# III. REGULATORY AND LEGAL FRAMEWORK FOR ANTI-CORRUPTION

The shortcomings of the laws and other regulatory instruments are particularly well exploited by those involved in corrupt practices. In order to minimize the conditions favorable to corruption and to devise mechanisms of control over corrupt practices in the SEE countries it is necessary to undertake a comprehensive reexamination of the existing legislation in terms of sanctions and prevention, as well as envision the appropriate legislative changes.

This chapter presents a general overview of the existing anti-corruption legislation and its implementation. The main objective of the analysis is to outline the common problems and the specifics in the individual countries and to formulate recommendations regarding the future development of the legislation and its effective implementation. The most important issues examined are:

- **Anti-corruption policy**, including the adoption and implementation of anti-corruption strategies and special anti-corruption laws and instruments as well as the establishment of special anti-corruption bodies;
- **Criminal law**, including the sanctions and other criminal law measures in areas often marked by corrupt actions;
- **Criminal procedure** with a special focus on the guarantees for openness and transparency of the criminal proceedings;
- **Civil law and procedure**, including the laws and regulations concerning business transactions, company and property registration, impartiality of the court and speed of the proceedings, as well as execution of judgments as a part of civil procedure.

## 3.1 Anti-Corruption Policy and Special Anti-Corruption Laws and Instruments

### *Anti-Corruption Strategies*

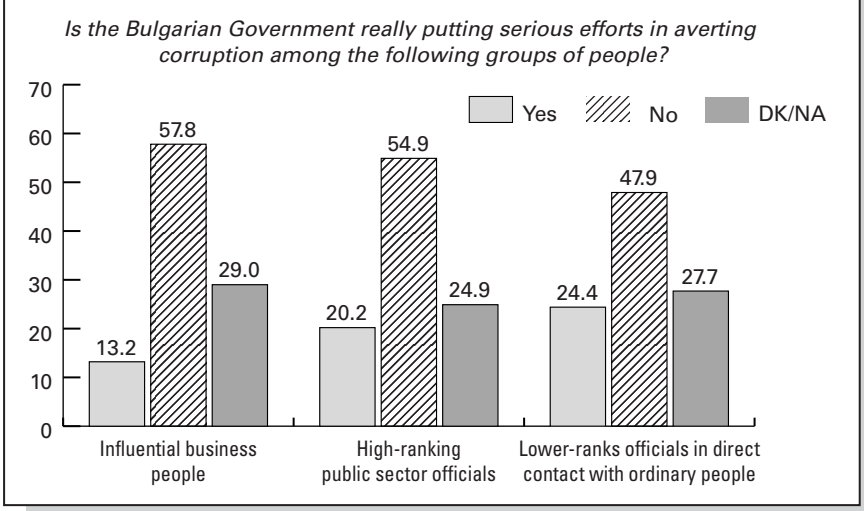
In most of the countries in the region special instruments regarding the fight against corruption in the form of strategies and action plans have been recently adopted or are in process of preparation. Although these documents are not pieces of legislation they have considerable anti-corruption significance since they provide analysis of the current situation in the respective countries, outline the activities and measures to be taken including legal reforms, and specify the institutions responsible for their implementation.

In **Bulgaria** the first anti-corruption activities were initiated by the non-governmental sector in early 1997 and resulted in launching in the spring of 1997 of the *Coalition 2000*[3] anti-corruption process – an initiative of Bulgarian non-governmental organizations aimed at limiting corruption in Bulgarian society through the development of public-private partnership between state institutions, non-governmental organizations, and individuals. Within the framework of *Coalition 2000* an Anti-Corruption Action Plan for Bulgaria was developed and endorsed by a Policy Forum in November 1998. The Anti-Corruption Action Plan successfully became part of the social agenda as a broadly approved system of measures and actions for curbing the extremely dangerous social phenomenon of corruption. Parallel to the elaboration of the Action Plan *Coalition 2000* experts developed a Corruption Monitoring System, which represents a system of empirical studies and analytical reports aimed to regularly present information about the scope of corruption in the country and the public attitudes, assessments and expectations. Each year, starting with 1999, the basic findings of the Corruption Monitoring System have been incorporated in a Corruption Assessment Report, which presents a general evaluation of the state and dynamic of corruption in Bulgarian society and of the efforts to counteract corruption in the respective year.

On October 1, 2002, Bulgarian Government adopted a *National Anti-Corruption Strategy* aimed to facilitate comprehensive measures for achieving greater transparency and accountability of the functioning of the state. The Strategy incorporated many of the measures proposed by *Coalition 2000* Action Plan of 1998. Following the

[3] For more information see www.online.bg/coalition2000.

**Chart 1: Evaluation of Government Efforts in Preventing Corruption – Bulgaria (%)**




adoption of the Strategy, the Government adopted a *Program for the Implementation of the National Anti-Corruption Strategy* and appointed a special Committee for Coordination of the Anti-Corruption Activities, chaired by the Minister of Justice Mr. Anton Stankov. An Operations Plan for Execution of the National Anti-Corruption Strategy was recently developed by a joint task force including experts and representatives of state institutions and non-governmental organizations. The first measures for the implementation of the Strategy included amendments to the criminal legislation, the *Law on the Judiciary* and the *Code of Civil Procedure*.

In **Republic of Croatia** a group of independent experts to the Ministry of Justice, Administration and Local Self-Government, supported by the Government, prepared a National Anti-Corruption Program entitled *Anti-Corruption Action Plan* that is currently in Parliamentary procedure.[4] The Program explains the harmful consequences of corruption and contains a comprehensive Action Plan for fighting corruption with determined tasks, responsible task carriers and timing. Tasks are directed towards establishing the rule of law and improving its effectiveness, establishing of a specific body specialized in the prosecution of cases of corruption, raising the efficiency of the criminal prosecution of corruption, developing organizational measures in the administrative system, decentralization, financial responsibility measures and other economic measures, as well as stimulating political and civil responsibility, and international activity.

In **Romania** the elaboration of an *Anti-Corruption Strategy* was launched by the Government in 2001. The Strategy includes the goal of improving the legal framework related to the prevention and sanctioning of corruption, development of the most appropriate infrastructure for fighting corruption and organized crime, continuous training of persons involved in the fight against corruption, and ensuring transparency.

In November 2001 the Government of the **Republic of Serbia** launched an Anti-Corruption Initiative including five basic tenets for fighting corruption. These are: 1. securing the institutional frame (court reform, strengthening parliamentarian control); 2. reform of the public administration (imposing internal and external budget control, control of the state services); 3. economic reform (macroeconomic stabilization, liberalization, fiscal reform, privatization); 4. motivating the participation of civil society (affirmation of media freedom, encouraging NGO campaigns); 5. affirmation of the political environment that favors the fight against corruption (political party financing, conflict of interest regulation).

The Anti-Corruption Initiative of the Serbian Government is divided into two segments: *counseling initiative* and *operative initiative*.

- Under the counseling initiative in November 2001 the Government formed the *Council for the Fight against Corruption.*

The role of the *Council* is to give recommendations to the Government for formulating and implementing the national anti-corruption strategy and policy. The Council has also an obligation to monitor concrete measures implemented by the Government on stopping corruption, and to evaluate and give suggestions for their improvement.

Following the request of the *Council* in January 2002, the Government has announced publicly all information on the participation of higher state officials in boards of directors of publicly owned companies, which was one of the major media events.

[4] The Program could be found at www.transparency.hr

Information showed that high state officials have several functions which created numerous controversies in the public. As a result the *Council* gave initiative for *Avoiding Conflict of Interest Law*. At the initiative of the *Council*, the Government formed a work group, including two representatives of the *Council*, which started to prepare the draft law. The *Council* also initiated *Registering State Officials' Property Law* and *Financing Political Parties Law.*

However, in order to further increase the effectiveness of the Council it is necessary to improve its financial independence.

- Under the operative initiative, the Government of the Republic of Serbia has formed the *Committee for the Fight against Corruption.* The *Committee* has formed specilaized teams to fight corruption: *anti-corruption teams* and *task force team*.

The *anti-corruption teams* are made up of the representatives of the Ministry of Interior Affairs and the Republic of Serbia's State Prosecutor Office. Up to date, 26 teams have been formed in the offices of the Ministry of Interior Affairs in all the larger cities of Serbia. At the disposal of the public are special phone numbers, which have been publicized in all media, and through which the citizens can report any case of corruption that they encounter. In the first 15 days of the functioning of the teams, there have been 456 reports of corruption, which resulted in 10 prosecutions against 13 individuals. Plans have been made for greater media promotion of the teams to increase their effectiveness.

The *task force team* is made up of the government and the non-government sector. The main function of the group is to facilitate and ease the communication flow between various state institutions and with the civil society. The members have been selected from the most important Federal and Serbian state institutions, NGOs, unions and the commercial community. This group has also a wide action implementation initiative, its members having experience and first hand knowledge of corruption in the Serbian community.

The Ministry of Finance and Economy of the Republic of Serbia is the main Government coordinator of the State's fight against corruption. The Ministry is the home to the *Anti-corruption Office,* which is the headquarters for the *Council for the Fight against Corruption* and the *anti-corruption task force*. The *Anti-Corruption Office* is designed to secure the information flow between all the parties involved, coordinates relations with the media and civil society, and manages international relations concerning the Government's anti-corruption initiatives.

***Special Anti-Corruption Legislation***

As to the special anti-corruption legislation most of the countries in the region have preferred the approach of incorporating individual anti-corruption provisions in the newly adopted or already existing laws and regulations rather than adopting special anti-corruption laws. According to the prevailing opinions in these countries an anti-corruption law will make little sense in a legal culture and environment marked by uncompleted overall legal reform and ineffective law enforcement.

In **Bulgaria** a *Draft Law on the Fight against Corruption and Financial Crime* was developed and introduced in Parliament in 1999 providing for the setting up of a special Government *Agency for the Fight against Financial Crime and Corruption* (financial police). The agency was designed as a specialized division within the Council of Ministers, and thus subordinated to the executive. However the draft did not gain the support of neither the policy makers' community nor the civil society and was not further discussed in the National Assembly. Thus Bulgaria followed the approach of developing the whole spectrum of laws and institutional preconditions necessary to create an environment unfavorable for corruption instead of adopting a special anti-corruption law and creating a separate anti-corruption institution.

So far only in Macedonia and Romania parallel to this approach special anti-corruption laws have been adopted.

In **Macedonia** a *Law against Corruption* has been adopted by the Parliament on April 26, 2002, providing for the establishment of a *State Commission against Corruption*. The Commission consists of seven legal and economic experts appointed by the Parliament. Under the Law there is an obligation for property disclosures for the politicians and other officials holding a high position. The members of the Commission shall be appointed within 6 months after the Law enters into force, which indicates that the Law shall not apply for the politicians and senior officials, who were in power until the parliamentary elections in September 2002. The opposition, media, NGO and experts have broadly criticized such unfavorable solution, which shows that the Government had no political will to combat corruption within its own ranks.

