

# anticorruption reloaded



Assessment of Southeast Europe



# **ANTI-CORRUPTION RELOADED**

**ASSESSMENT OF SOUTHEAST EUROPE**

Southeast Europe Leadership for Development and Integrity (SELDI) is an anti-corruption and good governance initiative created by CSOs from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Turkey. SELDI contributes to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anti-corruption and good governance. The initiative established a coalition for the development and endorsement of a regional CSO strategy and action agenda and carries out good governance monitoring. SELDI raises public awareness and advocates reformist policies through Regional Good Governance and Anti-Corruption Policy Forums.

This report provides a civil society view of the state of corruption and anticorruption in Southeast Europe. It has been prepared by the SELDI Secretariat (Center for the Study of Democracy) after extensive consultations with SELDI partners, and is based on nine national Corruption Assessment Reports. The report also reflects the findings of the *Corruption Monitoring System (CMS)* in the SELDI countries. Dr. Alexander Stoyanov and Alexander Gerganov from Vitosha Research, Bulgaria, have provided the methodological guidance and coordination of the CMS implementation. SELDI would like to acknowledge the comments to the drafts of the report contributed by Mr. Alain Servantie, Member, SELDI Advisory Board, Ms Sabine Zwaenepoel, Senior Rule of Law Co-ordinator, DG Enlargement, European Commission, and Mr. Florian Fichtl, former World Bank Officer in Bulgaria and Turkey. SELDI would like to thank the numerous national public anticorruption organizations from the region, which have provided comments to the national Corruption Assessment Reports.

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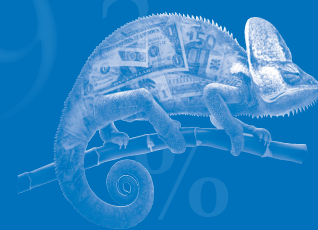
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## LIST OF ABBREVIATIONS

AL	Albania
ALL	Albanian Lek
BAM	Bosnia and Herzegovina Convertible Mark
BG	Bulgaria
BGN	Bulgarian Lev
BiH	Bosnia and Herzegovina
CSD	Center for the Study of Democracy
CMS	Corruption Monitoring System
CSO	Civil Society Organisation
CVM	Co-operation and Verification Mechanism
EULEX	European Union Rule of Law Mission to Kosovo
EURALIUS	European Assistance Mission to the Albanian Justice System
GCR	Global Competitiveness Report
GRECO	Groupe d'Etats Contre la Corruption – Group of States against Corruption
HR	Croatia
KV	Kosovo
ME	Montenegro
MK	Macedonia
MPs	Members of Parliament
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Co-operation in Europe
PSD	Partnership for Social Development
RS	Serbia
RSD	Serbian Dinar
SEE	South East Europe
SELDI	Southeast Europe Leadership for Development and Integrity
TI	Transparency International
TL	Turkish Lira
TR	Turkey
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USKOK	Ured za suzbijanje korupcije i organiziranog kriminaliteta – Croatian Bureau for Combating Corruption and Organized Crime





Corruption in Southeast Europe has been in the news, in the focus of public debate, and on the policy agenda of national and international institutions so often and for so long that its scrutiny hardly needs to be justified. It is precisely because it has proven to be such an intractable issue that innovative approaches to its understanding – and hence its reduction – are warranted. The EU accession prospects for the countries in the region – though distant – provide an enabling framework for action but it is local stakeholders, and in particular civil society who can bring about sustained progress in anti-corruption. The Southeast Europe Leadership for Development and Integrity (SELDI) has made the in-depth diagnosing and understanding of corruption and governance gaps in the region one of its main priorities, as a requisite condition for its advocacy of **knowledge-driven anticorruption policies**. This SELDI report fits in the development and implementation framework of the emerging regional anticorruption policy and infrastructure as exemplified by the SEE2020 Strategy's Governance Pillar run by the Regional Anti-Corruption Initiative.

Being the result of collaboration within SELDI, this report is innovative in both its method and its process. It is the result of the application of a system developed by SELDI in the early 2000s for the assessment of **both corruption and anticorruption**, tailored to the social and institutional environment of Southeast Europe.<sup>1</sup> The victimisation survey-based approach employed by the *Corruption Monitoring System* used in the report provides a unique data-driven assessment of anticorruption progress in the region since 2001. The 2013 – 2014 round of assessment – the findings of which are summarised in this report – is a rare case in international monitoring practice whereby the **same issues and the same region are revisited after a little more than a decade**. The assessment has compared the national legislation and institutional practice in a number of areas critical to anticorruption efforts: regulatory and legal framework, institutional prerequisites, corruption in the economy, the role of civil society and international cooperation. The report provides a **civil society view and policy assessment** while its findings and recommendations have been consulted with national and regional public institutions.

The assessment of the national institutional and legal aspects making corruption in the region possible is not intended as a comprehensive inventory of regulations and practices in all countries but rather emphasises some of the priority issues relevant to potential efforts of stemming common sources of corruption in Southeast Europe (SEE). The report provides a **model for reporting on anticorruption progress** by civil society in SEE.

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<sup>1</sup> (SELDI, 2002).

## MAIN FINDINGS

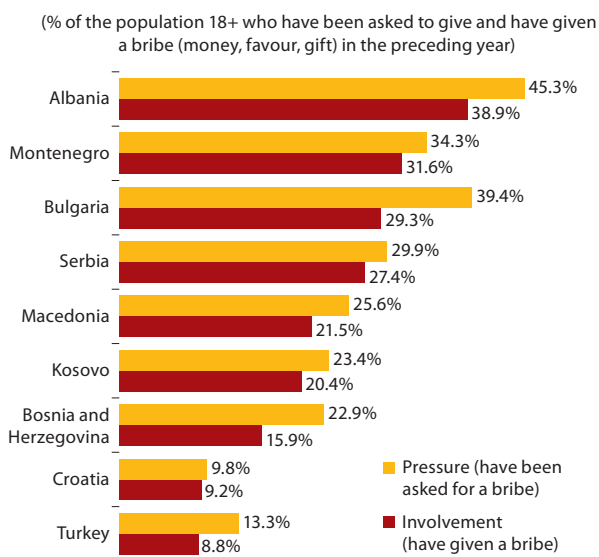
### Overall assessment

Despite some important achievements – mostly with respect to the stabilisation of democratic institutions, the adoption of laws in key anticorruption areas, a reduction in petty bribery and growing public intolerance of corruption – anticorruption and good governance reforms are not consolidated, corruption among elected politicians and judges seems to be increasing and the enforcement of anticorruption legislation is haphazard. Anticorruption policies and institutions in the region will benefit immensely from the adoption of regular and accurate victimisation-survey based tool for measuring corruption and the rate of progress in good governance, similar to the special Eurobarometer on anticorruption, UNODC’s SEE monitoring of corruption and organised crime, and the *Corruption Monitoring System* employed by this report.

### Prevalence of corruption in Southeast Europe

The experience with corruption – in other words, the involvement of members of the public in corruption transactions – in SEE is very high. Even in Turkey and Croatia, where levels of administrative corruption are lowest in the region, about 8-9% of the population report having given a bribe in the last year. Such levels of experience with corruption are well beyond the average levels registered by the Eurobarometer surveys in the EU.<sup>2</sup> This shows that administrative corruption is a **mass phenomenon** and cannot be confined to single cases of corrupt officials.

#### Corruption pressure and involvement in corruption



Source: SELDI/CSD Corruption Monitoring System, 2014.

Substantial differences between countries with a common historical background show that different paths of social, economic and institutional development render differing results. Overall, except for Bulgaria, the changes since the previous SELDI rounds of CMS diagnostics (2001 and 2002) for all countries are positive; progress, however, has been slow and uneven.

Corruption pressure from officials is the main factor that statistically influences the level of involvement. Most of the countries where both involvement and pressure are high are also characterised by low **resilience** to corruption pressure (most of the respondents who were asked for a bribe gave one). Although resilience could not be considered the main factor to reduce corruption, it reflects the prevailing social attitudes to integrity and is largely result of the efforts of civil society and authorities in increasing anticorruption awareness. In this respect the role of civil society is crucial as it is in a position to evaluate results and lead the public pressure for change.

<sup>2</sup> Indicators for experience with corruption used in the Eurobarometer surveys have slightly different content as they refer to direct experience and cases when respondents have witnessed cases of bribery. For more details, please refer to (TNS Opinion & Social, February 2014).

## Anticorruption policies and legislation

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of international anticorruption standards in their national legislations. Statutory quality, however, continues to be a problem. Frequent and inconsistent changes to laws have resulted in procedural and statutory complexity and contradictory interpretation by courts.

All countries have adopted some kind of strategic document containing their overall approach to tackling corruption. Though there are some differences among the countries, the implementation of these documents is generally hampered by insufficient resources and commitment at the senior government level. A further problem across the region has been the designing of strategies in a way to address all possible aspects of corruption. Instead of prioritising, these documents became all-embracing; with respect to anticorruption, strategic has come to signify simply exhaustive.

As regards policy priorities, there have been two significant changes in the approach to anticorruption – a shift of attention from petty corruption (that of traffic police or public sector doctors) to grand (that of members of parliament or ministers) and criminalisation of a wider array of abuses of public office. Achieving impact in terms of punishing grand corruption though remains limited at best. The key challenge for anticorruption policies in the region is to close the implementation gap, and keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with frequent changes.

The findings of SELDI monitoring emphasise the **significance of public support for the success of anticorruption policies**. Trust by the public in government and the effectiveness of policy are joined in a kind of virtuous circle: higher shares of people who are optimistic about the feasibility of anticorruption success are correlated with lower corruption levels. Conversely, more prevalent corruption goes hand in hand with increased pessimism about the prospects of anticorruption.

## Institutional practice and enforcement of the law

In Southeast Europe, the earlier emphasis on harmonising national legislation with international standards in anti-corruption has been gradually giving way to a focus on enforcement under increasing EU and local civil society pressure.

A shortcoming that is common to all SELDI countries is the compromised autonomy of the various oversight and law enforcement bodies. Some degree of interference by elected politicians – members of parliament or government ministers – in the work of the civil service is typical. Further, none of the SELDI countries has an adequately functioning complaints management mechanism in the public administration. Most have instituted an anticorruption body that is expected to receive complaints from the public. Another deficiency that is shared is the shortage of reliable and publicly accessible data on the performance of government institutions, especially as relates to anticorruption. Information and statistics are either not collected, not available to the public, or gathered so haphazardly as not to allow monitoring and analysis.

One of the key issues related to the design of specialised national anticorruption institutions in the region is **how to combine preventive and repressive functions**. Typically, the SELDI countries have tried to have their **anticorruption institutions** do both, although repression is by far the lesser aspect of their work. Most of the tasks of these bodies are related to some form of supervision and control, usually of the national anticorruption strategies and there is little evidence that they have had any significant influence on the governments' legislative agenda. The establishment and functioning of such institutions has been plagued by a number of difficulties:

- High as corruption might have been on the governments' agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the established balance of power. The typical compromise is for these agencies to be attached to the executive branch and given supervisory powers which, however, are usually limited to requiring other government agencies to report on the implementation of the anticorruption tasks assigned to them.
- Such agencies had to be careful not to duplicate powers already conferred to other oversight bodies (e.g. national audit institutions or law enforcement agencies).
- Most were provided with limited institutional capacity – budget, personnel – despite declared intentions to the opposite.

As regards the **legislature**, parliaments in the region do not rank high in the public trust and this unenviable position is not without its reasons. Codes of ethical behaviour are rare and unenforced; lobbying regulation is even rarer; only recently have procedures for lifting immunity from prosecution started to be introduced, albeit timidly; wherever there is an anticorruption body in parliament, it is typically to supervise some executive agency, rather than deal with corruption among members. An issue of significant concern in the SELDI countries is the financing of political parties and electoral campaigns. Most countries have implemented GRECO's recommendations on party funding but a number of problems – such as anonymous donations, vote buying (or voter bribing), insufficient capacity to audit party finances and limited powers to enforce sanctions – persist.

