its duties. I have to admit that I am sorry because media slipped writing affirmative about the Office, especially taking into consideration the fact that some cases were done good -- just remember the case when a judge was condemned for bribe taking, Deputy State Attorney's verdict, group from the pension insurance etc. I think that an affirmative media campaign is necessary in order to rebuild the trust of the people in the work of USKOK.

4. Sergej Abramov

The establishing of USKOK was perceived with great expectations. In public there was an impression that we were to get "Deus ex machina" for the prosecution of people who had committed certain corruptive acts. I have to mention that at the beginning of its work, USKOK was neither fully equipped nor computerised.

You also have to bear in mind that people are eager for sensations no matter whether they refer to good or bad news.

I remind you of the "Granić" case and ask you how were it possible for the documents to come out? Such cases throw doubt on the work of USKOK and bring to a conclusion that USKOK should be more careful and examine the evidence thoroughly. I personally think that media have written affirmatively about USKOK what can be seen from the writings on the case of the investigating judge from Karlovac and that USKOK should work on the education of citizens as regards corruption and introduce them to their rights.

5. Dragan Novosel

Anything below 20 per cent of negative decisions is acceptable both for the State's Attorney and for USKOK.

6. Zlata Đurđević

I will take into consideration the normative regulation of the prevention of corruption from the legal point of view. The measures envisaged by the Criminal Procedure Act against corruptive acts indicate that the criminal procedural law takes into consideration the great dangers of these acts for the society. However, although this is about the acts which are not prevented by the strictest criminal sanctions, the measures which could be taken for their detection and processing of their perpetrators are the same as if it were about the strictest criminal acts, such as acts of criminal organisations, drugs trafficking or murder. In this particular case, these acts are under the jurisdiction of USKOK and as such include taking of special investigating measures, e.g. technical recording or a cover-up investigator, against their perpetrators. As regards these acts our criminal legislation is harmonised with

the European standards while the further harmonisation will mainly refer to the introduction of legal protection of the EU budget. One of fundamental problems in sanctioning corruption is proving these criminal acts. Talking to police officers and their statements bring us to conclusion that they have not completely accepted yet all measures for acquiring evidences envisaged by the Criminal Procedure Act and that they find them insufficient. So, e.g. technical record of a conversation recorded secretly by a policeman can be used in criminal proceedings only if the order for recording has been issued by the court.

7. Dragan Novosel

As regards investigation I would like to point out that an impression is made in public (as a result of newspaper headlines) that a certain case has been established prior to investigation, which is inaccurate and creates difficulties in conducting proceedings, because any other decision taken after the investigation is often perceived as incapability of the State's Attorney, although the aim of the investigation is to determine by means of legal proceedings whether there is a reasonable doubt that a criminal act has been committed. However, let me turn back to USKOK, the public expectations are great, regular removing of irregularities is expected, and USKOK cannot remove all irregularities, but only extreme cases where there is a reasonable doubt that the suspect has committed a criminal act.

8. Velimir Čolović

First of all I would like to point out that legislation should be based on our own practice. We tend to harmonisation with the European legislative system and we are still a transition country. Therefore we should be very careful upon adopting certain legislation. As regards the Court Register Act from the beginning of our conversation, I think that the freedom of market could not be limited by instruments which are against the nature of market. The Court Register is not a place where we should punish tax defaulters. This problem is to be solved on the level of Tax Administration which has adopted a great number of regulations dealing with default of tax payment.

9. Andrija Hebrang

Legislation is not a solution to everything, it is necessary to change the sense of public and experts in this problem. I can personally talk about the health sector and my invitation to all citizens to get in touch with me personally in case they have encountered corruption in order to undertake the adequate measures. Until this very day I have not received even one call from citizens reporting the corrupted medical staff.

10. Danijela Babić

On one side the citizens do not trust the institutions that should solve the cases of corruption, while on the other they themselves are in an apathetic frame of mind to report these cases because they do not believe in their solution.