The **Romanian** National Assembly adopted a *Law on Fighting against Corruption and Organized Crime (78/2000*), which is supposed to bring some coherence in the legislative acts regulating this issue. It is also aimed at strengthening judicial control over a wide range of public positions by creating a *Special Department for Fighting Corruption* reporting to the Supreme Court of Justice. For the first time local units were created within county courts and special judges were appointed together with experts from various fields (i.e. public finance, banking system, and customs) to deal with important cases of corruption. However, the organization of local offices encounters difficulties and the judges complain that there is lack of notifications "from reliable sources" on such cases. Therefore, no major investigation was yet initiated.

Also in Romania the Government adopted in early April 2002 an emergency ordinance for setting up a *National Anti-Corruption Prosecutor Office (NAP)* that will go into operation from September 1 this year. NAP will deal with such practices as accepting and offering bribes, abuse of power, fraud, embezzlement, money laundering, tax evasion, criminal association and stealing of classified information from banks and other industries. The anti-corruption body only deals with criminal cases involving material losses of more than 100,000 Euro, or having a large impact in society. Moreover, NAP will deal with crimes committed by parliamentarians, government officials, judges and those who hold leading posts in public institutions, independent accounting departments and banks. NAP was set up as an independent branch of the Romanian Public Administration Ministry and is made up of 75 prosecutors, 150 police officers and 35 other specialists. The head of NAP will be appointed by the country's president and perform his duty upon authorization by the Minister of Justice.

### 3.2. Criminal Law and Procedure

Corruption is a serious crime, threatening the efficient and honest service to the population, undermining law enforcement and the respect of law. In the private sector it increases the costs of doing business which has adverse effects on trade and industry and the gross domestic product. When corruption has developed into system of the public administration and the private trade and industry, the criminal law approach has to be supplemented by broader measures, such as education to bring the values of decent administration, impartiality and fair-trading to life again. The attack on the system of corruption has to be supported also by the broader public, which has to develop a critical awareness towards shady dealings. Nowadays, there is almost no field in society where there is no corruption.

Criminal law has the most direct impact on the problems of corruption and is among the most important tools the legal system has to offer in the fight against corruption. Although the term "corruption" is not defined in the criminal legislation of most of the countries in the region their criminal laws include a number of provisions aimed at sanctioning various corruption related offences. In the last few years most of the countries have focused their efforts on amending the relevant criminal legislation in order to provide criminal sanctions for the largest possible range of corrupt practices and to introduce the European and international standards.

#### *Sanctioning of Corruption Related Offences*

The criminal laws of all SEE countries provide for the imposition of sanctions in cases of corruption related offences. Although the penalties provided in the laws of the individual countries differ in terms of type and amount most of the countries envisage either deprivation of liberty or imposition of fines for the offenders.

In **Albania**, the new *Criminal Code* in force since June 1995 included numerous provisions that attempted to prevent and punish corruption in the state administration and the civil service. Incriminated are the following offences:

- Offering a bribe (Articles 244) – the proposal for remuneration, gifts, or other benefits made to an official holding a state function or public responsibility, with a view to have the later act or refrain to act against what is expected from him by law, or to use his influence towards other authorities in order to obtain favors, courtesies, and any other benefits;

- Asking or receiving a bribe (Article 319) – asking for or unlawfully receiving remuneration, gifts, or other benefits, as well as procuring promises to get them, by the judge, the prosecutor, the defense attorneys, the experts, and/or every arbitrator assigned to a case, with the intent of carrying out or avoiding to carry out an act that is connected to their function.

The offering of bribe is punishable by a fine or up to 5 years of imprisonment, while the penalty provided for asking or receiving bribes is 5 to 10 years of imprisonment. These provisions give the courts considerable flexibility and leverage to

impose criminal penalties in cases of actual or attempted corruption in areas as different as public procurement, judicial proceedings, public works, money laundering, etc. It is also important to mention that the Law provides effective tools to offset corruption incentives in the judiciary system.

However Albanian criminal law has failed to provide a resolute response to the endemic corruption in the country. At least one reason for the relative ineffectiveness of the Albanian criminal law in the efforts to reduce corruption is of an objective nature: corruption deals are always kept in the dark. Secondly, pervasive corruption in the judicial system is also determined to a considerable extent by the diluted professional standards that are common among judges, prosecutors and (to a less extent) defense attorneys.

The segment of crime control in **Bosnia and Herzegovina** is a responsibility of the individual Entity Governments while at the state level cooperation was until recently minimal or nonexisting. On the other hand, criminal law was designed as an Entity matter and, therefore, we could until recently talk literally of two separate criminal justice systems in Bosnia and Herzegovina.[5]

As the country moves towards a greater degree of political confidence so is the inter-Entity crime on the rise too. Therefore the Ministry of Civil Affairs and Communications, being one of the six joint ministries, in collaboration with Office of the High Representative (OHR) will propose a Criminal Law of BiH regulating cross-Entity crime and corruption. *Inter alia*, it will handle money laundering as a criminal act, as well as the legal responsibility of individuals in criminal acts.

Meanwhile, RS has adopted a new *Criminal Law* in 2000, which engulfed provisions on: stock exchange dealings, forged bankruptcy, misuse in the liquidation procedure etc. Following the adoption of the *Criminal Law* of BiH, RS through its Ministry of Justice is likely to take over certain provisions its current law may be lacking.

In FBiH the Law will be amended before the year's end, which should cater for: money laundering, criminal acts relating to bankruptcy, stock exchange related activities, criminal acts through the privatization process (currently only valid until 2003, i.e. until the privatization process was deemed to be accomplished). These amendments will reintroduce confiscation of property for those activities, which led to illegal extra profits. It will take over certain provisions of the Council of Europe *Criminal and Civil Law Conventions on Corruption*. Generally speaking, the aim of these revisions is to increase penalties for illegal corrupt acts and it will be harmonized with the BiH *Criminal Law*.

Currently both Laws in RS and BiH respectively penalize equally those who give and take bribe and do not differentiate between these two categories.

The **Bulgarian** *Criminal Code* envisages criminal sanctions for several corruption related offences. The most important of them are as follows:

[5] A very important factor for understanding the complexity of crime control in Bosnia and Herzegovina is the internal political organization of the state and the present state of affairs in the country. Bosnia and Herzegovina (BiH) has been, ever since the signing of the Dayton-Paris Peace Agreement (DPA) in December 1995, administratively divided into two constitutional Entities with very high level of autonomy. While six ministries exist at the joint state level, the real authorities lay in fact with their counterpart ministries in Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS). Moreover, FBiH being a federal unit of the Bosnian Muslims and the Croats is further divided into ten Cantons, each of which has its own constitution, parliament, government, and other decentralized institutional features. FBiH was granted 51 per cent of the BiH territory by the DPA. The RS with 49 per cent of the land is far more centralized and has no cantonal structure, yet simply municipalities as the only local political level. In most of BiH and particularly FBiH the division of competencies is not fundamentally clear, which makes any proper administrative regulation rather difficult. The current political settings have dominated over the post-civil war period and it is unlikely to change since it is a product of the painstaking political consensus reached after the guns were silenced. Attempts to streamline the political and legislative processes in such a complex environment have been in the forefront of the country authorities' efforts together with the large donor community present in BiH. The interactions between these two factors have very much determined the development of the country and tackling of the problems. However, it is very worth noting that the international community has treated BiH as a semi-protectorate with its vast range of powers, vested primarily in the High Representative and his office (OHR) that has been imposing laws, permanently removing elected officials and appointing new ones to the top positions in the country. The international community has also played a pivotal role in the design of the anti-corruption strategy, individual laws directly or indirectly tackling the issue as well as in the overall guidance, monitoring and revision.

Most of the regulations and legal acts were inherited from the former Socialist Federal Republic of Yugoslavia, as the war begun immediately after the disputable declaration of the BiH independence. Consequently, the conditions to build a new regulatory system had never been established properly. Reconstruction and building of a new regulatory system was one of the most important tasks in the last couple of years for both Entities and their Governments, as well as for the State administration. No major player was prepared to do a complete legal revamping of the country and repeal most of the old, socialist legislation and so the process took a long time in adjusting the individual pieces of laws, then harmonizing them among the different political levels and finally, bringing them in line with the EU directives. Often, legislation would change several times which has additionally caused insecurity, as the system kept transforming.

- Racketeering (Article 213a) – threatening a person with violence, with making public some disgraceful circumstances, with inflicting damages on property or some other unlawful actions of grave consequences for that person or his relatives for the purpose of forcing this person to dispose of an article or a right or to undertake a property obligation;

- Blackmail (Article 214) – compelling somebody by force or threat to do, to fail to do or to suffer something contrary to his will and thereby inflicting material damage to that person or to another, for the purpose of procuring material benefit for oneself or for another;

- Accepting a bribe (Article 301) – accepting a gift or any other undue material benefit by an official: a) in order to perform or to fail to perform an act connected with his service, or because he has performed or failed to perform such an act; b) in order to violate, or for having violated his service, where this violation does not constitute a crime; c) in order to perform or because of having performed another crime in connection with his service. Accepting a bribe also includes the cases where the gift or material benefit has been given to another person with the consent of the respective official. The punishment for accepting a bribe is also imposed to an expert, appointed by a court, institution, enterprise or organization where he perpetrates such acts in connection with the tasks entrusted to him.

- Giving a bribe (Article 304) – giving a gift or any other material benefit to an official in order to perform or not to perform an act within the framework of his service, or because he has performed or has not performed such an act, including the cases where in connection with the bribe the official has violated his official duties. The provision applies also as regards to giving a bribe to an expert, appointed by a court, institution, enterprise or organization. However no punishment is imposed on a person who has given the bribe, if he had been blackmailed by the official or by the expert to do so or if he has informed the authorities of his own accord.

The penalties, provided for racketeering and blackmail, include deprivation of liberty from 1 up to 30 years (including life imprisonment for the cases where the offence has been accompanied by murder or attempt to murder) and imposition of fine in the amount of BGN 500 up to 10,000. In some of the cases the court may also rule confiscation of the whole or a part of the property of the perpetrator. The main penalty provided for bribery is deprivation of liberty (up to 30 years for particularly grave cases). Confiscation is also envisaged for some of the offences. A specific penalty as regards to bribery offences is the deprivation of specific rights such as the right to occupy certain state or public position and the right to exercise certain profession or activity.

The following tables provide some statistical data on the number of criminal cases for blackmail and bribery for the period 1999 – 2001.