The present state of the **civil service** corresponds to the transitional nature of the SEE countries and the lack of adequate legal and institutional traditions as well as to chronic underfunding. Despite some differences among the countries, the need to facilitate managerial and organisational development within the civil service is common to most. The culture of "control" of the administration instead of managing its work through motivation is what obstructs both enhanced professionalism and reduced corruption. One of the main findings in the report is **the mutual reinforcement between competence and integrity**. Typically, whenever the anticorruption credentials of a given government department are questioned, it is also found to be wanting in terms of institutional capacity. Conversely, any gain in professionalism has also led to improvement in integrity. Thus, the challenge in the region is how to make transparency and accountability essential characteristics of the civil service while also enhancing its professionalism. Quite often, it is poor management, obscure criteria and inadequate division of powers and responsibilities that hamper reform and undermine government authority.

The anticorruption role of **law enforcement agencies** in the region needs to be understood against the background of the constantly expanding range of incriminated corruption-related practices which risks channelling a disproportionate number of cases to law enforcement and the prosecution. The anticorruption role of law enforcement agencies in Southeast Europe is further compromised by their high vulnerability to corruption, especially by organised crime. The police forces in most SELDI countries have units specialising in countering organised crime operations; these units are also expected to work on anticorruption. Accommodating these two functions into one body is warranted mostly by the use of corruption by organised crime but also by the need for special investigative methods in uncovering sophisticated corruption schemes – expertise that is usually vested in the anti-organised crime departments. These units are, however, typically embedded in the larger police force or the ministries of interior which deprive them of the institutional autonomy that is required for a specialised anticorruption institution.

## The judiciary in anticorruption

In Southeast Europe the strong focus on ensuring judicial independence has not been balanced by equally strong requirements for accountability. Without adequate checks and balances judicial self-governance has spiralled out of control, and has turned into corporatism with all the associated corruption risks. An overemphasis on formal electoral independence became a typical example of the cure turning into the disease – instead of ensuring a balance to the executive power, self-governance perpetuated clientele-type relations between magistrates and special interests. Today, the judiciary in SEE has been as effectively captured as the other branches of power. Once emancipated from public scrutiny and the political factors that brought about such arrangements, there are today few checks on the rent-seeking by magistrates.

Not surprisingly, the public does not hold the judiciary in particularly high esteem. SELDI's *Corruption Monitoring System* finds that magistrates are considered among the most corrupt public officials in the region. The absence of transparency and accountability is arguably a significant factor in such assessments. In all SELDI countries, there has been a tangible **deterioration of the assessment of the spread of corruption among magistrates** since 2001.

The capacity of the judiciary in the region to enforce anticorruption legislation, especially as regards political corruption, has been undermined by a number of problems that have exerted their influence cumulatively:

- Constitutional issues, primarily related to restoring the balance between independence and accountability of the judiciary;
- The complexity of the criminal prosecution of perpetrators of criminal offences of corruption, especially at the political level;
- Overall insufficient capacity and the related issues of low professionalism, excessive workload, and resulting backlog of cases, case management, facilities, etc.

An important finding of this SELDI round of corruption monitoring that is relevant to the judicial role in anticorruption is the **lack of feedback mechanisms** that allow the public and policy makers to evaluate both the integrity of the judiciary and its effectiveness in applying criminal



anticorruption laws. In none of the SEE countries is there a reliable, systematic and comprehensive mechanism for collecting, processing and making publicly available statistics on the work of the courts and the prosecution, in particular on corruption cases.

## Corruption and the economy

In Southeast Europe, the outstanding considerable involvement of governments in the economy generates a number of points of potential conflict between public institutions and business; in turn, this creates corruption risk. The risk is particularly high in the area of privatisation and in public procurement and concessions heavy industries such as energy and health-care. Further, business overregulation – mostly concerning registration, licensing and permit regimes – continues to generate various barriers to market entrants and higher costs of doing business although some countries in the region have made substantial progress in tackling business obstacles. Yet, oversight and compliance administrations still distort markets through focusing overwhelmingly on control and penalties without proper risk and cost-benefit evaluation. This is particularly true of customs administrations across the region, which are still seen as effective means for pressure on businesses. This either drives entrepreneurs in the informal sector or compels them to resort to bribery. In a downward spiral this then justifies further regulation and administrative barriers.

The variety of circumstances that occasion corruption in the interactions of business and public officials illustrate the difficulty anticorruption policies face as they need to take a multitude of factors under consideration. When initiated by business, corrupt practices can be divided into two main categories – avoiding extra costs and gaining unfair advantage. In the first group are the kickbacks necessitated by poor or excessive regulation, individual or institutional incompetence, etc.; in the second are various types of fraud – tax evasion, VAT fraud, smuggling, non-compliance with health and safety standards, etc.

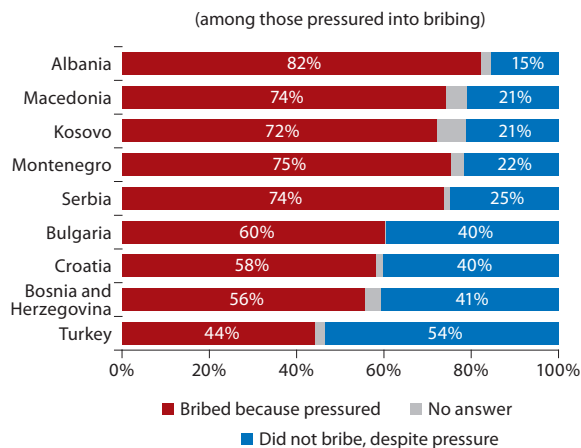
In Southeast Europe, government procurement is one of the main channels through which corruption affects the economy. Corruption risk in this area is associated with a number of deficiencies: insufficiently transparent procedures, large share of non-competitive procedures, weak oversight and ineffective judicial review (given judicial corruption), etc. Although more than a decade ago a SELDI study found that the countries in the area had made recent progress in strengthening the legal framework of the process and its harmonisation with the EU acquis, public procurement continues to be among the weakest aspects of public governance. Realities have not changed much since as well-conceived rules are circumvented by corrupt politicians and well connected businesses. Institutional fragmentation does not allow effective implementation of public procurement rules.

## Civil society in anticorruption

Non-governmental organisations in Southeast Europe are among the most important driving forces in anticorruption. They are, however, still a long way from translating public demands into effective advocacy for policies, and from standing up to corruption due to a number of shortcomings. Their contribution depends in no small measure on being capable of **both serving as watchdogs and engaging government** in anticorruption reforms. Still,

there is a lack of formal mechanisms for engaging civil society by national governments in the region, as well as lack of administrative capacity and clear vision and understanding of the potential of CSOs in the field of anticorruption. Over-reliance on international, including European financing, and the lack of national policies for nurturing vibrant civic sectors in Southeast Europe, compromise the sustainable impact of local anticorruption champions.

### Resilience to corruption pressure



Source: SELDI/CSD Corruption Monitoring System, 2014.

Although NGOs in the SELDI area have managed to establish some international public-private partnerships, these were not transformed into effective partnerships with national government institutions as well. The key to making partnering successful has been the capacity to enter into various relations with state institutions, both complementary and confrontational. One way, for example, of reconciling cooperation with performing a watchdog function, has been to enhance the professionalism of NGO monitoring of corruption and anticorruption policies.

The effectiveness of NGOs in addressing the issues of good public governance in SELDI countries depends to a great extent on their capacity to maintain their own governance in order. The risk of capturing of NGOs by special interests and corrupt public officials or elected

politicians stems from the opportunity to exploit a number of vulnerabilities of the non-profit sector in the region:

- absence of mandatory procedures for transparency;
- ineffective control of compliance with financial regulations;
- lack of auditing culture;
- low level of self-regulation and coordination of efforts.

Countering civil society capture as part of national anticorruption efforts in Southeast Europe should be on the top of the reform agenda in the region.

### International cooperation

International institutions and foreign partner countries have played an important role in the anticorruption developments in Southeast Europe. Given the extreme partisanship in domestic politics, international commitments facilitate the adoption of reform policies that might otherwise have been shunned by national politicians. Progress reports by the European Commission, EU funding for reforms and twinning arrangements are crucial international influences on the national anticorruption agendas in most SEE countries. Although anticorruption is one of the main elements of the EC progress reports, they are received locally in different ways – countries with clearer accession prospects pay much more and detailed attention to the reports' findings, while in Turkey, for example, reports generally receive less attention.

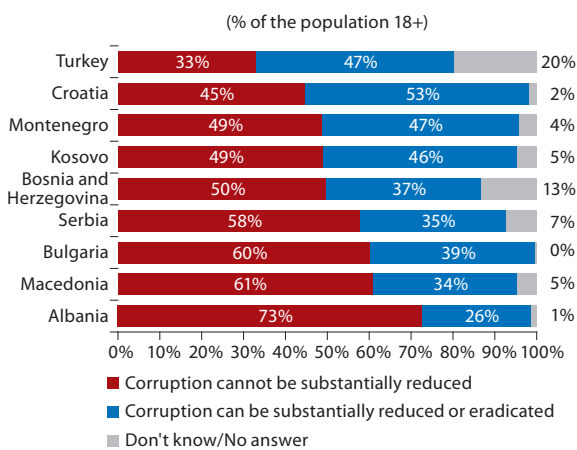
International involvement, however, also brought with itself the risk of unrealistic expectations for quick fixes which in turn could prompt the adoption of superficial and ad hoc measures. Conditionality and most of the

incentives affect primarily the executive branch agencies, while the judiciary, parliaments and other concerned public and private institutions were not sufficiently involved. The sustainability of international engagement was bolstered by the broadening of the range of involved local stakeholders to include civil society, media, professional associations, trade unions, etc. This broadening of the domestic interlocutors of international partners has had the effect of empowering isolated reformist politicians or political groups but also various non-government actors and encouraging public demand for reforms. Continuing and building on this engagement would be crucial to the leverage the EU has in the region. For this to happen, a government-to-Brussels connection is not sufficient. The engagement by international partners of reformist politicians and parties needs to be supported – and verified – by civil society in a kind of trilateral cooperation.

## KEY RECOMMENDATIONS

The experience of SELDI countries in tackling corruption since 2001 demonstrates that solving the corruption challenge in the region would require sustained efforts on many fronts and the involvement of all local and international stakeholders over the long term. The current report provides a number of recommendations to achieve further progress in limiting corruption. Among these, three key areas need to be prioritised by countries in the region and at the European level in order to achieve breakthrough in the mid-term:

### Feasibility of policy responses to corruption: public estimates



Source: SELDI/CSD Corruption Monitoring System, 2014.

**Effective prosecution of corrupt high level politicians and senior civil servants** is the only way to send a strong and immediate message that corruption would not be tolerated. Bringing crooked politicians to justice has proven very effective in strengthening anticorruption measures in Croatia and Slovenia, for example. Success in this direction would require also international support, including the involvement of EU member states law enforcement.

An **independent corruption and anti-corruption monitoring mechanism** needs to be introduced on national and regional level in order to provide robust data and analysis and integrate both **corruption diagnostics** and **anticorruption policy evaluation**. The mechanism should be implemented through national and/or regional civil society organisations and networks, and should be independent of direct

national government funding. It should serve as a vehicle for opening up administrative data and enhancing public access to information. Data allowing the tracking of public procurement, concessions, the enforcement of conflict of interest legislation, state aid, budget transfers, the annual performance reports of oversight and compliance agencies, etc., should be made publicly available in a database format, thus allowing big data analysis and the use of monitoring tools.

**Critical sectors with high corruption and state-capture risks, such as the energy sector, should be addressed with priority.** The other priority measures include:

- increasing competition in public procurement;
- improving the corporate governance of state owned enterprises;
- transparent management of large-scale investment projects;
- enhancing the accountability and independence of energy regulatory authorities.