We are also facing another problem and that is the problem of inexperience of the civil society. Recently there has been the case of the organisation Partnership for societal development which had come out with a number of the alleged cases of corruption so as to forget the whole story in the next few months.

So far we have talked that the prevention of corruption has to be an elaborated system consisting of the prevailing legislation which is good, institutions which are efficient and media informing objectively of the cases. Another thing that also has

to be incorporated into this system is making the citizens aware of the damaging effect of corruption and that is the task of the civil society organisations.

11. Sergej Abramov

In addition, I think that a part of work should also be done by the political parties. I again ask how it was possible that the case of Ferencak happened in the Republic of Croatia.

12. Dragan Novsel

I would use this opportunity to say that in mid-April Amendments to the Penal Code will be introduced. The Ministry of Justice has formed a work group, with Prof. Horvatić at its head, which has drafted these Amendments and also formed a work group to draft the Amendments to the Criminal Procedure Act. Once again I would like to point out that the prevailing legal framework is good, but that improvements are always possible. In this sense, the introduced Amendments will surely enable the desired improvements.

13. Zlata Đurđević

Once again I would like to turn back to the problem of proving and the investigation itself. Namely, the investigation should be a secret, as prescribed by the Criminal Procedure Act. Making the investigation public would bring to obstruction and inefficiency of the investigation on one side and on the other to jeopardizing unjustifiably the honour and dignity of the person against whom there are still insufficient evidence to press charges. Such media requirements on one side indicate distrust in the institutions of justice and on the other pretence that journalists would be competent to evaluate whether someone is guilty or not guilty and whether certain evidence is credible. The only persons qualified to judge and evaluate evidence during the investigation are the investigating judge and the State's Attorney.

14. Dragan Novosel

It is important to point out that during the last year 42,000 decisions were instituted on the basis of reports, 34 per cent of these were dismissed, over 27,000 were accusations and only 8.4 per cent were investigations.

15. Danijela Babić

The reports on corruption may also be a pure means of manipulation over the public and denouncing of certain public persons without firm evidence. Newspapers are full of such denunciations which in the end prove unfounded.

16. Nataša Đurović

It is surely necessary to work on the consciousness of citizens, but no great changes should be expected in this segment in a short period of time, because it is a time-consuming process. The focus should be first on the creation of systems within the institutions, institutes and organisations which will be transparent and which will by using their mechanisms reduce the possibility of performing corruptive acts to a minimum.

As regards legislation, I think that the amending of legislation happens too often. There are cases of mutual non-harmonisation of certain Acts and sometimes slips happen, such as the one which happened within the Amendments to the Penal Code of 2000. Namely, from a provision of the Penal Code incriminating "money

laundering” (criminal act of hiding the illegally acquired money from the Penal Code, Article 279) the provision on punishment was deleted by a slip which has not been corrected to this very day.

Priority areas:

1. Introduction of property cards (at least for state officials and civil servants).
2. Safety check on the personnel prior to their being admitted to the civil service.
3. Monitoring the work of each State’s Attorney monthly.
4. Increasing the efficiency of state administration (state administration is inefficient, the problem of staff surplus).
5. Computerisation of state administration (there are no computer records of documents, no electronic archives).
6. Constant education of citizens and changing awareness of the problem of corruption.
7. Monitoring the work of the board for prevention of conflict of interests as a mechanism for prevention of corruptive behaviour of state officials.
8. Objective covering of the cases of corruption by the media.
9. Political parties.

CONCLUSION

The National study on integrity is a comprehensive presentation of the situation within the scope of activities of state institutions, international community, civil society and media. The study emphasizes the importance of connecting and strengthening of institutions with the objective of prevention and combating corruption. The key role of the executive power is the implementation of anti-corruption measures, most of all due to the responsibility of the Government for work of all the bodies of state administration including ministries, state administrative organizations and offices of the state administration. For a more effective combat of corruption independent judiciary is important, therefore the judges and state attorney are prohibited to be members of political parties and to be active in politics. In exercising the tasks of their office, the judges must take care of prevention of a potential conflict of interest and avoiding of situations in which their private interest could be in conflict with the public interest of the office they are filling. Numerous research direct to the conclusion that the judiciary, according to the evaluation of the public is one of the areas to be the most threatened by the corruption.