**Table 3: Criminal Cases for Racket/Blackmail under Section V "Blackmail" of the Criminal Code (Articles 2130-2140)**

| Courts | Year | Cases opened | Cases closed | Persons Sentenced | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Total | Up to 3 years deprivation of liberty | From them: sentences on probation | 3-10 years deprivation of liberty | 10-30 years deprivation of liberty | Other penalties |
| Regional Courts | 1999 | 56 | 18 | 22 | 20 | 11 | | | 2 |
| | 2000 | 52 | 21 | 31 | 24 | 18 | | | 7 |
| | 2001 | 73 | 26 | 29 | 19 | 13 | 2 | | 8 |
| District Courts | 1999 | 39 | 15 | 15 | 9 | 7 | 4 | 1 | 1 |
| | 2000 | 46 | 19 | 28 | 21 | 17 | 5 | 1 | 1 |
| | 2001 | 34 | 14 | 13 | 9 | 5 | 1 | | 3 |
| Military Courts | 1999 | 8 | 1 | 2 | 1 | | | | 1 |
| | 2000 | 11 | 2 | 8 | 7 | 5 | | | 1 |
| | 2001 | 13 | 1 | 2 | 2 | 2 | | | |

**Table 4: Criminal Cases for Bribery under Articles 301 - 305a of the Criminal Code**

| Courts | Year[6] | Cases opened | Cases closed | Persons Sentenced | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Total | Up to 3 years deprivation of liberty | From them: sentences on probation | 3-10 years deprivation of liberty | 10-30 years deprivation of liberty | Other |
| Regional Courts[7] | 2000 | 16 | 11 | 9 | 4 | 3 | 1 | | 4 |
| | 2001 | 11 | 6 | 8 | 1 | 1 | | | 7 |
| District Courts[8] | 1999 | 47 | 27 | 25 | 21 | 19 | 1 | 2 | 1 |
| | 2000 | 48 | 27 | 31 | 23 | 23 | 1 | 1 | 6 |
| | 2001 | 29 | 12 | 9 | 5 | 4 | 2 | | 2 |
| Military Courts[9] | 1999 | 21 | 15 | 16 | 14 | 12 | | | 2 |
| | 2000 | 20 | 10 | 7 | 6 | 3 | | | 1 |
| | 2001 | 28 | 12 | 17 | 16 | 12 | | | 1 |

In the year 2000 the **Bulgarian** *Criminal Code* was amended on two occasions. The first set of amendments (in effect from March 21, 2000) enhanced the criminal measures in areas often marked by corrupt actions. They affected drug trafficking by incriminating two new aggravated offences – enticing or forcing someone to take drugs. The sanctions were increased and the forms of crime were expanded relative to the theft of motor vehicles and smuggling. The imprisonment previously imposed for libel and slander was replaced with fine and such crimes will now be prosecuted on a complaint of the victim. The second set of amendments to the Criminal Code (in effect from June 27, 2000) increased the sanctions for bribery. Aggravated crimes were introduced, as well as criminal liability for the officials. Two completely new offences were incriminated – promising and offering bribes. The act of the official who has asked for or has accepted a bribe is criminalized. A scope, in cases of active bribery of foreign officials and outside the carrying out of an international commercial activity, has been broadened. Incriminated were also the acts of promising and offering of bribes to foreign officials. The provision on what is known as "loyalty check" (provocation to bribery) was substantially improved.

The ratification of the *Criminal Law Convention on Corruption* of the Council of Europe in 2001 was a significant step forward as well.

As a follow-up to the adoption of the Government's *National Anti-Corruption Strategy* the Council of Ministers upon proposal by the Minister of Justice submitted to the National Assembly a *Draft Law on Amendments to the Criminal Code.* Most of the amendments proposed are in compliance with the international anti-corruption instruments such as the Council of Europe *Criminal Law Convention on Corruption* and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

The most important amendments, currently in process of discussion in the National Assembly, envisage:

- broadening the scope of the definition for "foreign public official" by including the officials of international parliamentary assemblies and of international courts (Article 93);
- incriminating the bribery in the private sector (Article 225c);
- including the nonmaterial benefits or services as possible subjects of bribery;
- incriminating the passive bribery of foreign public officials (Article 301, paragraph 5);
- incriminating the trade in influence and the exercising of influence with the purpose of receiving benefits (Article 304b);

[6] No data for cases for bribery in Regional Courts for 1999.

[7] Regional Courts hear cases for bribery under Articles 304, 305 and 305a of the *Criminal Code*.

[8] District Courts hear cases for bribery under Articles 301-303 of the *Criminal Code*.

[9] Military Courts hear cases for bribery under all articles of the *Criminal Code*.

- incriminating the bribery of arbiters and in certain cases the bribery of defense attorneys (Article 305);

- making bribery committed by a magistrate (judge, prosecutor or investigator) as an aggravated offense;

- repealing the provision of Article 307 on the inducement to bribery.

- increasing the sanctions for bribery of magistrates – judges, prosecutors and investigators (Articles 302 and 304a).

Another part of the amendments proposed are aimed to comply with the *UN Convention against the Transnational Organized Crime,* the *International Convention on Combating Bomb Terrorism,* the *Protocol against the Illegal Trafficking of Migrants by Earth, Sea and Air, Protocol on Prevention, Counteraction and Punishment of the People Traffic, especially of Women and Children, supplementing the UN Convention against the Transnational Organized Crime*, all of which were ratified by the National Assembly in 2001.

With the forthcoming amendments to the Criminal Code the main forms of corrupt behavior are expected to be covered to a fuller extent. Nevertheless, in order to improve the legislative rules on bribes (often perceived as a synonym to corruption) some more steps should be undertaken concerning the sanctioning of illegal funding of political parties and more precisely defining the term "public officials" as major subjects of passive bribery (at present, for instance, it could be disputed if a MP or a municipal counselor is a "public official" who could be the perpetrator of passive bribery under the present language of Article 93 of the *Criminal Code*). As much as the titles of the chapters in the *Criminal Code* provide guidance in the interpretation of their content it would also be good if the title of the chapter, which deals with bribery, were amended to include the opportunities for bribery in the sphere of the economy as well. Another necessary step is the regulation by law of administrative liability (imposition of monetary penalties) for legal persons whose senior officials and representatives have committed crimes of corruption for the benefit of those persons.

In the **Croatian** *Criminal Law* (adopted in 1997 and amended in 1998 and 2000) there is no legal definition of corruption, but conventionally it is regarded as offering and accepting bribes (Articles 347 and 348); illegal intercession (Article 343), abuse in performing governmental duties (Article 338), abuse of office and official authority (Article 337), concluding a prejudicial contract (Article 294), disclosure of an official secret (Article 351), and disclosure and unauthorized procurement of a business secret (Article 295). Each of the above specifications reveals an individual element of the phenomenon of corruption, and although disputes can occur over its definition, what is indisputable is that corruption causes social and political damage and that it exists in the Republic of Croatia.

A *Draft Law on Criminal Liability of Legal Persons for Criminal Offences* is currently being prepared by a governmental working group and is expected to be adopted soon. The Draft Law provides that all legal persons, including foreign legal persons, can be held criminally liable. The criminal liability of legal person would be an indirect liability, as it would be incurred only through the conduct of a natural person, authorized to represent the legal person or acting in the framework of the legal persons' activities. The material conditions as to the imputation of the liability to the legal person are still under discussion. On this particular point, the drafting team was inspired by the French and Slovenian legal models. Regarding sanctions on legal persons, the principal sanction provided by the Draft Law would be a fine of a maximal amount of 4 million KN (approx. 550,000 Euro). Other penalties are also envisaged, such as dissolution, placing under judicial supervision, disqualification from the practice of certain activities, confiscation of the proceeds from the offence, interdiction to obtain licenses, grants, etc.

According to estimation by OECD (OECD, 2001) Croatia now possesses a relatively sophisticated criminal legislation and a relatively comprehensive anti-money laundering legislation. Although the laws could be estimated as appropriate, the main problems are in their implementation.

The *Criminal Code* of the **Republic of Macedonia** has proscribed the following criminal offences, which deal with potential corruption:

- Misuse of official position and authorization (Article 353) – acquiring some kind of benefit by an official person for himself or for another, or causing damage to another by using his official position or authorization, by exceeding the limits of his/her official authorization, or by not performing his official duty;

- Receiving a bribe (Article 357) – requesting or receiving a present or some other benefit by

an official person in order to perform an official act within the framework of his own official authorization which he should not perform, or not to perform an official act which he otherwise must do. Paragraph 2 of this article covers the situation when the official person requests or receives a present or some other benefit, in order to perform an official act within the framework of his own official authorization which he must perform, or not to perform an official act which he otherwise should not perform.

- Giving a bribe (Article 358) – giving or promising an official person a present or other benefit to incite him/her to act in the manner, described above (Article 357). It is very important to mention that the offender of the criminal offence "giving a bribe" who gave a bribe upon the request from the official person, and who reported this before the crime was discovered, shall be acquitted from punishment.

- Unlawful mediation (trade in influence) (Article 359) – receiving a reward or some other benefit by using one's official or social position and influence, in order to mediate for some official act to be executed or not.

All these offences are settled in Chapter 30 of the *Criminal Code* of the Republic of Macedonia named "Crimes against Official Duty." Other corruption related crimes are money laundering (Article 273), trafficking (Article 278), etc.

All these provisions are part of *Criminal Code* that entered into force in November 1996. In year 1999 the Code was amended with provisions dealing with foreign public officials and legal persons. Namely, Article 122 of *Criminal Code* was amended with definitions of foreign official person and foreign legal person. Also, responsible persons from foreign legal persons were proscribed as possible offenders of criminal offences receiving a bribe, giving a bribe, and unlawful mediation. This is in accordance with international efforts to combat corruption, including those of the Council of Europe. All these criminal offences are quite modern and have been amended in past few years with adding foreign persons (legal and physical) as potential active or passive perpetrators of this criminal offence. Also there are provisions acquitting from sanctions those persons who collaborate with authorities before they are discovered.

There are no adequate provisions in the *Criminal Code* for provocation for bribery, but in practice it works with legal coverage of the provisions sanctioning the giving of bribes. There are no legal provisions in Macedonian law, which regulate the legal situation of "agent provocateur".

Analyzing the annual reports of Public Prosecutors Office of Republic of Macedonia about this kind of crime, numbers can seem strange. Namely, in the last three years (1999, 2000 and 2001) the number of prosecuted persons per year in Macedonia for the criminal offences receiving a bribe and giving a bribe was between 15 and 20, but for the criminal offence misuse of official position and authorization, they were about 500. These figures show very small number of criminal procedures for classic corruption cases. It is very difficult to prove that such criminal offence has taken place without at least one of the participants in the criminal event reporting to authorities about offering or asking the bribe. In this situation police rather reports to prosecutor criminal offence misuse of official position and authorization because it is easier to prove it.

Legislative jurisdiction that is in force in **Serbia** is divided between the Federal Republic of Yugoslavia and the Republic of Serbia. The general part of the *Criminal Code* is in the domain of the Federation while the special part, which includes incriminations of most corruption offences, is in the jurisdiction of the republics.

Serbian legislation has not even mentioned the term "corruption" at all until recently. *Criminal Code* amendments adopted in March 2002 imposed corruption as a crime for the first time in the history of Serbian legal system. Although Serbian legal system still does not recognize a single definition of corruption, amendments of Serbian *Criminal Code* that have been made in 2002 provide a number of corruption and corruption-related offences according to international legal instruments, in particular the Council of Europe *Criminal Law Convention on Corruption*. Furthermore, the recent amendments of the Serbian *Criminal Code* introduced a completely new chapter related to Corruption Offences (Chapter XXI A).