**International partners, and primarily the European Commission, should engage directly civil society organisations in the region.** This is essential for several reasons: a) for internationally supported reforms to become sustainable, they need to gain wider public acceptance and CSOs are indispensable for this to happen; b) involvement of CSOs is a way of guaranteeing that the accountability of governments to donors and international organisations does not take precedence over accountability to local constituencies; c) the effectiveness of international assistance would be enhanced if it utilises the monitoring and analytical skills and advocacy capabilities of CSOs; d) a direct engagement would have the added benefit of preventing civil society being captured by the clientelistic networks of unreformed and often corrupt public administrations.

## SPECIFIC RECOMMENDATIONS

### Policies and legislation

- Define national anticorruption efforts in terms of policy related to quantifiable goals and milestones rather than simply measures or legislation. This would entail setting specific targets to be achieved and selecting appropriate intervention methods. These targets should be quantified as much as feasible.
- Prioritise certain sectors, types of corruption and methods of intervention and pilot different approaches before rolling out full blown measures. Corruption is a broad concept, related to various and varying types of fraud which cannot be addressed simultaneously in an effective way.
- Policies need to be informed. While some effort has been made in the national anticorruption strategies to estimate previous results, none of the SELDI countries has a sustainable mechanism of evaluation of anticorruption policies. At the very least, this requires: a) reliable and regular statistics about anticorruption efforts (investigations, prosecutions, administrative measures, etc.); b) regular monitoring and analysis of the spread and forms of corruption in the various public sectors. The monitoring should be independent and/or external to the country, involve civil society and incorporate the basic components of non-administrative corruption monitoring systems, such as SELDI's CMS.

### Anticorruption institutions and enforcement of the law

- Introduce a feedback mechanism for the enforcement of anticorruption policies. The mechanism could be based on innovative new instruments made more readily available in recent years, such as the *Integrated Anticorruption Enforcement Monitoring Toolkit* developed by the Center for the Study of Democracy and the University of Trento. It allows policy makers to assess corruption risks in a given government institution and the effect of the corresponding anticorruption policy, identifying the highest impact solutions.
- The institutional capacity of the relevant government bodies – particularly the specialised anticorruption agencies and oversight agencies such as the national audit institutions – including their budgets, facilities and personnel need to be aligned with the wide remit these institutions are given. Alternatively, they should design more narrow annual or mid-term programmes, which prioritise interventions.
- National audit institutions should also have their institutional leverage strengthened, including the powers to impose harsher sanctions. Both auditees and national parliaments should be obligated to follow up on the reports of these institutions. The national audit institutions should also be mandated to audit the management of EU funds where these are administered by national authorities. As performance audit work is at a very early stage, they should develop their capacity to carry out more of these.
- Further measures are needed to ensure that recruitment to the civil service is merit based and not dependent on political party affiliation.
- The anticorruption work needs to be shared more evenly among government bodies. Expanding the range of statutory incrimination should be balanced by enhanced capacity in all public bodies to address corruption in their ranks through administrative tools instead of “buck-passing” responsibility to police and prosecution. General public administration bodies should act as gatekeepers of the criminal justice system by dealing with as many corruption cases as their administrative powers allow them. At the very least, this entails the creation of effective complaints management mechanisms.
- The forfeiture of illegally obtained assets in corruption cases is an anticorruption tool the application of which should be expanded. While special care needs to be applied to balance the rights of the accused with the interests of public good – especially in an environment of often corrupt public administrations – wealth confiscation following criminal convictions is an important deterrence which is still underutilised in SEE.

### Judiciary

- Countries where the majority of the judicial self-governing bodies are not elected among magistrates should adopt reforms increasing their voting power. Countries that have not, should adopt the “one magistrate – one vote” principle.
- Ensure that the election of the judicial quota is as representative as possible, including judges from first instance courts. Carefully review, and if needed reconsider, the compatibility of the position of court chairperson with membership of the judicial self-governing bodies.
- In countries where both the prosecution and the courts are governed by the same body, two colleges – for the prosecutors and for judges – need to

be separated within this body. Prosecutors and judges, respectively, would only be elected to these colleges.

- Abolish or reduce to a minimum the role of government ministers (typically of justice) in judicial self-governing bodies, especially as regards decisions on disciplinary procedures.
- Magistrates should be prioritised in the mechanism for verification of asset declarations.
- The independence and capacity of judicial inspectorates should be strengthened to allow them to step up inspections.
- Introduce feedback mechanisms for the enforcement of anticorruption policies with respect to magistrates. These mechanisms are substantially deficient or practically missing in all SELDI countries; their absence sabotages the repression aspect of anticorruption policies and renders further incrimination of corruption useless. A possible best practice to be replicated – although it is still underdeveloped – is Kosovo’s Platform of Anticorruption Statistics, designed by an NGO. Such a mechanism should include regular information about: disciplinary and administrative and criminal measures in the public service and the judiciary; the various aspects of criminal prosecution, including indictments and convictions/acquittals, and sentences by the various types of corruption offences.

### **Corruption and the economy**

- Reduce to a minimum and review annually state aid policies as they create considerable corruption risks. Introduce in advance strict enforcement of EU state aid rules, and develop the capacity of national independent state aid regulators to enforce the rules.
- Improve the enforcement of anti-monopoly legislation in order to promote free enterprise and competition. Apply special care and review regularly concentration in sectors which are heavily regulated and face licensing and other restrictions, thus creating a risk of collusion between larger competitors and politicians.
- Countries that have not done so should establish institutional links between the management of assets and liabilities of all public finances, including state-owned companies, in order to mitigate financial risks and enhance the government’s credibility in public finance management. State-owned enterprises should meet stringent corporate governance and reporting requirements (e.g. OECD rules), on par with publicly traded companies. These enterprises should publish online quarterly reports.
- Introduce liability and sanctions for contracting authorities who fail to submit reports on public procurement in continuity, reports on violations of anticorruption regulations or submit incorrect or incomplete data.
- Define a legal and institutional framework for the management and control of contracts concluded by public-private partnerships.
- Improve oversight of procurement by large public procurers (state-owned enterprises and utility companies) to maximise the efficiency and reduce irregularities.
- Adopt policies to reduce the share of public procurement tenders with only one bidder and enhance competition. Publish in online searchable data-base format the complete documentation on public procurement pre-notices, notices, bids, contracts, and any addendum thereof.

- EU candidate countries that do not have one should establish decentralised implementation systems for EU funds to provide the appropriate legal and administrative framework for the transfer of responsibilities for the implementation of the EU funded programmes. Oversight should remain centralised and independent of implementation bodies.
- Introduce the concept of value-for-money in the evaluation of public procurement contracts.

### **Civil society**

- Enhance the capacity of civil society organisations to monitor and report on corruption and anticorruption, including the ability to collect and collate primary information on the operation of government institutions, skills for the measurement of the actual proliferation of corruption and in the analysis of data, institutional evaluation and report writing.
- Conflict of interest legislation should include non-profit institutions, especially where they are funded via government administered programmes, such as national budget, EU funds, etc.
- Rules and regulations for public funding – both by central and local governments – of non-profit organisations should be clear and transparent. Only NGOs registered in the public benefit should be allowed to receive public funding, and should respectively meet more stringent reporting and disclosure requirements.
- The European Union and other donor agencies should consider a larger share of funding for good governance programmes implemented in collaboration between civil society organisations and public institutions. These programmes should have explicit requirements against the capture of NGOs by special interests. It should be noted that achieving impact requires longer-term (10 years and above) sustained commitment.
- The civil society sector needs to provide for its own self-regulation. At the minimum, this involves adopting codes of conduct with aspirational standards. They should also find more and better ways of organising coalitions of interest.
- NGOs need better understanding of the need to be transparent and accountable. This includes undergoing regular auditing, disclosure of financial statements, explicit and transparent corporate governance procedures, and measures against capture by special interests.
- The non-EU member countries of SEE would be well advised to learn from the body of knowledge and expertise contained in the EU Anticorruption Report. This would provide them with valuable insights with respect to the evaluation of the spread of corruption and the design of anticorruption policies.

### **International cooperation**

- Foreign assistance programmes need to better reflect the findings of international and independent domestic evaluations. For this to be achieved, assistance programmes need to be made more responsive and flexible, including a shorter time lag between design and delivery.
- International anticorruption assistance to national governments should envisage a stronger role for civil society. This includes the involvement of NGOs as implementation partners, monitors and resource organisations, especially in the evaluation of the impact of assistance projects.

- The effectiveness of assistance needs to be periodically evaluated through impact assessment methods. In addition to providing a value-for-money measure – especially when there has been public funding involved – this would allow successful programmes to be sustained while unsuccessful to be discontinued. It is imperative that this assessment be independent and that it utilises the expertise of civil society organisations.
- Assistance needs to encourage cross-country programmes on common issues, such as trans-border crime. The Bulgarian experience in public-private cooperation in the analysis of the linkages of organised crime and corruption should be utilised across the region.
- European Commission regular reports' preparation and findings should be better embedded in local policy-making by drawing more heavily upon local civil society and business community.





# INTRODUCTION



Corruption in Southeast Europe has been in the news and on the policy agenda of national and international institutions so often that its scrutiny hardly needs to be justified. However, it is precisely because it has proven to be such an intractable issue that innovative approaches to its understanding – and therefore its reduction – are justified.

Today corruption is frequently referred to as a “global concern”; less frequently understood is that it is also originated by factors which do not recognise national borders. This is especially true in Southeast Europe (SEE) where a number of interconnected common causes – armed conflicts, transborder crime, communist legacy, low level of development – have conspired to turn bribery and abuse of public office into a systemic problem for the countries in the region. In addition, there are also a number of factors that the SEE countries share without these being regional in nature: rapid modernisation and the ensuing shift in social structures, both internal (rural-urban) and international migration, ethnic minorities that are coextensive with the poor sections of the population, etc.

It is also often said that these countries are “in transition”; democracy and market economy are most frequently mentioned in this respect. What is not always appreciated is how broad and deep is the social makeover that they have undergone. SEE has suffered a period of political, social, economic and other upheaval which is inimical to compliance with official law and causes the proliferation of “micro” ethics which seem just only in specific contexts. The unsettling of established mores, loyalties and identities has hampered the shaping of sustained reformist constituencies which would demand better public governance. The general problem for a society that intends to reorder its entire mechanism of governance is where the reformist drive would come from. If **corruption has become the dominant mode** of transaction in public life, how would an **alternative political force** that receives the trust of a critical mass of citizens be built?

“Reform” has become an overused term, which is partly due to failure to appreciate that genuine reforms – anticorruption in particular – entail costs; the key consideration, therefore, is how these costs are to be distributed and borne. In an environment where patron-client relations are well embedded, no political agent wants its clients affected which leads to impasse and stalling reforms. Thus, talk of **the costs of reforms is shunned by both national government and international partners**, while the benefits are celebrated. Acknowledging this would help find a truly reformist constituency which is what the anticorruption efforts in SEE need today.

In this context, policies hoping to upset entrenched special interests cannot be delivered through traditional bureaucracies alone. High level of partisanship in SEE prevents reformist politicians from mustering the type of public support needed to make anticorruption efforts successful. For this to happen, **broad public coalitions** need to be formed both within the countries, and region-wide. It is often wrongly assumed that anticorruption efforts would

be opposed only by corrupt politicians and bureaucrats but somehow automatically supported by the general public. Corruption flourishes – or diminishes – not just because of the legal framework or government law enforcement but also in a social and cultural environment the informal rules and sanctions of which are sometimes more effective than those of law enforcement. Any anticorruption programme in the SEE countries needs to ensure that it is tailored to these local social networks in a way that makes them receptive to reformist policies.

**Figure 1. Common corruption-related vulnerabilities in Southeast Europe**



Source: (SELDI, 2013).

A further feature of corruption in SEE that warrants cooperation between government, including international institutions, and NGOs is that it has turned into a typical development problem for these countries. Institutionalised corruption distorts the economy, creates sharp inequalities, prevents the modernisation of the education system and public healthcare, affects social programs, diminishes the public's trust in government institutions and breeds disillusionment with reforms in general. All this makes corruption a typical development concern. Development problems, however, are rarely amenable to administrative solutions but require partnerships between government and business, between NGOs and public institutions in order to complement enforcement and prevention, to combine government policies and civic involvement, to create shared value.