Independence and autonomy in work is regulated by the law also for the State Attorney’s Office and the people’s Ombudsperson. In the last five years, the People’s Ombudsperson has not been relieved from office, which is a positive sign of independence and autonomy in his work. In the legislative reform several new pieces of legislation have been enacted and provisions of the existing ones changed with the purpose of a more effective corruption prevention. However, the said legislation is in some parts insufficient and not precise and therefore in need of elaboration. For instance, the study shows that there is no special provision by means of which political independence of civil servants is required in the sense

that membership in political parties of management bodies of political parties is strictly prohibited, or that independence or autonomy in acting is explicitly required. Considering rules for recruiting and promotion in the career, it has been emphasized that the candidate selection procedure is not regulated in detail. In the aspect of promotion, space has been left for promotion on the basis of criteria that are not only professional, like acquaintances, political criteria and similar. There are no particular rules preventing nepotism and other forms of protection, nor legal sanctions envisaged for civil servants. The law does not specially regulate informing on illegal activities, nor does it give special protection to civil servants reporting on such activities.

The financing of political parties in Croatia has been regulated by several articles of the Act on Political Parties. By now, no modern law on financing of political parties has been passed. The system of financing of politics is further on relatively non-transparent. The sources of financing of parties and election are partly public. The only source which is under full monitoring of public is grants from the state budget. There are no rules on costs of financing of political parties and election. Budgets of political parties are not being publicly released in official papers. The state audit does not conduct any kind of control of party finances, and the parties bear no sanctions, even if they do not send their reports to the parliamentary committee.

The State Audit Office and the Auditor General are independent and professional bodies whose function is separated from the executive power. The Study makes the conclusion that the total situation of budget transparency is improving. The Croatian Parliament, the Government and the State Audit Office have for the first time a possibility of a more complete insight to particular kinds of expenditures by economic criteria and categories of particular budgetary beneficiaries, which is a significant progress in transparency and insight to financial business transactions of institutions being financed by the state budget.

The research has also covered the area of public procurement being regulated by the Act on Public Procurement. The research shows that the decisions on public procurement are accessible for the public through the OG and that there are rules for prevention of nepotism or conflict of interest in the procedure of public procurement, but they are not precise enough. One of the disadvantages is also that there is no system of monitoring of private property and style of life of civil servants who participate in procedures of public procurement.

Finally, the role of police is immense in the implementation of criminal investigation for penal acts related to corruption. The findings of the research show that the police activities by now indicate appearances of corruption within the police force. Research findings show that it is mostly appearing in the form of the so-called street corruption and though most often among officers of the traffic police force who sometimes on offer of citizens accept small amounts of money, and in return forgive traffic offences to drivers.

The study gives in the end a row of recommendations about what should be done for the purpose of prevention and suppression of corruption. Some of the proposals are: urgent establishing of a Commission on implementation of the National

Programme, establishing of an independent body for prevention and education on danger of corruption and needs of prevention thereof, improvement of conditions for the work of the USKOK, creation of legal and material pre-conditions for normal functioning of the Commission for prevention of the conflict of interest in exercise of public office, change of the existing Act on financing of political parties and appropriate changes of the Act on financing of advertising of election for the President of the Republic of Croatia, a more effective protection of corruption informants, changes of the Act on the right of access to information, passing of ethic codes in public services in which they are non-existent and stimulating implementation of such measures in the private sector, strengthening of the education component of anti-corruption policy and integration of educational contents on harm from corruption to all the levels of the education system, and ensuring of funds and creation of mechanism of responsibility of the state for the harm caused by corruption under conditions stipulated by the Civil-legal convention on corruption.