The criminal law regulations contain provisions pertaining the criminal bribe taking offences (Article 254: Accepting a Bribe) and giving bribe (Article 255: Offering a Bribe). Article 242 pertains to misuse of professional capacity (Misuse of Official Position). Article 243 of the *Criminal Code* of Serbia also pertains to judges, sanctioning violations of the law on the part of judges with the purpose of securing advantages for themselves and other persons. Giving false statements

before a court of law by witnesses and experts is also sanctioned (Articles 206 and 207 of the *Criminal Code* of Serbia), as well as abuse of trust on the part of lawyers (Article 179). Relevant incrimination provided in the Serbian Criminal Code is also illegal mediation and trading in influence (Article 253).

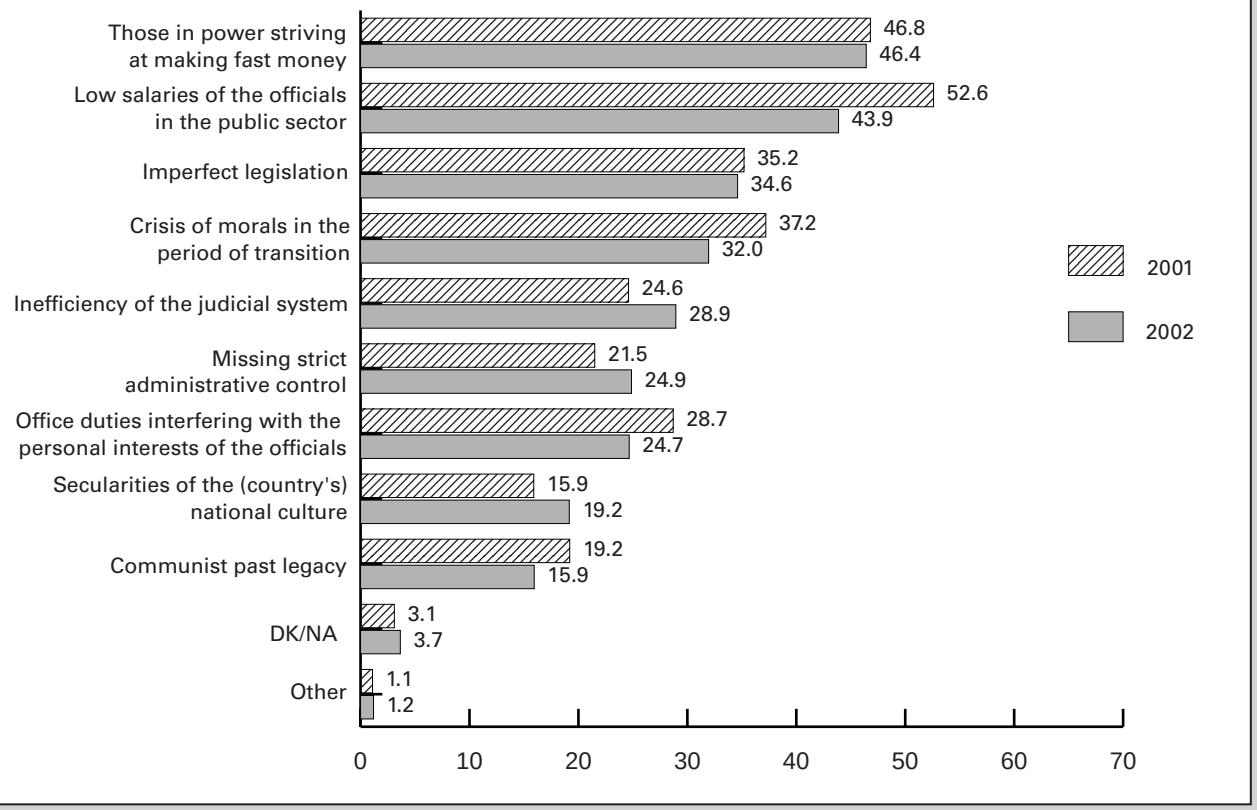
Minimum sentence for bribe receiver is 1 year of imprisonment, and for bribe giver a minimum of 6 months of imprisonment. Confiscation of the received gifts and benefits is prescribed, except if the offender has voluntarily reported the offence before its discovery; in such case, the bribe is returned to the giver.

Chapter XXI A introduces special corruption offences, a large number of which were already sanctioned by the general provisions on bribery. Corruption offences are listed in this way: corruption in the administrative bodies (Article 255b), misuse of budget means (Article 255v), corruption in public procurements (Article 255g), corruption in the process of privatization (Article 255d), corruption in judiciary (Article 255dj), abuse of proxy or attorney function (Article 255e), corruption in the health system (Article 255zh), corruption in the education system (Article 255z), stipulating sports results (Article 255i). Very different sanctions are prescribed for these incriminations, ranging from one to ten years of prison.

Incriminations of public sector corruption cover both officials of the Republic of Serbia and officials of the FRY. Corruption with a foreign element or foreign public officials is not sanctioned. Although bribery in private sector is criminalized through the term of "responsible person," the *Criminal Code* does not give any definition of a "responsible person." According to the jurisprudence of the courts, the "responsible person" would be any person in charge of particular tasks within a legal entity (enterprises, public companies, funds, institutions, organizations, etc.), a government body, or a body of local self-government and administration.

A person that gives a bribe can be exempted from the sanction if he proves that he has been solicited by the public official to do so, but only if he has reported the act to the adequate law enforcement authority before the crime was revealed (Serbian *Criminal Code*, Article 255, paragraph 3). The amendments to the Code in 2002 have introduced

**Chart 2: Factors influencing the spread of corruption in Serbia**




*Source: SELDI Corruption Monitoring System.*

additional special mitigation measures for corruption and some corruption related offences. Article 255a prescribes that disclosure of the offence, perpetration, organization or prevention of committing the offence, may be punished more leniently.

The *Criminal Code* comprises a number of offences, which do not seem at first sight as related directly to corruption, but all these areas have been severely affected by corruption, and sanctioning these offences have a direct potential to penalise quite widespread forms of corruption in the Serbia today. The list includes:

- Offences against the electoral procedure: falsification of the results of elections (Article 84); destruction of documents with records of elections (Article 85);

- Offences against the economic system: unconscientious conduct of business affairs (Article 136); causing of bankruptcy (Article 137). The other offences against economic system are: deliberate causing of damage to loan-givers, abuse of authorisations in the conduct of business (Article 86g), conclusion of contracts harmful to one's company (Article 140), revelation and unauthorised acquisition of a commercial secret, illegal usurpation of socially owned land, illegal management and allocation of residential premises, and discrimination between customers (Article 152).

- Offences against the integrity of the judiciary: commission of acts that cause obstacles to the process of deriving judicial proofs, illegal facilitation of commission of certain judicial actions.

- Offences against the integrity of official duty performance: abuse of official position, transgression of the law by a judge or magistrate (Article 243), illegal release of a detained person (Article 244), unscrupulous official duties performance, illegal acceptance or making of payments (Article 246), cheating in the performance of official duties, official secret revelation, fraud, illegal use of official resources, illegal mediation or facilitation between parties.

As most aspects of life in Serbia are affected by corruption this list may not be entirely exhaustive, so the criminal legislation that relates to aspects that are not immediately associated with corruption has the potential to penalise corruption in Serbia, which means that this list is an indication of the current state of the Serbian criminal law.

As far as acceptance of bribes is concerned, items of *Criminal Code* of Serbia are virtually identical to the corresponding paragraphs of Article 179 of *Criminal Code* of the Federal Republic of Yugoslavia: Accepting a Bribe. Other provisions of the Criminal Code of FRY that may refer to corruption are: violation of neutrality in business affairs (Article 163); creating and using of monopoly position (Article 163); abuse of official position (Article 174); illegal mediation (Article 180); transgression of the law by judges and magistrates (Article 181); illegal acceptance or making payments; illegal facilitation of making business (Article 198).

***Immunity***

An important issue regarding corruption related criminal rules is the immunity from criminal prosecution. The link between immunity and corruption has been publicly debated for a long time and cited as an important issue in several international documents. Thus, for instance, *Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption* of the Committee of Ministers of the Council of Europe states that countries should "limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society." Despite the ongoing debate in individual countries the present situation is as follows.

In the Constitution of **Albania**, immunity is clearly defined for the President of the Republic, Members of the Parliament, Members of the Constitutional and Supreme Court, Members of the Government, judges of all levels, the General Prosecutor, the Ombudsman and the High State Audit. The Constitution defines how immunity is revoked, and for which reasons. However, there have been only a few cases over the last 10 years when deputies have lost their immunity and were convicted to imprisonment on corruption charges.

In **Bosnia and Herzegovina** according to the *Law on Immunity*,[10] the following persons are entitled to immunity: Members of the BiH Presidency, Delegates of the House of Peoples and Members of the House of Representatives, Co-chairs and Vice-chair of the BiH Council of

[10] Law on Immunity, (http://www.ohr.int/ohr-dept/legal)

Ministers, Ministers and their Deputies, Judges of the BiH Constitutional Court, Governor and Members of the Central Bank Governing Board. All officials and other persons employed by or authorized to represent the Presidency, Parliamentary Assembly, Council of Ministers with Ministries, Constitutional Court, Central Bank and other institutions carrying out the activities from within the competencies of Bosnia and Herzegovina have the right to immunity in the exercise of their duties for the common institutions and while traveling to and from the institutions and the place of permanent or temporary residence.

In **Bulgaria** according to the *Constitution* the Members of Parliament, the President and the Vice-President of the Republic, the Constitutional Court Judges and the magistrates enjoy immunity. The immunity of a Member of Parliament could be lifted only by a decision of the National Assembly, while the one of the President and the Vice President – by a decision of the Constitutional Court upon proposal by at least three-forths of the Members of Parliament. The immunity of the Constitutional Court Judges could be removed by the Constitutional Court itself, and the immunity of the magistrates could be removed by the Supreme Judicial Council. The failed attempt in year 2001 to amend the *Constitution* on the issue of MPs' and magistrates' immunity makes it practically impossible to introduce some of the relevant changes in the criminal regulations directed against corruption. However the issue of immunity, especially the one of magistrates, continues to be subject of discussion in view of a future amendment of the *Constitution*.