In the past decade, both the nature of corruption and the anticorruption agenda in Southeast Europe have changed. Political corruption has replaced petty bribery both as the dominant concern of national and international reformists and as the cause of most social and economic damage. The **earlier emphasis on harmonising national legislation with international standards has now been substituted by a focus on its enforcement.** Statutory quality, however, continues to be a problem. Frequent and inconsistent changes to laws have resulted in procedural and statutory complexity and contradictory interpretation by courts. Complexity, however, is not a friend of good governance: it has the same effect as opacity. Furthermore, “the rules mainly focus on restrictions and prohibitions, to the detriment of public disclosure and transparency, which curtails their effect.”<sup>3</sup>

The Southeast Europe Leadership for Development and Integrity (SELDI)<sup>4</sup> has made the in-depth understanding of these changes one of its main priorities, as a requisite condition for its advocacy of **knowledge-driven anticorruption policies.** To this end, in the early 2000s, SELDI developed a civil society centric public-private cooperation model for the assessment of **both corruption and anticorruption,** tailored to the social and institutional

<sup>3</sup> (GRECO, 2014, p. 4).

<sup>4</sup> The SELDI countries are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Serbia, and Turkey. The designation “Kosovo” is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. The official denomination for “Macedonia” used in EU documents remains “The former Yugoslav Republic of Macedonia”. As the current report is not an official EU document, SELDI partners have unanimously agreed to use the shorter and accepted in the country name “Macedonia”.

environment of Southeast Europe. Such a combined evaluation allows policy makers and civil society to identify the correspondence – or, more often the absence of it – between anticorruption intentions and outcomes in terms of reduced corruption. Using this model, in 2002 SELDI carried out the first regional measurement of the proliferation of corruption and evaluation of institutional performance in the SEE countries.<sup>5</sup> The 2013 – 2014 round of assessment – the findings of which are summarised in this report – is a rare case in international monitoring practice whereby the same issues and the same region are revisited after a little more than a decade.

The evidence of progress is clear: two SELDI countries are now EU members; settlement of transborder conflicts has allowed both economic growth and the stabilisation of democratic institutions; important legislative developments have taken place, including the adoption of laws in key areas such as conflict of interest and asset declarations. The *Corruption Monitoring System* – SELDI's tool for measuring the proliferation of corruption – indicates that there is enhanced public sensitivity towards corruption. Nevertheless, “despite the positive efforts of establishing the regulatory and institutional base for countering corruption, including the establishment of specialised anti-corruption agencies, which are being introduced in the majority of the countries in the region, significant problems persist, especially with regard to the practical implementation of the existing legal framework and institutional enforcement.”<sup>6</sup>

This report compares the national legislation and institutional practice in a number of areas critical to anticorruption efforts: regulatory and legal framework, institutional prerequisites, corruption in the economy, the role of civil society and international cooperation. The coverage of the national institutional and legal aspects making regional corruption possible is not intended as a comprehensive inventory of regulations and practices in all countries but rather emphasises some of the priority issues relevant to potential efforts of stemming common sources of corruption in SEE.

Being the result of collaboration within SELDI, the report is innovative in both its method and its process. SELDI is distinguished from the other region-wide initiatives as being the first NGO-led effort to encourage public-private cooperation as an instrument for regional development. It complements existing international programmes in the following ways:

- By ensuring a leading role of civil society in establishing **regional public-private anticorruption partnerships**. This complements the exclusively intergovernmental nature of the other initiatives.
- By **integrating policy design and diagnostics** developed specially for the institutional, political and social environment of SEE.
- By providing institutional links (through its NGO network mobilisers) to **existing national efforts** starting or already underway in the participating countries. Most of these national programs are implemented in cooperation between civil society and public institutions.

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<sup>5</sup> (SELDI, 2002).

<sup>6</sup> (SELDI, 2013, p. 5).





## 1.1. CMS METHODOLOGY

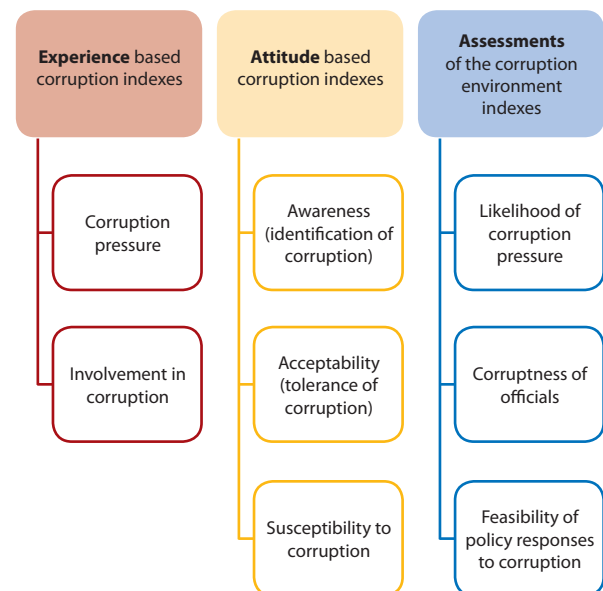
Significant efforts have been invested by governments, NGOs and international institutions in scaling back corruption in Southeast Europe. Where these efforts have had success it should be attributed partly to an increased body of knowledge about the manifestations, underlying causes and incidence of corruption in a transition environment. The EU approach in this respect has also been changing. While earlier priority had been given to input indicators (regulations, procedures, etc.) focus now has shifted to output indicators (actual impact). Member states have also contributed to understanding corruption and recommending action through the mechanism of peer reviews. Still, “identifying anti-corruption progress remains largely arbitrary. Corruption [...] is an evolving concept. Understanding corruption and obtaining reliable information about its dynamics are crucial to the implementation of successful prevention and control policies.”<sup>7</sup> It is with this purpose in mind that SELDI developed its *Corruption Monitoring System* (CMS).<sup>8</sup> Designed by the Center for the Study of Democracy, the CMS has been recognised by the UN as a best practice in corruption monitoring. Introduced at a time when corruption measurement was confined to public perceptions, the CMS transformed monitoring by introducing a measure of the **victimisation** of individuals by corrupt officials accounting for their **direct experience** with various corruption patterns. It allows assessments to be made about the dynamics of proliferation of corruption behaviour patterns (prevalence of corrupt transactions) in a society. The CMS methodology ensures comparability of data across countries and registers the **actual level and trends** of corruption, as well as the public attitudes, assessments and expectations in relation to corruption.

The major outputs of CMS are the *Corruption Indexes*.<sup>9</sup> They are based on surveys included in the CMS and

summarise the most important aspects of corruption behaviour patterns. The main indicators of the CMS describe corruption as a social phenomenon using three groups of sub-concepts:

- experience,
- attitudes, and
- perceptions.

Figure 2. Structure of the Corruption Monitoring System Indexes



The CMS gauges the principal empirical manifestations of administrative corruption patterns. In terms of definition, administrative corruption includes the extension of benefits (money, gifts, and favours) by citizens in exchange for services they obtain by public officials. The **experience** aspect of administrative corruption contains two indicators:

- **Involvement in corruption** captures the instances when citizens make informal payments to public officials. The concrete questions used to gather information about this indicator are victimisation questions and reflect experience during the preceding year. The index summarises citizens’ reports and divides them into two categories: people without corruption experience (have not given bribes) and people with corruption experience

<sup>7</sup> Center for the Study of Democracy, 2007.

<sup>8</sup> For more information, please refer to (Center for the Study of Democracy, 2002) and (Center for the Study of Democracy, 1998, pp. 61-94).

<sup>9</sup> Every index is based on the aggregation of data from several variables (research questions). See further the Methodological Appendix.

(have given bribes at least once during the preceding year).<sup>10</sup>

- **Corruption pressure** reflects instances of initiation of bribe seeking by public officials: directly by asking for an informal payment or indirectly by implying that an informal payment would lead to a positive (for the citizen) outcome. CMS results have shown that pressure has been a decisive factor for involvement. Most corruption transactions occur after the active solicitation of payments by officials.

Direct involvement in corruption transactions is accompanied by the prevalence of specific **attitudes** towards corruption and corruption behaviour and by perception of the spread of corruption in society. Ideally, low levels of involvement in corruption would be paired with negative attitudes towards corrupt behaviour and perceptions that corruption is rare and unlikely. This does not mean that perceptions and attitudes directly determine corruption behaviour of citizens. Rather they could influence behaviour to a certain degree but essentially express the general social and political atmosphere in society related to corruption.

The indexes capturing different aspects of attitudes towards and perceptions of corruption included in the CMS are:

- **Awareness (identification) of corruption** is an index accounting for the level of understanding of citizens as to what constitutes corruption behaviour. The index differentiates between three categories of awareness: high (citizens who identify all or most of the common corruption behaviour patterns as corruption), moderate (many of the common corruption practices are identified but some forms of corruption are classified as “normal behaviour”), low (few corruption patterns are identified as corruption).
- **Acceptability (tolerance) of corrupt behaviour.** While awareness captures the knowledge component, acceptability of corruption captures tolerance (or lack of tolerance) towards corruption. It summarises

citizens’ assessments of the acceptability for members of parliament or government as well as civil servants at ministries, municipalities and mayoralties to take gifts, money, favours or receive a free lunch (“get a treat”) in return to solving someone’s problems.

- **Susceptibility to corruption** reflects the tendency of the respondents to react in two hypothetical situations – one involves being in the role of an underpaid public official and accepting or denying a bribe that was offered; the other situation asks about giving a bribe to a corrupt public official, if one had a major problem to solve and was asked explicitly for a bribe in cash. Declaring the denying of a bribe in both situations is interpreted as the respondent being not susceptible to corruption, while accepting/giving a bribe in both is interpreted as susceptibility, while giving/taking a bribe in one of the situations and not in the other is defined as “mixed behaviour”.

The experience with corruption and the attitudes towards corruption, as well as the general current sentiment and level of trust towards public institutions in society determine the public’s **assessment** of the corruptness of the environment. These perceptions are summarised in the following indexes:

- **Likelihood of corruption pressure** is an index measuring expectations of citizens of the likelihood of facing corruption pressure in their interaction with public officials. Overall, this is an index gauging perceptions of the corruptness of the environment. Corruption theory<sup>11</sup> considers that people would be more likely to “use” corruption patterns if they assess the environment is intrinsically corrupt.
- **Corruptness of officials** is an index reflecting perceptions of the integrity reputation of different groups of public officials; it thus constitutes an estimate by the public of the corruptness of the various public services. The interpretation of this index is specific, as it is an assessment of attitudes of citizens towards public officials rather than a measure of the prevalence of corruption in the respective offices. The added value of this index is that it helps identify sectors most affected by corruption or being least trusted by the public.
- **Feasibility of policy responses** to corruption is an indicator capturing the “public thinking” about policy responses to corruption. More specifically it evaluates potential public trust in the government’s

<sup>10</sup> Over the years the wording of questions has been preserved in order to ensure comparability of data. However, calculation methodology has been modified. Prior to 2013 indexes were calculated based on a normalisation procedure and their values ranged from 0 to 10. While this is a standard procedure, it has created difficulties in the concrete interpretation of index values. To overcome this difficulty the aggregation procedure has been modified and uses direct recoding of response groups. This makes it possible to position respondents into distinct and directly interpretable categories referring to different aspects of corruption behaviour patterns. See further the Methodological Appendix.

<sup>11</sup> See (Rothstein, 2007:3).

willingness and/or capacity to tackle corruption, as well as the potential support for anticorruption policies.

## 1.2. EXPERIENCE WITH CORRUPTION

Corruption pressure and involvement are based on the actual experiences of citizens from the SELDI countries with corruption. The corruption pressure index reflects how often citizens were asked directly to pay a bribe by a public official and how often the public official did not ask directly, but indicated that he/she expected a bribe. Regardless of whether such pressure was experienced in isolated contacts with public officials only or in most of the contacts a person had with the public officials of the country, these cases are considered victims of corruption pressure.

Even isolated cases of one of the three forms of bribery during the preceding year are considered as corruption incidents (involvement in corruption). It should be noted that not everyone who had been involved in corruption during the preceding year would report experiencing pressure by officials. Such cases, where involvement in corruption took place without pressure, are interpreted as initiation of the transaction by the citizens themselves.

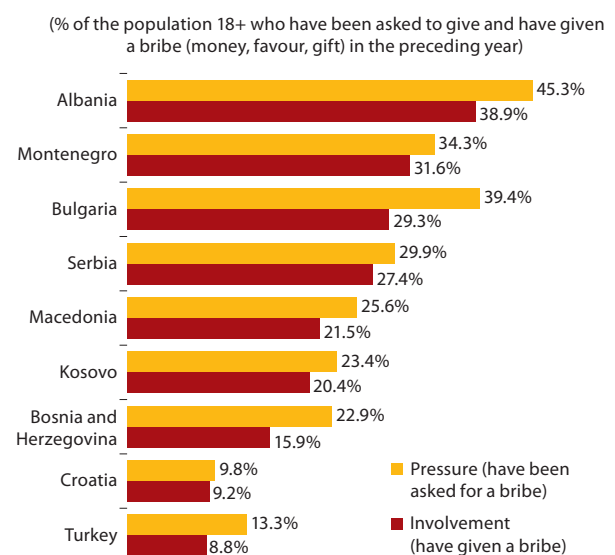
The CMS 2014 results in Figure 3 show the corruption pressure and the involvement in corruption for the year preceding the CMS implementation (2013). Countries are sorted by the share of respondents reporting involvement in corruption transactions, starting from the highest share of people involved in actual transactions (39% of the population in Albania) to the lowest share (9% in Turkey). The ordering with regard to corruption pressure is very similar, with only Turkey and Bulgaria changing their ranking by one position if the ordering is done according to corruption pressure. The value of the indexes, and the comparison between the SELDI countries warrant several conclusions:

- Experience with corruption (involvement of citizens in corruption transactions) in the SELDI countries is very high. Even in Turkey and Croatia, where levels of administrative corruption are lowest in the region, about 8-9% of the population reports having given a bribe in the preceding year. Such levels of experience with corruption are well beyond average

levels registered by the Eurobarometer surveys in the EU.<sup>12</sup> This shows that administrative corruption is a **mass phenomenon** and cannot be confined to “single cases” of corrupt officials.

- For Bulgaria a longer time series of CMS indexes is available, including data collected since 1999. The lowest levels of involvement for Bulgaria have been registered in 2010 (about 10%) and have gradually increased since then. There has been a sharp increase since then, which can generally be explained by the unstable political situation in the country in 2013 – 2014, including the change of 3 successive governments and wide public discontent and protests. Developments in Bulgaria suggest that **EU membership in itself is not enough** to lead to sustained reduction in corruption but efforts need to be integrated into public institutions, and results should be sustainable already before accession.
- Observed levels of administrative corruption lead to the conclusion that it is **systemic** and should be regarded as a specific characteristic of the mode of operation of public institutions. Substantial differences even between countries with a common historical background show that different paths of social, economic and institutional development render differing results.

**Figure 3. Corruption pressure and involvement in corruption**



Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>12</sup> Indicators for experience with corruption used in the Eurobarometer surveys have slightly different content as they refer to direct experience and cases when citizens have witnessed cases of bribery. For more details, please refer to (TNS Opinion & Social, February 2014).

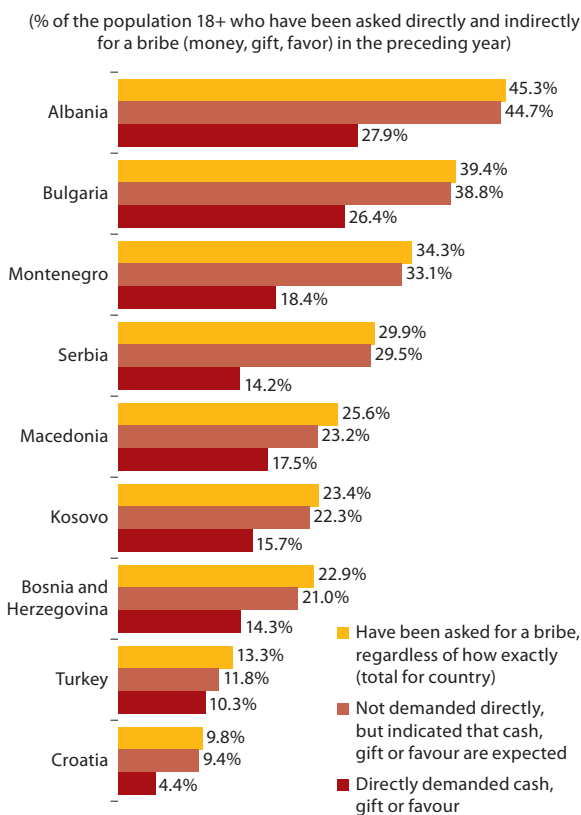


- Overall, with the exception of Bulgaria, the changes since previous SELDI rounds of CMS diagnostics (2001 and 2002) for all countries are positive. However, they are not considered satisfactory by governments, the business sector and citizens. Progress has been slow and uneven.

The two components of corruption pressure – percentage of the population who were asked directly for a bribe and the percentage who were not asked directly, but the officials managed to show they expected to receive a bribe are shown on Figure 4.<sup>13</sup> It is not surprising that most often the officials ask for a bribe indirectly, indicating that they expect it without asking explicitly. Still, in a lot of the cases this is done directly (explicitly) which comes to show that bribery is considered more or less a normal scenario.

The highest levels of explicit pressure have been observed in Albania (28%) and Bulgaria (26%). In Montenegro and Serbia the pressure is more often

**Figure 4. Explicit and implicit corruption pressure**



Source: SELDI/CSD Corruption Monitoring System, 2014.

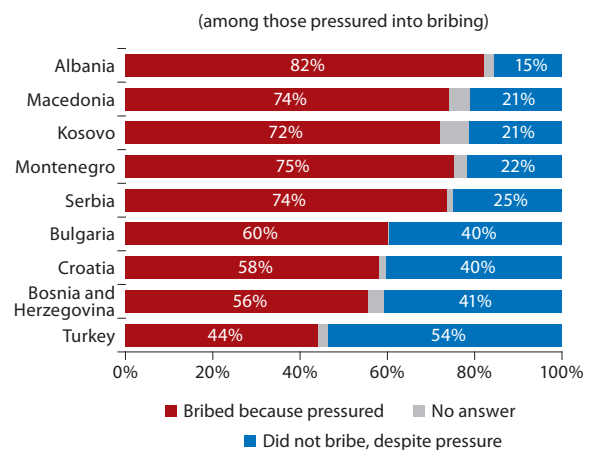
<sup>13</sup> Implicit and explicit pressure do not add up to the total pressure percentage, because very often respondents experienced both types of pressure during the year.

implicit, while explicit pressure is not so common. Another country where the explicit pressure is almost as high as the implicit is Turkey, where 12% of citizens report cases of implicit pressure and 10% report they were asked explicitly.

Corruption pressure is the main factor that statistically influences the level of involvement. Still, pressure does not necessarily mean that a citizen would give a bribe. The share of respondents who experienced pressure but did not give a bribe is presented in Figure 5. Most of the countries with high corruption involvement and pressure are also characterised by low **resilience** to corruption pressure (most of the respondents who were asked for a bribe gave one). There are, however, some exceptions, most notably Bulgaria which is one of the top three countries in terms of corruption pressure and actual transactions, but in terms of resilience ranks together with less corrupted countries like Croatia and BiH. Macedonia rises to second rank in terms of respondents who yield to pressure. The high resilience in Turkey explains why actual corruption transactions are less common than even in Croatia, regardless of the higher pressure (13.3% pressure in Turkey, while only 9.8% in Croatia).

Data also show that resilience to pressure is substantially higher in less corrupt environments (e.g. Turkey compared to Albania). However, this does not make resilience a factor to reduce corruption; rather it reflects the overall atmosphere in society.

**Figure 5. Resilience to corruption pressure**

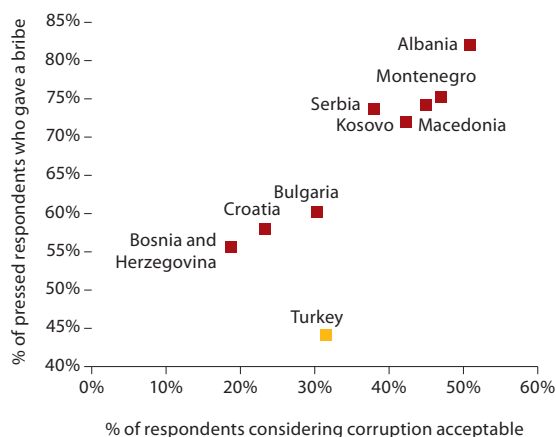


Source: SELDI/CSD Corruption Monitoring System, 2014. Base: respondents who experienced corruption pressure.

Although there are different possible reasons for the variations in resilience across the countries, the **attitudes towards corruption** indicators provide one

possible explanation – the lower the acceptability of corruption as part of the environment, the higher resilience would be. In other words, if more people think that corruption is acceptable, more of the citizens pressed for bribes are likely to yield and be involved in actual corruption transactions (Figure 6).

**Figure 6. Corruption pressure and acceptability of corrupt behaviour**



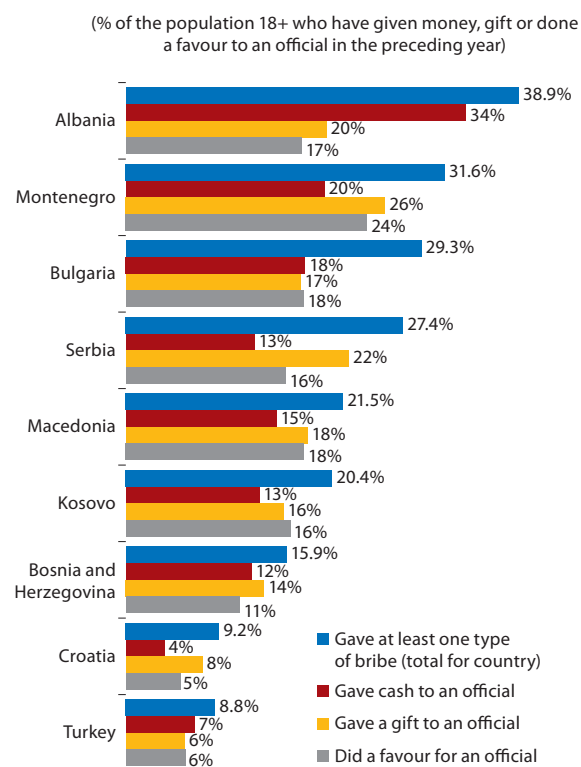
Source: SELDI/CSD Corruption Monitoring System, 2014.

Cross-country comparisons show that there are some major differences between the countries in terms of the most common means of bribery (Figure 7).<sup>14</sup>

While in Albania money is by far the most often used means of bribery (34% compared to 20% giving gifts and 17% doing favours), in most of the SELDI countries gifts are given more often than money – Montenegro (26% gave gifts, 20% gave money), Serbia (22% gave gifts, 13% gave money), Kosovo (16% gave gifts, 13% gave money), Croatia (8% gave gifts, only 4% gave money). Other countries like Bulgaria and Turkey are characterised by relatively similar shares of respondents who gave money, gifts, or did favours.

In some cases transactions are admittedly initiated by citizens themselves: they were not pressed by the public officials (neither explicitly, nor implicitly), but still gave a bribe (money, gift or a favour). Such active involvement is most common in Bulgaria (5.5%) and Montenegro (5.1% of the population), but – interestingly – also present in the low corruption countries like Croatia and Turkey (3.3% and 2.6% respectively). The reasons for such a strategy in

**Figure 7. Involvement in corruption – types of bribes**



Source: SELDI/CSD Corruption Monitoring System, 2014.