According to the Article 75 of the *Constitution* of **Croatia** the Members of the Croatian Parliament enjoy immunity. No representative can be prosecuted, detained or punished for an opinion expressed or vote cast in the Croatian Parliament. No representative can be detained, nor can criminal proceedings be instituted against him, without the consent of the Croatian Parliament. A representative may be detained without the consent of the Croatian Parliament only if he has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case, the President of the Croatian Parliament is notified thereof. If the Croatian Parliament is not in session, approval for the detention of a representative, or for the continuation of criminal proceedings against him, is given and his right to immunity decided by the credentials-and-immunity committee, such a decision being subject to subsequent confirmation by the Croatian Parliament. Further details about immunity of MPs, are regulated with the *Standing Orders of Croatian Parliament* (adopted in 2001). According to the Article 105 of the *Constitution*, the President of the Republic enjoys immunity. The President of the Republic may not be detained nor may criminal proceedings be instituted against him without prior consent of the Constitutional Court. The President of the Republic may be detained without prior consent of the Constitutional Court only if he has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case the state body which has detained the President of the Republic shall instantly notify the President of the Constitutional Court thereof. According to Article 121 of the *Constitution* judges enjoy immunity in accordance with the law. Judges and lay assessors who take part in the administration of justice cannot be called to account for an opinion or a vote given in the process of judicial decision-making unless there exists violation of law on the part of a judge, which is a criminal offence. A judge may not be detained in criminal proceedings initiated for a criminal offence committed in performance of his judicial duty without prior consent of the National Judicial Council. According to the Article 126 of *Constitution* judges of the Constitutional Court of the Republic of Croatia enjoy same immunity as members of the Croatian Parliament. According to the *Law about the National Judicial Council* (adopted in 1993) the President and the Members of the National Judicial Council also enjoy immunity.

Several constitutional rules in **Macedonia** protect the President, Members of Parliament, Members of the Government, judges, prosecutors and other public officials from harassment. These rules have been adopted to protect the function, and not the person. However, this procedure is sometimes perceived as privilege of certain persons. The question becomes particularly serious in the context of prosecution of Members of Parliament and Government for offences of corruption as such offences are usually intimately linked with the function. These rules are normally applicable to investigation and prosecution of all kinds of criminal offences, not just for corruption. The Parliament has to authorize arrest and detention for criminal offences with proscribed maximum punishment of five years of imprisonment.

According to Article 87 of the *Constitution* of the **Federal Republic of Yugoslavia**, people's deputy in the Federal Parliament (People's Assembly of FRY) cannot be detained except if caught

executing a crime for which at least six years of prison is prescribed. The same immunity system is valid for the judges of Federal Court (Article 100), members of the Federal Government (Article 100) and Federal Public Prosecutor (Article 112). Federal Parliament can lift the immunity of people's deputies, Federal Court is competent for the immunity of the judges, and Federal Government for immunity of its members. The Constitution of Serbia provides exactly the same immunity system for the Republican Parliament (People's Assembly of the Republic of Serbia) and Republican Government. Republican Public Prosecutor and judges do not enjoy immunity.

***Criminal Procedure***

Criminal procedure mechanisms play a very important role for the quality and speed of prosecution as well as for the procedures of the imposition and execution of penalties for corruption crimes.

Criminal proceedings and trials in **Albania** are open and transparent by law, and anyone wishing so can attend them. There are, however, some technical obstacles. For instance the courtrooms are small, not comfortable, and they lack the necessary infrastructure to accommodate everyone who wants to attend. However, this is a technical rather than a principle issue.

In **Bosnia and Herzegovina** the *Criminal Code* of the Republika Srpska, *Criminal Code* of the Federation of Bosnia and Herzegovina and *Criminal Procedure Code* for the Federation of BiH ensure the openness and transparency of criminal proceedings, for example: [11]

- The main trial is public.
- The main trial may be attended by persons who have reached the age of majority.
- From the opening of the session to the end of the main trial the panel of judges may at any time, automatically or on motion of the principals, but always after hearing them, exclude the public for the entire main trial or a part of it if this is in the interest of the national security, or if this is required to preserve a national, military, official or important business secret, to preserve public law and order, to protect morality in a democracy, personal or intimate life of the accused or the injured, or to protect the interests of a minor or a witness.
- The order to exclude the public is made by the panel in a decision which must be substantiated and made public.
- The decision to exclude the public may be contested only in the appeal of the verdict.
- The complete content of the verdict is entered in the main trial record, as well as indication as to whether the verdict has been a decision concerning costs of criminal proceedings, concerning a claim under property law, and concerning whether the final verdict is to be made public through the press, radio or television.

The *Law on Criminal Procedure* determines the costs and duration of prosecutions. It currently exists in both Entities, thought its structures have thus far not secured either a quick or an inexpensive procedure and the investigative bodies had limited authority, i.e. the entire process was largely inefficient.

Currently efforts are underway between the BiH authorities at both the State and Entity level together with the OHR to prepare new laws at both levels. The very initial draft is being prepared at the BiH level.

In FBiH the currently existing position of an investigative judge is to be abolished and replaced with public prosecution. The number of mechanisms to trigger an appeal is to be reduced, the request for protection of legality as an extraordinary appellation mechanism is to be repealed and new investigative techniques are to be introduced. In RS, the new Law will regulate the roles of the process subjects and also introduce new processes for the purpose of the pre-investigation procedure. However the reform is still in process of implementation and therefore its expected anti-corruption effect is difficult to be evaluated.

In **Bulgaria** the amendments to the *Code of Criminal Procedure* of 1999, in force since January 1, 2000, came to meet modern requirements to the criminal prosecution system – consolidation of the court's role as the principal overseer of procedure and the trial phase as the central stage in criminal proceedings; judicial control over coercive measures which may infringe upon basic human rights at the pre-trial phase; competitiveness in court; expedited procedure; and introduction of differentiated procedures. Nevertheless, these amendments did not have a significant contribution for progress in combating

[11] Criminal Code of the Republika Srpska, Criminal Code of the Federation of Bosnia and Herzegovina, Criminal Procedure Code for the Federation of BiH, (http://www.ohr.int/ohr-dept/legal)

crime in general and corruption in particular. Admittedly, the period since these amendments went into force has been short and it may be too early to judge about their effectiveness but still it should be noted that practical problems have already emerged, primarily due to some legislative amendments which were not very appropriate. Several of these amendments were made with the *Law on Amendment to the Code of Criminal Procedure*, in force since May 1, 2001, which was passed at the very end of the mandate of the 38th National Assembly. These changes have had a negative influence on the efficiency of the Judiciary's work. To the greatest degree this applies to the amendments on the issue of plea bargaining, which very quickly won recognition as an important procedural technique for accelerating criminal prosecution and preventing corrupt practices between defendants and magistrates. Data from cases tried in 2000 shows that 36, 6 % (more than 1/3) were concluded through plea bargaining.

The legal community also insisted that the amendments in question were not in line with European standards and they were not backed by necessary funding and would be inefficient.

As a whole, the 2001 amendments to the *Code of Criminal Procedure* have slowed down criminal procedure and made it more expensive. Serious fears also exist that the quality of administration of justice will be reduced due to the court clog as courts have to deal with activities for which they should not be responsible – as a result the percentage of detected and punished crimes, including those involving corruption, will decrease.

In order to improve the efficiency of criminal procedure, new legislative solutions are necessary. These actions must be based on a long-term anti-corruption strategy which will serve the public rather than short-term particularistic interests. The causes for the inefficient operation of some of the questionable provisions as well as the experience so far must be thoroughly analyzed in order to find a solution to the low detection of the crimes of corruption. It is recommended that after such an analysis, a new *Code of Criminal Procedure* be drafted; amendments in the sphere of execution of penalties should also be adopted.

On issues related to good governance, experts in **Croatia** put particular emphasis on the need for the setting-up of a policy advice capacity. As regards the rule of law, it is necessary to complete the legal and institutional framework, in particular through the review of the confiscation and provisional measures regime and the revision of the *Code of Criminal Procedure*. With regard to bribery of public officials in business transactions, three areas were presented as priorities: 1) improvement of the repressive framework by streamlining the legislation in specific areas, such as corporate liability; 2) promotion of integrity in business via the development of codes of conduct and promotion of high corporate standards; 3) enhancement of enforcement measures through training of tax professionals for detecting bribes (OECD, 2001).

It is very important to mention that authorities in **Macedonia**, which combat criminal offences, face huge obstacle in fight against corruption. Namely, Article 17 of the *Constitution* of Republic of Macedonia has proscribed very strict rules for eavesdropping and other forms of interrupting private communications. That practically means that it is forbidden for police to monitor communications, and to use this material in court as evidence. Also, there are no proscribed rules in the relevant laws for performing special investigative measures, such as legal use of agent provocateur, controlling deliveries, etc.

One of the basic rules of criminal procedure is publicity. Public can be present in the courtroom, with some exceptions, in accordance with Article 6 of *European Convention for Human Rights*. Sometimes media, looking for attractive stories, are interested in the case in the very beginning of the procedure, violating the rule of innocence of the person, and later, if criminal procedure really starts, losing the interest and ceasing to inform the public about the case.

Procedure in cases of corruption is very long, and usually lasts one or two years. This happens especially in the situation when the accused person is not in detention, since in such case, they often try to postpone the conclusion of the case. That makes the procedure very expensive.

### 3.3. Civil Law and Procedure

The development of civil legislation, though not always directly affecting corruption, could also deter or contribute to it. Civil law could contribute to the removal of the existing legal barriers as regards to business, which will result in minimizing the conditions for flourishing of corruption. Therefore it is important to examine the civil law provisions and procedures, concerning significant matters such as:

- business transaction (including acquisition of property, privatization and concessions);
- company legislation and commercial bankruptcy;
- company and property registration, etc.

***Acquisition of Property, Privatization and Concessions***

Acquiring property in the countries in transition has been in many cases subject to corruption. This conclusion refers in particular to the process of privatization and the granting of concessions since privatization and concession deals are in many cases target for corruption.

Based on the civil law, the acquisition of property in **Albania** can take place according to the provisions of the *Civil Code* and other ways defined by special laws. Some of the ways to acquire property are: acquisition by contract (Article 164); acquisition by inheritance (Article 165); acquisition by goodwill of movable properties (Article 166); positive prescription (Article 168); acquisition by merger (Article 173); acquisition by processing property (Article 177).

Another form of using property (rather than buying it) is a concession. The *Law (No. 7973, July 26, 1995) on the Concessionaries* was approved 6 years ago, but has been implemented only during the last 3 years. Although the need and the possibilities can make this investment form widely used, the number of the concessions has been very limited.

The following legal improvements are suggested in order to fight corrupt practices:

- The Law must place terms for the main procedures. In the case of the bid the period should be no more than 60 days from the promulgation to the supply assessment. It is necessary to determine clearly this period because it helps the private investor and eliminates abusing;
- According to Article 11 of the Law, the concessionaire company is obligated to form a commercial association and to register it in the tribunal within 30 days from the signing of contract. This is difficult because there is a long period from the moment of signing to its enforcement and there is no reason to create a company that does not act. At the same time, not respecting this law is a violation. That is why it is necessary to change the law so that the registration of the company can be related to the enforcement of the contract;
- The law requirement to determine the fees, professional payments, etc. in the contract is not accepted by investors, because of the impossibility of accomplishing it in the time of contract signing.
- The Law doesn't clearly express what the "industrial zone" notion means, and that might give way to abuse and misunderstanding.