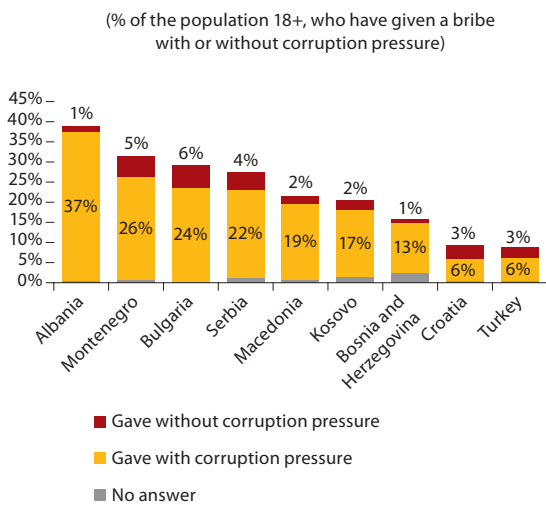
dealing with public officials are probably a complex combination of various factors such as:

- corruptness of the environment (if everyone is considered corrupt, people might try to bribe without pressure);
- levels of corruption pressure (if the pressure is declining very fast, the citizens might try to initiate the transaction themselves in particular if they have done or asked for something undue);
- effectiveness of law enforcement (if law enforcement is effective or the punishment is very severe, people might avoid offering bribes themselves, without indication that these bribes are expected and would be accepted by the official).

The full distribution of experiences with corruption pressure and reaction to it are presented in Figure 8 and Figure 9. Missing information (no answers, refusals to answer) are informative as well, as higher percentage of such answers (as in Kosovo or in Bosnia and Herzegovina) might indicate reluctance of the respondents to admit they were pressed for a bribe or involved in such transactions. This might be an indication of general fear of prosecution among the population if their answers are revealed.

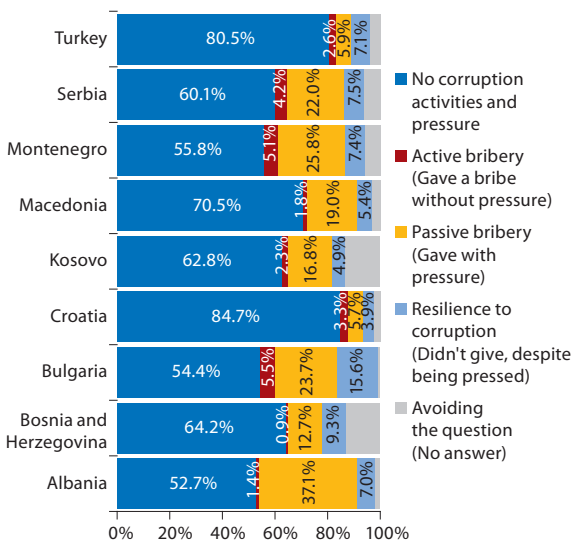
<sup>14</sup> “Money, gifts and favours” transactions do not add up to the total involvement percentage, because very often respondents were involved in different types of bribery at the same time.

**Figure 8. Involvement in corruption with or without corruption pressure**



Source: SELDI/CSD Corruption Monitoring System, 2014.

**Figure 9. Corruption activities and pressure – citizens' involvement in corruption transactions**



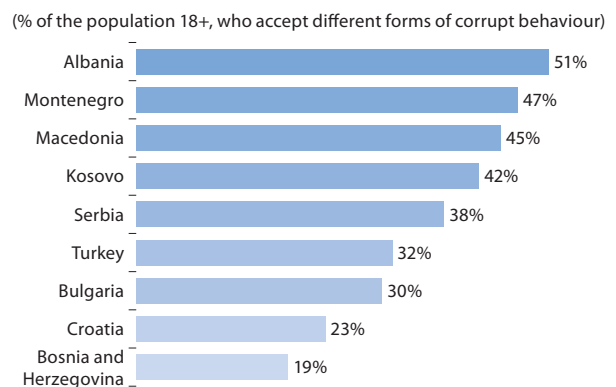
Source: SELDI/CSD Corruption Monitoring System, 2014.

### 1.3. ATTITUDES TOWARDS CORRUPTION

Attitudes towards corruption reflect people's mind-set with regard to corruption transactions. The CMS includes three attitudes indexes: acceptability, awareness of and susceptibility to corruption. The overall conclusions from the three attitudes indexes that could be made are as follows:

- High levels of administrative corruption usually coincide with higher levels of acceptability (Albania) and vice-versa (Turkey, Croatia). Still, there are exceptions from this pattern (e.g. Bulgaria, Bosnia and Herzegovina), where the lower relative acceptability comes against the backdrop of higher levels of administrative corruption. This normally breeds resignation, distrust of public institutions, and high potential for protest.

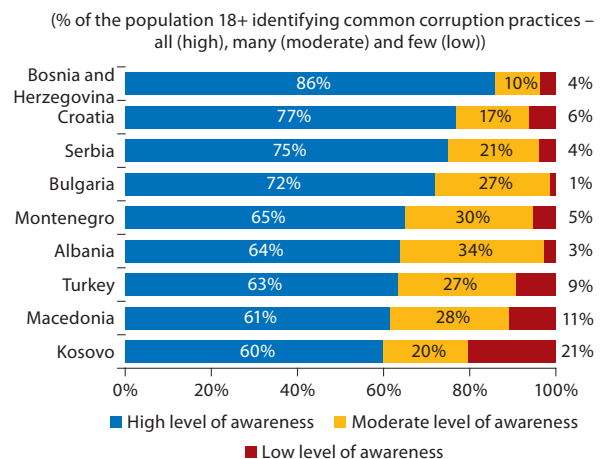
**Figure 10. Acceptability of corruption**



Source: SELDI/CSD Corruption Monitoring System, 2014.

- Higher levels of awareness of corruption (Bosnia and Herzegovina) are not directly linked to lower levels of administrative corruption (Turkey). Awareness reflects to a large extent the internal political debate on corruption and governance and the exposure of the public to awareness raising on the issue. Countries in which debate has been more intensive contribute to the corruption awareness of citizens but this does not directly translate into reduction of corruption behaviour.

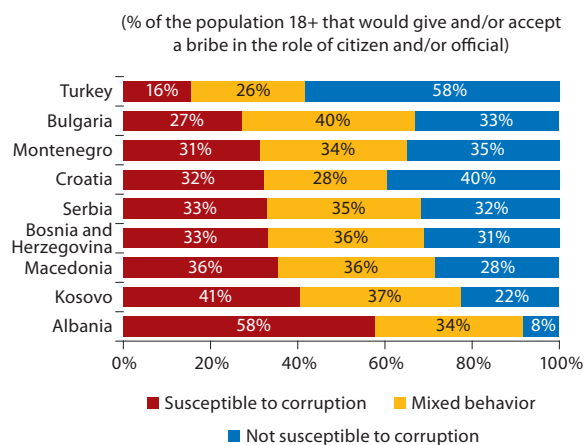
**Figure 11. Awareness (identification) of common corruption practices**



Source: SELDI/CSD Corruption Monitoring System, 2014.

- Regarding susceptibility to corruption the CMS data show that citizens in countries with similar rates of administrative corruption have substantially different structure of predisposition to corruption behaviour (e.g. Croatia and Turkey). The highest susceptibility is observed in Albania, followed by Kosovo and Macedonia. The relatively lower susceptibility in Bulgaria for example (lowest after Turkey) indicates (together with low acceptability) the integrity of the citizens which could explain why a large share of citizens who were pressed for bribes did not give any in these countries. A factor in this respect, especially regarding Bulgaria, is the role of civil society: the most intensive anticorruption campaign started in 1998 and was implemented by CSD-led *Coalition 2000*.<sup>15</sup> Still, the very high corruption pressure in Bulgaria, combined with the low tolerance and susceptibility to corruption, seems the most probable explanation for the highest share of mixed behaviour among the SELDI countries. People get forced to compromise on their principles by an overwhelmingly corrupt environment. At the same time, countries like Albania and Kosovo face steep challenges in their anticorruption drive, as high administrative corruption is coupled with lower levels of awareness and higher levels of acceptance.

**Figure 12. Susceptibility to corruption**



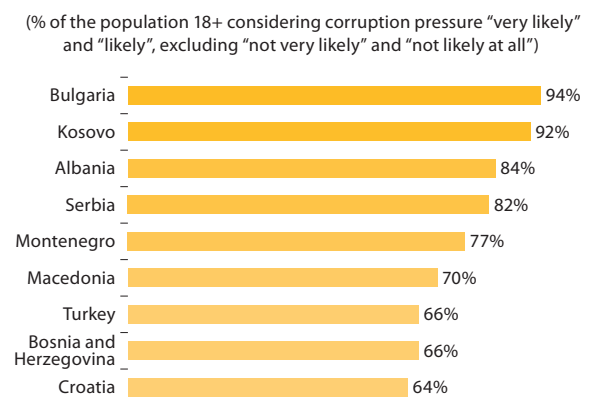
Source: SELDI/CSD Corruption Monitoring System, 2014.

## 1.4. ASSESSMENTS OF THE CORRUPTION ENVIRONMENT

Assessments of the corruption environment (perceptions of corruption) are not a good proxy for measuring the prevalence of corrupt practices and the level of corruption. Rather they show the attitude of citizens towards the governance model and are a form of political evaluation of the current government. This explains why assessments of the corruption environment in a country are usually much more negative and widespread than the actual count of corruption transactions.

More than half of the population of SELDI countries believe they live in a highly corrupt environment in which it is highly likely to encounter corruption pressure when contacting public officials (Figure 13). The highest percentage of the expected corruption pressure is found in Bulgaria and Kosovo, where more than 90% of the participants in the survey believe pressure to be likely. The smallest percent is in Croatia, but even there 2/3 of the population (64%) perceive pressure to be likely. This shows that corruption is perceived as a serious problem in the whole region despite the relatively lower levels of prevalence in Turkey, Croatia and Bosnia and Herzegovina.

**Figure 13. Likelihood of corruption pressure**



Source: SELDI/CSD Corruption Monitoring System, 2014.

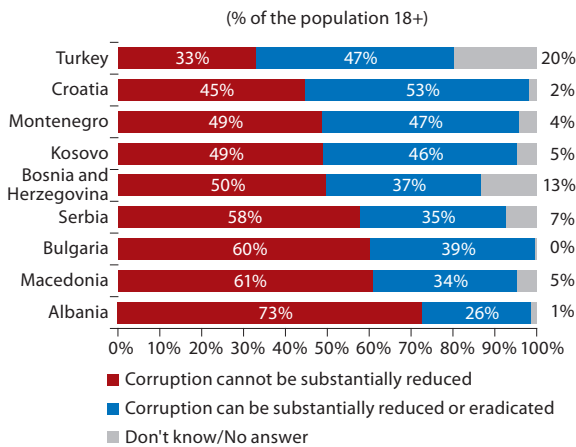
Nearly three quarters of the population in Albania (73%) consider corruption inevitable and systemic and do not think that it can be substantially reduced. The highest percentages of people who are optimistic about the feasibility of anticorruption policies are in Croatia (53%) followed by Montenegro, Kosovo and Turkey (46-47% respectively). Such a finding shows that higher levels of corruption prevalence go hand in hand

<sup>15</sup> <http://www.anticorruption.bg>

with increased pessimism about the effectiveness of anticorruption policies.

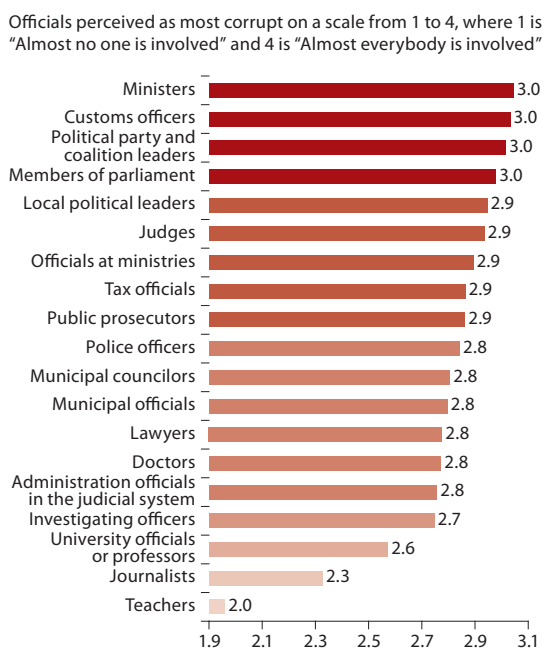
The perception that all or most public officials are corrupt predominates in Southeast Europe. As an average for the region, government ministers and custom officers are perceived as the most corrupt public officials, together with political party leaders and members of parliament. Perceived as least corrupt are teachers, journalists, university professors and investigation officers. Sectors perceived as most corrupt are the highest levels of the

**Figure 14. Feasibility of policy responses to corruption**



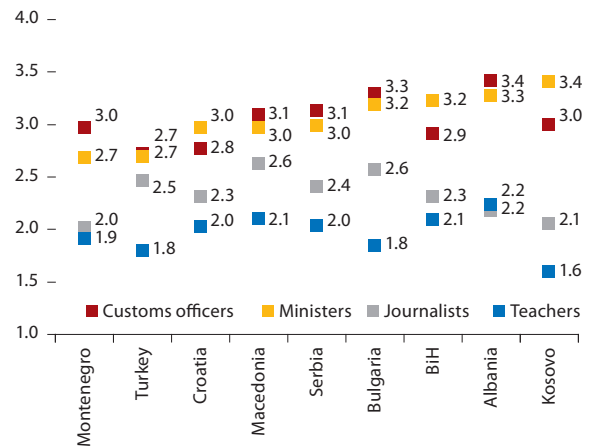
Source: SELDI/CSD Corruption Monitoring System, 2014.

**Figure 15. Estimates of the corruptness of public officials – regional average**



Source: SELDI/CSD Corruption Monitoring System, 2014.

**Figure 16. Estimates by the public: most and least corrupt occupations (country differences)**



Source: SELDI/CSD Corruption Monitoring System, 2014.

executive, law enforcement institutions and revenue collection agencies (most notably customs). This is just another indication that political corruption in most countries of the region is a common and far from adequately addressed problem. Citizens clearly believe that positions of power are at the top of the corruption pyramid, calling for strong action against political corruption.

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CMS results have shown that the main factors influencing corrupt behaviour of citizens in SEE countries are rooted in the interactions between citizens and officials. Corruption pressure appears to be the most potent factor that pushed people to engage in corrupt transactions. Attitudes and perception have minor importance but tend to follow the overall dynamics of corruption prevalence and determine the likelihood of success of anticorruption efforts. Results show that achieving success in terms of bringing corruption levels close to EU average is likely to require massive and sustained efforts in the next two decades. The case of Bulgaria shows that progress is reversible, and anticorruption efforts should be sustained over extensive periods of time. The case of Croatia indicates that strong conditionality before accession gives results but the anticorruption drive and institutional mechanisms need to be sustained and further strengthened.

The predominant public attitude towards corruption in the region is negative. In many countries this goes hand in hand with relatively high levels of involvement in corruption transactions: corruption has evolved into a necessary evil and this tends to discourage public

confidence in the ability of government to enforce anticorruption policies. Some of the countries, like Albania and Kosovo face considerable challenges in countering corruption, and would require wide ranging reforms. In others there is still fear among the population to disclose corruption attitude and experience, which hampers civil society activities in countering corruption. Data suggested that low administrative corruption in parts of the region, notably Turkey, Macedonia, and to some extent Serbia could be related to less political freedom and even fear of repression.

In the period since 2001 – 2002 (the first regional implementation of the SELDI CMS) most countries have registered progress<sup>16</sup> with respect to most CMS dimensions (indexes): lower levels of corruption pressure and involvement in corruption, lower tolerance, lower susceptibility, increased resilience, etc. In view of the initial level of corruption prevalence, however, this progress could be considered marginal. There has not been an anticorruption breakthrough in any of the countries in the region.

Unstable and controversial effects of government actions can be clearly illustrated with the case of Bulgaria: annual implementation of the CMS has shown an uneven marginal progress (reduction) with respect to administrative corruption in the period 1999 – 2013.<sup>17</sup> However, the 2014 round of diagnostics registered serious deterioration and has seen prevalence return to levels even higher than those observed in 2001 – 2002. Despite the introduction of the Cooperation and Verification Mechanism the country has regressed, which points to the complexity of tackling systemic and political corruption, as well as the importance of political and judicial leadership in the country for achieving progress.

In all countries future anticorruption efforts will need to deal with a major challenge: the magnitude of prevalence of administrative corruption (even in countries where it is relatively low) makes it practically impossible for law enforcement to identify and prosecute offenders. In addition, as CMS results show, oversight institutions and law enforcement are also among the primary targets of corruption.

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<sup>16</sup> The dynamics of corruption indexes for each country has been included in the country profiles in Chapters II and III. See also (Center for the Study of Democracy, 2002).

<sup>17</sup> In the period 1999 – 2003, CMS diagnostics in Bulgaria has been implemented on a quarterly basis.





Having taken a measure of the levels of proliferation of corruption and understood the experiences and attitudes of the public with respect to it, it is appropriate to turn to an evaluation of the intentions of governments and the tools they employ to tackle corruption – in other words, the policies. Looking into the experience of Southeast Europe is all the more instructive as their regulatory regimes with respect to corruption have been particularly dynamic since they had to respond to a multitude of factors and balance a number of considerations:

- the magnitude of the problem in their countries: a multifaceted practice that afflicts all levels and sectors of the national system of governance;
- corruption often responds to pressure by changing form and moving to other social loci instead of disappearing;
- gradual changing of the understanding of its causes and effects;
- recommendations from foreign partners and international institutions.

## 2.1. NATIONAL ANTICORRUPTION STRATEGIES

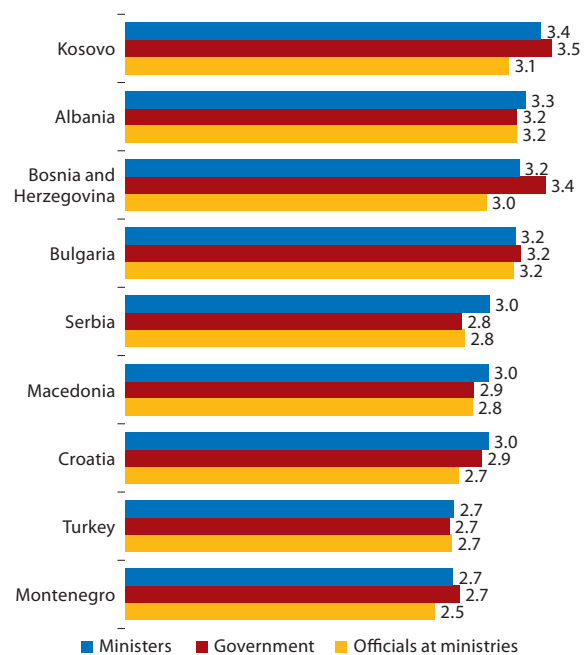
The anticorruption strategy as a government tool first appeared in Southeast Europe in the late 1990s and early 2000s as a response to a growing awareness of the severity and spread of corruption. The purpose of strategies was to demonstrate intentions for reform (commonly referred to as “political will”) and to guide efforts over the long term and across election cycles.

Many expectations were associated with these strategies but they also encountered a number of structural difficulties. The first was constitutional. Adopted and implemented mostly by the executive, albeit on occasion through wider consultations, the strategies often had significant implications for the other branches of state power – the judiciary, legislature – as well as for the private sector, media, etc. The executive was

held accountable for the delivery of the strategic intentions but it found it difficult, if at all possible, to enforce the implementation of the provisions on the other branches of power. The independence – at least nominally – of the judiciary, the complicated politics of national parliaments made the task of governments difficult at best.

Another issue was the continuity in the relevance and implementation of the strategies across election cycles, beyond the lifetime of the government that has adopted them. Unlike a policy, which is expected to change with the change of government, anticorruption strategies were designed for the longer term and were expected to weather the political winds. The highly partisan politics of the countries of Southeast Europe, however, made such continuity unlikely. While some permanence of intention was maintained, each successive government wanted to affirm its own anticorruption credentials by adopting some consequential document. **Corruption**

Figure 17. Estimates of the corruptness of the government and ministers<sup>18</sup>



Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>18</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved.” For the institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”



had become – by the 2000s – an electoral campaign issue almost everywhere in Southeast Europe which tended to water down the commitment to strategic pledges.

A further design problem was the intention to have the strategies address all possible aspects of corruption. Instead of prioritising, these documents became all-embracing; with respect to anticorruption, **strategic has come to signify simply exhaustive**. Further, in being general and comprehensive, the national strategies have become hardly distinguishable. There is little, if any, national specifics in them to reflect national circumstances in the generation and manifestation of corruption.

Arguably, the most significant drawback of these strategies is that they never became policies. The language of the documents – “strengthening integrity” or “enhancing awareness” – was understandably general which was thought to be compensated by their being translated into specific actions. The action plans that followed the strategies, however, rarely sought to establish targets –  $x\%$  reduction of corruption or  $y\%$  of improvement of public services – or even some kind of benchmarks but were instead lists of “measures.” While a policy is a combination of an intended outcome with appropriate means, measures were standalone actions, the completion of which was the sole criterion of achievement. Thus, the evaluation of the strategic approach to corruption was done in terms of percentage of actions implemented, instead of corruption actually reduced.

A commendable feature of all strategies in the SELDI countries was their attempt at an assessment of the state of corruption in the respective country. These evaluations, however, hardly venture beyond a fact-finding of the sectors that are worst hit to try to analyse the underlying social, economic, cultural or other factors fuelling corruption.

In **Albania**, the latest *Anti-Corruption Strategy 2014 – 2017* was prepared with the technical assistance of the OSCE Presence in Albania, and is much shorter and simpler than the previous one. The drafting of the strategy underwent several consultation meetings with international experts, civil society and the private sector. The specific objectives and implementation procedures will be defined in the action plans of the line ministries, other state bodies and independent institutions. The strategy gives special attention to the harmonisation of statistics and track records on corruption and organised

crime among law enforcement agencies. Furthermore, it focuses on three main approaches: preventive, sanctioning and raising awareness.

In the context of strengthening the preventive approach to corruption, the strategy sets as a short term priority for the creation of new legal framework on whistleblowers as well as the establishment of an implementing agency. The new legislation aims to narrow down and make more detailed the existing legislation by extending it to public employees and private entities. Managing public complaints are seen as a crucial element in the fight against corruption in the new strategy. Among other measures, the strategy also foresees an overall assessment of the anticorruption legislation and the institutions in charge of implementing it, and corruption proofing of legislation – a practice which will be used for the first time in Albania. Systematic risk analyses, corruption trends, effectiveness of anticorruption measures and monitoring of their implementation are foreseen as future steps to be taken with regard to the fight against corruption. In addition, anticorruption policies by local governments are seen as a priority.