The phenomenon of unjustly acquiring property during the transitional period has thrived for a number of reasons, among which the most important are:

- Acquisition of property from politically affiliated people as a reward for their political loyalty;
- Disrespect of legal framework and exploitation of the weak implementation power of the legal framework;
- Directly corrupting public officials who turn a blind eye on unjust procedures that lead to property acquisition.

In **Bosnia and Herzegovina** the *Law on Foreign Investment and Concessions* in Republika Srpska (adopted in April 1998) stipulates that concessions are granted by the Government of RS. Concessions may not be given to foreign persons for any activity on the territory of RS in areas, which, according to the provisions regulating general national defense, are considered as forbidden zones. For the use of goods of public interest in accordance with the Space Plan of RS, concessions are given by the Government, but prior to that, the opinion of the National Assembly of RS should be obtained. In other cases the Government has to obtain the opinion of the respective governing ministry. Concessions may be given for duration of up to 30 years. Concessions are granted under the condition that the business to be conducted secures the maintenance of the technical and technological unity of the system, its efficient functioning and rational management, and that it does not jeopardize life. Concessions are regulated by a contract in writing.

In the FBiH, concessions are regulated by the *Cantonal Concession Law* and the *Foreign*

*Investment Law*. Concessions must gain the approval of the federal agency responsible for the foreign economic relations and the district cantonal government agency responsible for economic activities. The competent cantonal and federal agencies may permit the foreign investor to build, operate and transfer after a certain period of time, under the conditions set out in the permit, a specified facility, installation or a plant on a state-owned or public-owned land.

Privatization is additionally supervised by the Entity Assemblies, which directly supervise work of the Entity Privatization Agencies, besides the Entity Governments that regulate the mere operations, but not the essence of their work or the administrative line of accountability.

Due to the influence of politics on public companies, and to some extent, on private companies, corruption in this area is still significant. This is particularly true in the pre-privatization period and in the course of the privatization itself, as will be discussed in the later chapters of this paper.

In **Croatia** the primary legal framework for acquisition of property, business transactions and publicly traded companies consists of the 1993 *Company Law* (CL), the 1995 *Law on Issuing and Trade of Securities* (amended in 1998) and the 1997 *Law for the Takeover of Joint Stock Companies*. All traded securities must be in the legal form of shares in joint stock companies, which are governed by the *Company Law*. While moving towards integration with the EU, the legal reform necessary for that integration remains at an early stage. Croatia's laws have not yet been comprehensively reviewed for compliance with the Directives of the EU. The *Securities Law* governs the securities markets and establishes the primary securities regulatory agencies: the Croatian Securities Depository Agency (SDA) and the Croatian Securities Commission (CSC). The *Securities Law* also regulates the trading of securities and sets out the extent of civil and criminal liabilities. Under the *Securities Law*, insider trading and market manipulation are prohibited and subject to both fines and imprisonment. Current levels of disclosure do not allow the ownership structure of Croatian companies to be clearly identified. Information provided is based on estimates by market participants.

SDA was created in April 1997 according to Article 84 of the *Law on the Issuing and Trading of Securities* (adopted in 1995) and Article 177 of the *Company Law* (adopted in 1993). The mandate of the SDA is to operate as the Croatian Central Registry/Depository for all forms of securities and to contribute to the competitiveness of the Croatian capital markets through providing electronic clearing, settlement and depository services. The SDA was fully operational by November 1999 and by March 31, 2001 it had completed registration of about 150 of the most-actively traded companies, which represent close to 100 percent of trading.

Founded in 1996, the CSC is the administrative body responsible for the licensing and monitoring of issuers, intermediaries, investment funds, portfolio managers, brokers and advisors as well as investors. Under the 1995 *Securities Law*, the CSC is empowered to monitor and investigate all securities trading and, as appropriate, refer cases to the commercial courts or the prosecutor-general. CSC is governed by a chairman, two deputy chairmen and three other members, all nominated by the Government of Croatia and appointed by the Croatian Parliament for a term of six years, with the terms of two commissioners expiring every two years. The members of the Commission are prohibited from acting as members of the management, boards of directors, oversight committees or other bodies of issuers of securities. They may not perform any other service or function, which might influence their independence, or diminish their public reputation. The Commission is funded by the state budget. The Commission can initiate investigation of its own accord or upon the notification of third parties. In cases of non-compliance or violation of the Securities Law by market participants, the Commission may give warnings, halt trading, and publicize cases of abuse practices. The Commission can only investigate violations directly related to securities trading. CSC does not have administrative powers to impose fines, but must refer the case to the commercial courts. Violations of the criminal code are referred to the prosecutor-general. Administrative decisions by CSC can be appealed to the administrative court.

In Croatia when establishing a joint-stock company or a limited liability company, a domestic or foreign investor may invest money, goods and rights. A joint-stock company may also be established by a single natural person or legal entity. A company may be established by one or more persons. A foreign natural person is allowed to operate as a sole trader in Croatia provided he, or she, holds a work permit and the condition of reciprocity is met. Before starting to engage in handicrafts, the person is required to obtain a license, which is issued by the respective County office, dependant on where the headquarters of the particular handicraft is located. Preferential crafts are approved by the appropriate Ministry, dependant

on the type of handicraft. Law and rules are clear, so one could estimate that here are no serious corruption related risks.

Although these provisions create the necessary regulatory and institutional preconditions for transparent capital market, the successful counteraction to corruption could be achieved only through their effective practical implementation.

There are also *Law on Public Procurement, Law on Company Registration, Law on Litigation Procedure, Law on Impartiality of Court, Law on Privatization*, which however do not have specially articles regarding the combat against corruption.

In **Macedonia** the acquisition of the property is regulated by the *Law on Ownership and Other Property Rights* (published in the *Official Gazette of the Republic of Macedonia* no 18/01). According to the Law, all domestic and foreign persons, including the State, as well as self-government units, may acquire ownership rights under conditions and method prescribed by the Law. The methods for acquiring the property are the following: acquisition through purchasing contract, inheritance, gift, positive prescription, merge ring, payment of unpaid debts, and other.

Corruption as regards to acquiring property mainly affects the privatization of the former state owned companies. Depending on the size of enterprises and method of selling, the Privatization Agency signs different types of contracts with the new owner after the completion of the privatization process[12] and submits the sale contract to the relevant Court of Registry, which erases the enterprise from the corresponding Registry.

The concession is one of the ways for using the property for a certain period of time. According to the *Law on Concession* a biding procedure is necessary for getting the concession right on the property. The Bid includes the conditions and the manner of utilization of the property, carrying out the concession activities, the period and the amount of the reimbursement. A concessionaire agreement is signed with the best bidder. The concession is obliged to perform the concessionaire activities in accordance with the Concession agreement. The concession is withdrawn if the concessionaire fails to start with the performing of the concession activities in the period set forth in the Agreement. However despite the existing provisions for bidding and the requirements concerning concession agreements the procedure is still not fully transparent. Therefore there is a need for amending the law in order to achieve greater transparency and to prevent corrupt practices.

In *Serbia* the Government proposed a set of five laws with the objective to further regulate financial markets and prevent corruption. These are: *Final Account of the 2000 Budget with Budget Inspection Report, Organic Budget Law, Public Procurement Law, Tobacco Law, and Games of Chance Law*.

### *Company Legislation and Commercial Bankruptcy*

In **Albania** the insolvency procedure is based on the *Law No.8017 (date 25/10/1995) on Bankruptcy Procedures*. The law favors creditors over other sorts of investors. At the moment the creditors of the companies are banks. The arguable risk about such a law is that at a time of financial distress, banks are keen to get their money back as soon as they can and they do not care much about the company business. That definitely leads to unfavorable fire sale valuations at the expense of the other financial claimants of the company. Having said that, it is worth noting that the credit, extended to the corporate sector, accounts for approximately 5% of the country's GDP.

Amendments to the **Bulgarian** *Commercial Code,* in force since October 17, 2000, concern two main areas - company law and commercial bankruptcy law. Harmonization of the company law section with the EC directives on publicity, equity and single member limited liability companies and the adjustment of the legal provisions for joint stock companies will enhance confidence in equity trading, reduce the possibilities for abuse and ensure better transparency and the protection of creditor and third party interests. One of the provisions expected to improve the quality of the administration of justice and to have a distinct anticorruption effect is the new Article 613b. It enables appeals before the Supreme Court of Cassation against all rulings delivered in the course of or putting an end to insolvency proceedings and also prevents local level versions of insolvency case-law and the dis-

[12] Such contracts are the ones for purchasing small or medium sized enterprises, purchasing by public announcement for collecting offers and by direct agreement, sale of enterprises to entities undertaking the managing of the enterprise, transformation of large sized enterprises, transformation by sale of all assets of the enterprise, issuing of shares for additional investment and leasing of enterprise.

pute resolution based on local interests and conjuncture, rather than on law. Thus, the Supreme Court of Cassation would be able to exercise its Constitutional power, viz. to exert the final control for the correct enforcement of the existing legislation.

The amendments to the commercial bankruptcy legislation have not yet brought a real acceleration to bankruptcy procedures and therefore have failed to adequately deter interested parties from seeking resolutions through corrupt means.

A significant new amendment to the section of the *Commercial Code* which deals with re-structuring of companies (mergers, acquisitions, spin-offs, splits and transformations) is now being considered. This amendment comes as a response to the need for harmonization of Bulgarian legislation with EU standards and aims to put an end to the current practice of restructuring in an atmosphere of lack of transparency and acting at the expense of some of the partners involved which should significantly improve the business climate.

It is still necessary to adopt a *Law on Bank Bankruptcy*, developed and discussed since 2000, in order to ensure greater stability and speed in bankruptcy proceedings and to enforce control over the receiver in a bank bankruptcy, which should reduce the possibilities for corruption. Currently two Draft Laws on this matter have been submitted to the Parliament and have been passed on first reading in a plenary session.

In **Macedonia** the insolvency of the company is regulated by the *Bankruptcy Law*, which was enacted in 1997 (published in the *Official Gazette of the Republic of Macedonia* no 55/97) and amended in 2000. Law regulates the goals and reasons for opening the bankruptcy proceeding, the manner of its conduct, management and disposition of the property being subject of bankruptcy estate and settlement of the trustees.

The inability and insolvency of the debtor to pay its debts within 60 days of the date on which they have become due represents the main reason for opening a bankruptcy procedure. The conditions for starting the bankruptcy procedure are also met if the debtor cannot pay its due obligations (such as executive court or administrative decisions, concerning monetary obligations) in the executive procedure or if there is an immediate prospect for unavoidable inability to pay. Trustee can initiate the opening of the bankruptcy procedure within 60 days from the day its claims are due and submit to the court evidence that the debtor is unable to settle its monetary obligations. The Court in its official capacity shall determine all the measures necessary for opening a Bankruptcy Proceeding.

Upon the opening of the Bankruptcy Proceeding the right of the debtor to manage and to dispose of the property that comprises the Bankruptcy Estate (the property of the debtor at the day of the opening of the proceedings and the one to be gained in the course of the proceedings) is transferred to the Bankruptcy Trustee. If it has been confirmed that the debtor has no property, or his property is not sufficient to settle the costs of the proceeding, the Bankruptcy proceedings are not conducted and the company is liquidated. The proceeds from the sale of the real estate in the case of liquidation are used for payment of debts and for settlement of expenses incurred during the Bankruptcy procedure. Any surplus is paid to the founders.

Although the *Bankruptcy Law* has been designed in order to meet the European standards, there is still a lack of transparency, the procedure is long and inefficient, and does not guarantee the trustees to collect their claims. It also allows postponing of the bankruptcy proceeding of the company in case of its insolvency with potential opportunities for abuse of power. The Agency for Blocked Accounts which has been introduced recently, aims to start the bankruptcy proceeding against all companies, which accounts were blocked 45 days. The amendments of the Law are in the Parliamentary procedure.

The adopted laws on mortgage and pledge did not achieve the expectations for efficient payment of the claims and execution of court decisions, although there are some improvements, especially regarding payment of unpaid banking credits. The court procedure is still long and inefficient and may create potential for abuse.

### *Impartiality of the Court and Speed of the Proceedings. Execution of Judgments*

In **Albania**, as described in the *Constitution*, the judicial system is based on the impartiality principle of courts and rigorous implementation of the law. The courts should be impartial in giving justice and support their verdicts exclusively on facts made public during the course of the trial. Even though the law is quite precise, there are a lot of complaints about the impartiality of courts and the speed of proceedings because of corruption of the judiciary officials, political pressures, lack of professionalism in some cases, etc.

The Bailiff Office is attached to the courts of first instance. As a consequence, it is erroneously perceived as part of the judiciary. In fact, the Bailiff Office is expected to execute both judicial decisions and a certain category of administrative decisions (the so-called writs of execution).

The Bailiff Office conducts its business in virtue of Articles 527-617 of the *Code of Civil Procedure.* Parallel to the general notions relevant to the execution of final judicial decisions the Code regulates the execution of seizure on movable and immovable properties (including means of maritime and air transport), credits of debtor and properties that third persons owe to the debtor, financial obligations towards budgetary institutions, sums deposited in bank accounts as well as the execution of obligations to relinquish a definite object or to perform a determined action. Provisions on the means of defense against execution of decisions and the grounds for suspension and cessation of the execution are also envisaged.

As for the execution of administrative writs of executions, the Bailiff Office derives authority directly from the respective special laws. In terms of procedure the Office uses by analogy the procedure specified in the *Code of Civil Procedure* for the judicial decisions. From the point of view of funding, the Office is considered to be part of the judiciary but although its budget is a part of the overall judicial budget it is usually extremely meager which create conditions favorable to corruption.

Judges at all levels of the judicial system in **Bosnia and Herzegovina** have been subject to political appointments. This has caused severe partiality and bias with a high degree of political influence over their rulings. At the Peace Implementation Council (PIC)[13] held in March in Brussels, it had been decided that all judges at all levels of the courts are to be temporarily suspended and the new recruitment process is to follow shortly. This process has commenced in April 2002 and at present all judges are applying for jobs with the courts. Those with a proven record of partiality of any sort will be closely looked at and possibly not re-employed as a result of this. The entire process is managed by the OHR and the previous action of hot-lines for collection of complaints against the judges will serve as the database for the qualification assessment. That activity, however, was run in 1999-2001 and resulted in a number of specific complaints of the general public and entrepreneurs against named judges at local and regional courts primarily.

According to opinions expressed by business managers who were interviewed in the enterprise survey, slowness of the courts is the most problematic obstacle to doing business in BiH. It was selected by 87 percent of respondents and ranks above all other 27 problems listed as negative characteristics of the business environment.[14]

In **Bulgaria** the *Code of Civil Procedure* was amended in 1999. The new provisions guarantee the impartiality of the court, reduce the opportunities to postpone the hearings, introduce summary proceedings, and limit the insolvency proceedings to two court instances. These amendments, however, have not brought about any tangible improvement of court proceedings. Further amendments will be needed along these lines in order to eradicate any chances of protracting the procedure on purpose or abusing procedural rights, as all this generates corruption.

The execution of judgments is the part of civil procedure, which concludes the process of civil litigation but has been least reformed. The clumsy and inefficient, frequently corrupted, execution proceedings negate all efforts to improve the administration of justice and prevent corruption. Legislative amendments are required in order to minimize the possibilities for endless delays in the enforcement proceedings and supply creditors with better guarantees.

A *Draft Law on Amendments to the Code of Civil Procedure* has been recently submitted to the National Assembly and its adoption on first reading in a plenary session is forthcoming. The amendments proposed are aimed at introducing simpler and speedier court procedures, especially by improving the cassation proceedings. For instance, the possibility provided for the cassation instance to decide on the merit and the transformation of the possibility for returning the case for reexamination from a general principle into an exception will make civil proceedings speedier and more effective and will considerably limit the opportunities for corrupt practices. The proposed new foreclosure procedures, including the possibility for foreclosure of company shares, materialized and dematerialized securities, unpicked

[13] Political steering group that observes progress of peace and particularly DPA implementation in BiH that meets regularly and decides on the focal areas for the IC/s involvements in the year to come. It is the highest-level decision making body outside of the country's authorities and bears the ultimate responsibility for the IC's policies towards BiH.

[14] World Bank, Diagnostic Surveys of Corruption, p. 40, http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

plants, would also have anti-corruption impact. Parallel to this a working group to the Ministry of Justice is developing a concept paper for introducing private bailiffs to operate parallel to the state, which is also aimed at speeding up foreclosure proceedings and limiting corruption.

In October 2001 a *Center for Out-of-Court Legal Dispute Resolution* was established with the Union of Bulgarian Jurists and Rules on the initiation and performance of out-of-court legal dispute resolution was adopted. This is the first step towards the introduction of procedures for alternative out-of-court legal dispute resolution. Their practical implementation is expected to narrow the possibilities for corruption, ensure effectiveness and rapidness in the resolution of disputes, and relief the judicial system's work.

Impartiality of the court in **Macedonia** is one of the basic rules of civil procedure and court system generally. Courts and judges are obliged by the *Constitution* and laws to have impartial and fair attitude towards parties in the procedure. *Civil Procedure Law* contains a lot of provisions that should make this general rule applicable in practice: public procedure, equal access for the parties to all evidences the other part has proposed, obligation for the judge to warn ignorant party about its rights in the procedure, right of appeal, etc. Execution of judgments falls under the competence of one of the sections of the basic courts. It very often is the most difficult part of the civil procedure because of the problems that can appear from the judgment itself or by the party who use all possible legal and non-legal measures to avoid the execution. In practice this part of civil procedure is especially problematic.

The procedure of execution of judgments is proscribed in a separate Code (*Code for Execution Procedure*), which is very long and complicated, with lots of procedural activities and lots of court decisions. Party, who won the case in procedure several years long, will need another several years to execute the judgment. This can be the main reason for parties to try to reach the conclusion of the procedure through corruption. Either the debtor or the creditor may be tempted to offer bribe to official person from court to help them. It is important that in this procedure very active and crucial role after judges have court clerks. The court clerks are dealing with practical execution on the spot, and have a power to conduct the practical execution.

Some changes were made in the *Code for Execution Procedure* in the last few years, but that was not enough to reach an effective and fast execution procedure as an efficient ending of civil procedure.

The compensation for damage when a public official has been bribed during the public procurement procedure is another area connected with this kind of procedure and considered very important in the fight against corruption. A situation of particular relevance is also when an employee of the bribe-giving company bribes an employee or an officer from another company. In such cases, compensation may be asked for by the state or by the local government, which may claim to be the victim of the offence, or by competitors who were not given the contract.

An important issue, which has to be solved, is the problem of the validity of a contract concluded through obtaining a bribe: whether the main contract is null and void in itself, or it is at the discretion of the Government or the company to void it.

Macedonian theory and practice have no answer to all these questions related to corruption and civil procedure. Until now no civil cases in Macedonian courts have reached decisions on these topics.

### *Registry Keeping and Registration Proceedings*

In **Albania** the Law No. 7632, of November 4, 1992, defines the procedures and rules to be followed in order to register a company. The Court keeps the commercial register. Any person may consult the register without incurring any expenses. Also, anyone may get (against payment) copies of the registration and appropriate documentation. According to the Law companies are registered with the court if their statute is in full accordance with law provisions and all required documentation is completed.

In **Bosnia and Herzegovina** the procedures of company registration is one of the most complex of all countries in the region. Consequently, the costs of establishing companies are high, which does not make BiH attractive area for foreign investment. In future, efforts will be made to streamline procedures and in that sense, a series of measures will be taken. One of the most efficient ways is introduction of a single identification number and establishment of a single registry of companies, as well as a single form for company registration in the whole country, which is forecasted in the next 18 month period. In particular, attention will be paid to harmonization of regulation on registration of national and interna-

tional companies, and resolution of the problems related to use of land.

Company registration at present is within the domain of regional/cantonal courts and each of them keeps a separate company registration database. There had until recently been no efforts either to combine those books (although they are public) at any level, or to introduce a computerized system to make the process more efficient. Therefore the process is not so much burdened by forged data or administrative corruption in the process steps, as much as it is in its duration, which is inevitably followed by the existence of bribes that make the process "more efficient" and thus cheaper for some companies.

Survey data[15] indicates that corruption is positive related to company registry process. Every month businesses pay bribes in the form of gifts, tips and money to representatives of public officials in amounts equal to 18 percent of expenses of the average firm. The average "standard rate" for bribes that businesses report paying for several services including connection to utilities, obtaining licenses and permits, dealing with courts and customs and other bodies equals 361 KM (approximate EUR 180).

Company registration in BiH is usually done by the owner of the company or by an appointed company's employee. Only 18 percent of respondents reported that they had used a third party to handle the process of business registration. It is worth mentioning that none of the newly-created enterprises (those founded in 1999-2000) used a third party. At the same time, public enterprises used a third party very often – 40 percent of the public firms who are were involved in WB survey reported so. Another group of firms that used this method of company registration are enterprises founded before 1992. Since 72 percent of public enterprises were founded before 1992, the prevalent use of third-party facilitators among older firms is not surprising. Why do companies use third parties for company registration? Mostly because the managers want to make sure that no procedural mistakes are made (59 percents of respondents), sometimes because they want to save time (23 percent), sometimes the reason is that the third party has connections – "knows the right people" (18 percent). Use of third parties is also known to help hide corruption – the bribe in this case might be expensed as a fee for a business service provided by the third party.[16]

It is of utmost importance as a matter of fostering transparency in this process, to establish a single registry of companies, for the purpose of reducing bureaucracy, increasing efficiency and transparency in operations of both Entities.

Non-governmental organizations are subject to the *Law on Citizens Associations and Foundations,* which has been changed in early 2002 in both RS and BiH. The new RS law as well as the umbrella State law allows for a much more simple registration of non-governmental organizations, citizen associations and well as parties that no longer requires more than thirty signatories but minimum of three instead. The RS register remains with the regional courts and the BiH registry is with the Ministry of Civic Affairs and Communications. The new version of the law, that has been in existence in FBiH since 2001 also allows for other associations to group together and e.g. form confederations of associations. The BiH Law will register those subjects that want to operate at the country-wide level and refuse to register solely at the Entity level. Nevertheless, both Entity laws allow for the country-wide operations of any citizens associations and are not restrictive in any manner. This is why the BiH Law is often seen as a political step, rather than changing anything in practice, following the harmonization of the two Entity laws and their simplification.

The property registry is still based on the former Austro-Hungarian system of Cadastre that was introduced before 1914. According to this system, the property books are kept with the municipal authorities, while urban and construction planning happens in the relevant government agencies. There are plans to start replacing the old Cadastre system with a brand new computerized database, but this process is likely to take ten years or more and the launch of it is scheduled for the late 2002.

According to the current state of the registers in **Bulgaria** private legal persons, except for the political parties, are registered with the District Courts in 28 separate registers located throughout the country. Property registration is done in a similar way. Property records are kept by about 110 Regional Courts and are still paper-based.

[15] World Bank Anti-Corruption Survey, p. 52
http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

[16] World Bank ibid., pp. 52-53
http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

Pilot projects are being carried out for the introduction of electronic information systems in some of the courts, although these information systems have no legal weight. Except for the Central Pledges Register at the Ministry of Justice, established in 1997, most of the other registries are currently decentralized and paper based which causes serious problems of reliability of information and its physical and legal security. The available data shows numerous cases of fraud, abuse and corruption.

As far as property law is concerned, in 1998 a project *Establishment of Cadastre and Property Registry in Bulgaria* was launched by the Bulgarian Government with the support of the World Bank and a *Law on the Cadastre and the Property Registry* was adopted, in force since January 1, 2001. This instrument is expected to be a major step in the transition from the "owner-based" to an "estate-based" system of real estate registration. Changes in the system of real estate registration, a sphere marked by abuse, fraud and corruption, are also in progress. Introducing these changes takes a long time but the impact, including availability of complete and precise information on property and pending liabilities upon it, will have lasting anticorruption effects in the field of real estate transactions.

A special working group to the Ministry of Justice chaired by the Deputy Minister of Justice has developed a set of recommendations for improving the legal framework of property registration including amendments to the *Law on the Cadastre and the Property Registry* and adoption of the respective secondary legislation for its implementation. The proposal is aimed at facilitating the process of reforming the property registration in Bulgaria and the successful introduction of the Cadastre and the Property Registry in the country.

Special attention should also be paid to the idea, developed by experts to the Law Program of the Center for the Study of Democracy within the framework of *Coalition 2000* of replacing the court registration of not-for-profit organizations with registration in a newly created Central Electronic Register for Not-for-Profit Organizations at the Ministry of Justice, the establishment of which could serve as a first step towards the introduction of a Central Electronic Register for Persons and Property. The transition to such a register will have far-reaching anti-corruption effects, especially with regard to the present dismal state of the country's registers. The business community also evaluates the existing registration system as ineffective and sees it as an obstacle to growth of business. It has even proposed relieving the courts of the responsibility of keeping the commercial registers in order to make them function better.[17]

According to the *Coalition 2000* proposal the Central Electronic Register for Persons and Property should include registration data on all private legal persons and state enterprises (except for political parties and professional organizations). First it should be introduced for the not-for-profit legal entities since the philosophy thereof has already been laid out in a concept paper. In a medium-term perspective this Register should include commercial legal persons and merge with the Central Pledges Register, while in a long-term perspective, after the establishment of a national electronic cadastre and its incorporation into a uniform national database, the Register should be merged with the property registers.

The implementation of the proposal for a Central Electronic Register for Persons and Property will allow both registration and obtaining of information online by electronic means. This will make it possible to quickly publish information about changes in circumstances through filings and the current situation of the Register can be checked in real time, i.e. immediately after the conclusion of a transaction. The Register should be public and everyone should be able to obtain information and receive a certificate verifying the necessary information. A denial of a filing should be subject to appeal before the Minister of Justice following an administrative procedure; a denial by the Minister should be subject to appeal following the procedure under the *Law on the Supreme Administrative Court* which will minimize the unregulated practices accompanying registration and obtaining information.

All companies in **Croatia** are required to register in the Court Register of the respective Commercial Court, dependant on the location of the company's headquarters. When establishing a joint-stock company or a limited liability company, a domestic or foreign investor may invest money, goods and rights.

[17] Bulgarian International Business Association (BIBA) – White Paper on Foreign Investment'2001 http://www.biba.bg/docs/White%20Paper%202001%20Engl.pdf

An enterprise register is maintained by the eight regional commercial courts and covers over 120,000 enterprises, including partnerships and sole proprietorships. The commercial court registers include the names of the company's members of the management and supervisory boards, the company's statutes and information regarding the total share capital of the company. The register also includes the names of the company's founders but not the names of the current major shareholders. Public information is not fully centralized. To obtain copies of a company's statutes one must visit the regional court register in person. Provision for online access is being discussed by the Ministry of Justice, which is responsible for the operation of the Commercial Register.

Political parties are required to be registered in the Ministry of Justice, Administration and Local Self-Government.

Non-governmental organizations are required to be registered in the Ministry of Justice, Administration and Local Self-Government.

Property registry is required to be done at Municipality courts. According to the World Bank estimation Croatia is included in a group of transitional countries (with Estonia and Poland) with quite decent state protection of the security of property and contract rights (World Bank, 2002). Although, there is a (quite good) *Law about Cadastre System Record Ownership*, in reality situation with Offices of cadastre system record ownership is very bad and one of the most neuralgic parts in Croatian judiciary.

In **Macedonia** according to the *Trade Company Law*, before starting their business activities the companies are required to be registered in the Trade Registry. All trade companies and affiliates have an obligation to be registered in the Register. The Trade Register is a public book. There are three courts in Macedonia authorized for company registration in the Trade Register: the Basic Court I, in Skopje, the Basic Court in Bitola and the Basic Court in Stip. The authorized person from the company submits an application for registration of the company and changes in the Trade Register. The Law describes the necessary documentation and procedure for registration.

The *Law on Political Parties* stipulates that a political party may start with its activities after the registration in the Register of Political Parties. The Appeal Court in Skopje is authorized for keeping the Court register of political parties. The Minister of Justice proscribes the blank form and method of keeping of the Court register. The political party is obliged within 30 days from the day of its establishing to submit an application for enrollment in the court register, accompanied with its Program, the Article of Agreement and court decision for establishment of a political party.

According to the *Law on Citizens Associations and Foundations*, the citizens associations and foundations are required to be registered in the Register kept in the basic court, depending on where their headquarter is located. The blank form and procedure for registration are proscribed by the Minister of Justice. The application for registration, along with the program for its activities, the names of authorized persons for representing the citizens association or foundation are submitted to the court, within 30 days from the day of their establishing.

Upon the application, the court is obliged to bring a decision for enrollment of the association or foundation in the register. If the court finds out that the required elements and criteria are not met, or that the program and its activities are not in compliance with the law, it refuses the registration.

The *Cadastre Law* requires the physical and legal persons to register their real estate in the Cadastre register, depending on the location where the property is located. The registration is done under the relevant document issued by the competent bodies. Upon the submission of the documentation, which proves the ownership, the Cadastre registers the real estate in the Register.

The legislation provides for transparent procedure and proscribes the required documentation, leaving narrow possibilities for discretion right of the authorities dealing with the registration. However some possibilities for corruption still exist especially in relation to the Property Register.

In **Serbia** company registration is regulated by the federal *Company Law* (adopted in 1996 and amended in 1996, 1997, 1998 and 1999). Company or enterprise may be established in the form of Joint Stock Company, Limited Liability Company, Limited Partnership and General Partnership. A company or an enterprise is incorporated by Decision on Incorporation (one founder) or a Memorandum of Association (two or more founders). These documents are to be in written form, signed and notarized. Depending on the intended business activities the company or the enterprise may need some approvals by the respective inspections such as the Market

Inspection, the Sanitary Inspection, the Labor Inspection, and the Environmental Inspection. The incorporation of a company or an enterprise follows a Decree of Incorporation issued by the competent Commercial court's Registry Department. After the Decree has been granted, an official note of incorporation is deposited with the Federal Bureau of Statistics. For a company engaged in foreign trade an official note is also deposited with the Federal Customs Bureau. Finally, a company or an enterprise has to open an account with the Public Accounting Service, as well as an account with a commercial bank of its choice.

All registers are kept in the Regional Commercial Courts, which are 16, in major cities of the provinces. System is not centralized, and you cannot find all the relevant data about all companies at one place. The main disadvantage is that the software package for such an operation has been prepared but there are still not enough resources for the appropriate hardware. Currently there are no detailed databases and all registries are kept in files. This means that for relevant details file should be physically opened.

*Company* Law obliges all companies to be registered. After fifty years of controlled economy, this law is aimed at harmonizing standards with the standards of the EU. Unlike before, the law recognizes SA organizing form and limited responsibility.

Since the adoption of the *Law on Foreign Investment* in March 2002 foreigners go through almost the same procedure for registering the company. They should only submit proofs (certified copies) that they have company operating in another country. They have the right to register for everything apart from some segments of the army industry, for which they need consent from a Defense Ministry. Before adopting this law, foreigners needed consent from the Federal Ministry of Economic Relations in order to establish a company.

Inscription of companies in a register is described by the *Law on Inscription Procedures in Court Register* (adopted in 1994) and *Decree on Inscription in Court Register* (adopted in 1997 and amended in 1997) which in annex also offer samples for the registry form.

According to the *Decree on Inscription in Court Register* for establishment of a stock asset company one must enclose a set of documents such as a contract on establishment of the company with certified signatures of the founders, a statute, a bank report on existent money deposits on temporarily accounts, etc.

There are approximately 100,000 entities entered in court register so far, and approximately 60,000 of them are companies. Others are non-profit institutions such as hospitals, schools etc.

Common frauds that involve court registry have to do with the forgery of signatures of authorized persons (judges), or disposal of forged identification documents for establishing a company, popularly called phantom companies. The existence of such kind of companies is the major problem for the financial police. The government is planning to strengthen the procedure for establishing companies, but without increasing bureaucracy at the same time.

* * *

*The legal preconditions ought, above all, to foster a social and political environment unfavorable to corruption. Along with the general preventive and stabilizing effect, they also ought to lead to a clear regulation of the liabilities and sanctions for the perpetration of acts of corruption.*

*Despite the different approaches followed by the individual countries in the region they are all directed towards further developing the legal basis for anti-corruption and its adaptation to the various and flexible forms of corrupt behavior. These efforts are facilitated by the common objective to comply the national legislations with the international and European standards and instruments thus responding to the process of internationalization of the phenomenon of corruption.*