**Bosnia and Herzegovina** was a relative latecomer as regards anticorruption strategies. Efforts on planning strategic anticorruption interventions started in the mid-2000s with measures being integrated in development and anti-crime strategies. The latest applicable document – the *Strategy for the Fight against Corruption* – was adopted in 2009 with a timeframe of 5 years. With the Strategy about to expire, out of 81 planned measures only 8 (9.8%) have been completed in full, 57 (70.4%) have been partially completed and 16 (19.8%) have not been implemented.<sup>19</sup> This has affected some key reforms efforts such as such the preparation and adoption of the *Program of Modernisation of the Public Administration* aimed toward strengthening of the civil service at the BiH level. The backlog is mostly due to the late establishment of the Agency for Prevention of Corruption and Coordination of Fight against Corruption which is charged with carrying out the strategy. The strong autonomy which the entities that constitute BiH enjoy means that they also pursue their own anticorruption policies. At the end of 2013, the National Assembly of Republika Srpska adopted the *Strategy of Fight against Corruption* covering the period 2013 – 2017; following its adoption, a corresponding action plan is expected. For the first time, this strategy requires

<sup>19</sup> (Transparency International BiH, 2014, p. 15).

public sector bodies to prepare integrity plans as a mechanism for enabling legal and ethical quality of work of governmental bodies. The administration of the implementation process of the Strategy and its action plan will be in hands of the Commission for Monitoring of Implementation of the Strategy, a government level body in Republika Srpska. In the Federation of BiH, the *General Framework of the FBiH Government for Fight against Corruption* was adopted in May 2012 and covers the period until the end of 2014. The Framework is an example of the wide ranging, comprehensive and ambitious nature of the strategies in Southeast Europe – it covers a range of legislative measures, activities to be implemented by public administration institutions, measures for the judiciary and law enforcement agencies, involvement of the public in fight against corruption.

The centrepiece policy document with regard to anticorruption policy in **Bulgaria** is the 2009 *Integrated Strategy for Prevention and Countering Corruption and Organised Crime*. The Strategy, though vague in its commitments, attempts to set general direction and recommendations for limiting the spread and impact of corruption and organised crime on multiple levels of governance (central, regional and local), while also including the business sector and civil society in the process. While the Strategy fails to provide feasible incentives for implementation, the elaboration of action plans and audit reports of implementation increases, at

least theoretically, the specific nature of the Bulgarian action in the anticorruption domain. The responsibility for its coordination lies with the General Inspectorate and the Commission for the Prevention and Combating of Corruption, operated by the Inspectorate. As with some of the other strategy documents in the SELDI countries, this one claims to introduce a “unified approach” to anticorruption policy. Few other policies need this kind of integrative aspect but with corruption it is justified by the diverse areas and bodies involved in its delivery.

Due to the unstable political environment, lack of coordination and delays in implementation, the publication of the action plans has been sporadic so far – at central government level such are available for the period of July 2011 – July 2012, for August 2012 – December 2012, as well as for October – November 2013. This fact alone, leaves a **considerable gap in the Bulgarian anticorruption policy**. Since the adoption of the Strategy, **anticorruption measures have been missing for a substantial period of time** without any justification. The availability of associated indicators for each anticorruption measure also varies, leaving a considerable portion of measures without a base to be assessed against. So far, a total of 119 indicators are produced, leaving 78 measures with no indicators (from a total of 197 measures across all action plans). Overall, there is **no clear indications of how the action plans**, more specifically their measures and associated

### Box 1. A model for monitoring anticorruption reforms

In 2006, the Center for the Study of Democracy (CSD) in Bulgaria, developed a **comprehensive model for the monitoring of the anticorruption policies** of governments. Specifically, it contained a set of indicators for the assessment of the implementation of Bulgarian government’s 2006 – 2008 *Strategy for Transparent Governance and for Prevention and Counteraction of Corruption*. The model evaluates several groups of outcomes of anticorruption policies:

- The first set of indicators reflects the adequacy, effectiveness, timeliness, and implementation progress of policy measures.
- The second group of indicators evaluates the social environment factors directly affecting the level of corruption and governance transparency – involvement in corrupt practices, attitudes to corruption and the value of integrity, trust in government institutions, etc.
- A third group of indicators show the effect of policies. These evaluate public service delivery and are of greatest value in assessing the effectiveness of anticorruption policies and the prevention and counteraction of corruption.

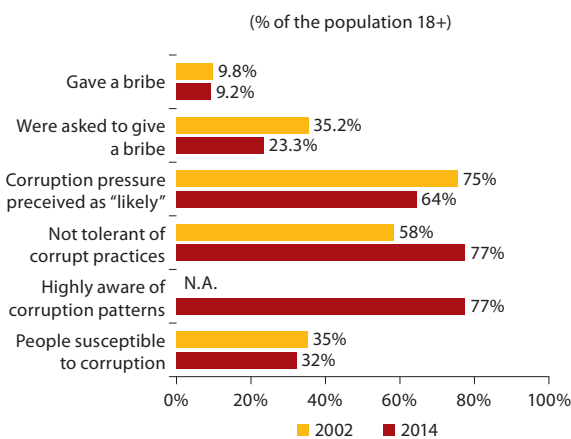
Albeit being formally adopted by the government, this model has not yet been implemented.

*Source:* (Center for the Study of Democracy, 2006).

indicators, should **impact the general anticorruption environment and contribute to the implementation** of the Strategy; this is further confirmed by the available reports on implementation.

Croatia’s anticorruption strategy has been in place since 2008 and sets a number of broad objectives for the widest possible range of public services, from the administration of justice to education. It is transformed into specific measures through an action plan updated annually; the most recent (2013) updates include stronger monitoring of compliance with conflict of interests and asset declarations legislation. Since the adoption of the strategy, the action plans have downplayed preventive measures, highlighting instead corruption repression through prosecution, sanctioning, etc. All concerned government authorities in the country are required to monitor regularly the implementation of the action plan accompanying the strategy, assess the risks of corruption and take appropriate measures. Although the risk assessment is one the main tasks of the Committee for Monitoring the Implementation of Measures for the Suppression of Corruption, there are no documents or data available on the reports made by the Committee on this topic. In the *Strategy and Action Plan of the Tax Administration for Fighting Corruption*, the Ministry of Finance has the task of determining risk areas at all levels. However, the Ministry of Finance publishes no data on risk assessment connected with corruption.

Figure 18. Corruption profile of Croatia



Source: SELDI/CSD Corruption Monitoring System, 2014.

In Kosovo, the *Strategy and Action Plan for the years 2012 – 2016* guide the operations of the Anti-Corruption Agency and other relevant institutions. It is a pertinent example of the issue noted above – percentage of completed activities rather than results

are taken as indicators of success. As in the other countries, the strategy is all-embracing – central and local government, civil society and media, law enforcement and judiciary, the civil service and international cooperation are all “priority” sectors. An area of particular concern is the accuracy of the asset declaration data from public officials, given the huge discrepancies in the amount of the wealth that officials declare and what they really own. Issues of conflict of interest and political appointments, such as those in governing boards of public institutions, are also part of the list of issues which call for immediate action. The strategy lists a set of anti-mafia laws, such as the *Law on Confiscation of Assets*, as necessary to include best practices like reversed burden of proof and extended confiscation. Cash registers, and the completion and implementation of the *Public Procurement Law* are seen as priorities because it is evident that most losses from corruption happen in forging of tenders.

*Addressing low level of trust in public institutions – political, judiciary and the administration – remains the main priority in building a credible state that functions in the public interest. Failing to properly tackle this challenge puts in jeopardy all efforts to obtain full international recognition and internal legitimacy.*

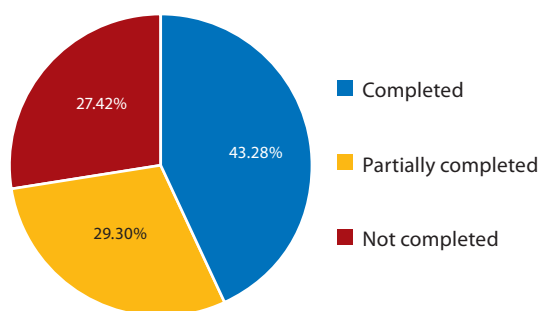
**Kosovo Anticorruption Strategy 2012 – 2016**

In Macedonia two strategic documents of 2011 – the *State Programme for Prevention and Repression of Corruption* and the *State Programme for Prevention and Reduction of Conflict of Interests* – are combined to form a single vision. Again, these cover the entire range of public sectors – from law enforcement to education and sports. There is an attempt to introduce some degree of prioritisation in the action plans of the two state programmes by designating the various actions “first” or “second” priority, while still not being clear whether this concerns significance or sequencing. Anticorruption is also part of the measures envisaged in the two-page *Program for Fight against Corruption* of the Ministry of Justice (mostly outlining the Ministry’s tasks with respect to anticorruption legislation and ratifications), the government’s *Annual Working Program and the Strategy for Reform of Public Administration 2010 – 2015*.

The currently applicable anticorruption strategy for Montenegro covers the period 2010 – 2014. It seeks to state the priorities for a clampdown on corruption,

mostly related to improvement of parliament's control function, criminal prosecution and international cooperation. It also lists areas vulnerable to corruption, such as political parties financing, conflict of interest, free access to information, public procurement, state property, urban planning, education, health sector, civil society, media and sport, etc. – again, the longlist of sectors. It also lists some 40 laws as relevant to anticorruption. In order to make it more concrete and functional, an *Action Plan* for implementation of this Strategy for the period 2013-2014 was adopted. It defines priorities in prevention of corruption at the political and international level, areas of particular risk, prevention of corruption in law enforcement bodies, with an impressive range of 109 objectives and 230 measures for their achievement.

**Figure 19. Level of completion of the measures of the Montenegrin anticorruption strategy**



Source: *Bulletin of the Directorate for Anti-Corruption Initiative, July 2013.*

Besides these documents, the government of Montenegro has adopted an *Action Plan for Chapter 23 in the EU negotiations* (Judiciary and Fundamental Rights) which contains two sections – for prevention and suppression of corruption. Concrete preventive actions refer to the institutional framework for fight against corruption; improvement of the system of reporting on assets of public officials; improvement of internal rules of procedures in state bodies, particularly with regard to the appointments and internal control; improvement of political parties financing system; insurance of effective implementation of free access to information rules; improvement of control in public procurement. According to the Action Plan, the government intends to establish an Anticorruption Agency. The Agency will combine and expand the existing competences of the Directorate for Anticorruption Initiative, the Commission for Prevention of Conflict of Interest as well as competences of the State Election Commission in the area of control of financing political parties and election campaigns, and the competences of the National Commission for the Implementation of the Strategy for

the fight against corruption and organised crime. The Agency is to be established by January 2016.

In **Serbia**, a new *Anticorruption Strategy* was adopted in July 2013, for the period 2013 – 2018. The proclaimed objective of the Strategy is to reduce corruption to the lowest possible level, as it is “an obstacle to economic, social and democratic development”. The Strategy stresses that corruption may lead to a drop in public confidence in the democratic institutions, and that it also creates uncertainty and instability of the economy, which is reflected, inter alia, in lower investments. As with the other countries, the Serbian strategy addresses practically all public sectors and seeks to analyse the situation and provide some more or less general recommendations. In order to specify the recommendations and measures, in addition to the Strategy, the Ministry of Justice has prepared a fairly detailed Action plan which operationalises the Strategy by defining measures, activities, time frame, responsible government bodies, indicators (again, mostly actions to be taken rather than results achieved) and required resources for each of the numerous priorities. The implementation of the strategy is expected to move away from the hands-on approach so valuable for political ratings towards an institutional building process that would enhance the anticorruption capacity of implementing institutions.

The current national strategy and action plan for preventing corruption in **Turkey** was adopted in January 2010. It was drafted by a government appointed Executive Board but with no appropriate participation of civil society. According to the *Strategy Plan of Enhancing Transparency and Strengthening the Fight against Corruption*, corruption is defined as the infraction of rules and laws in order to achieve illegal objectives. The Strategy Plan states that corruption should not be taken as a solely legal issue; the socioeconomic dimensions of corruption should also be taken into account when planning measures to combat against corruption. There is a working group for each of the 10 anticorruption measures, and the reports of these groups have been submitted to the Committee of Ministers; as of June 2014, the publication of the results was still pending. While pointing that the strategy “incorporates important preventive provisions and addresses the issue of political corruption,” a March 2012 evaluation report by OECD’s SIGMA found that “implementation of the Strategy appears to have slowed down.”<sup>20</sup>

<sup>20</sup> (SIGMA, 2012, p. 6).

## 2.2. ASSESSMENT OF THE REGULATORY ENVIRONMENT FOR ANTICORRUPTION

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of the international anticorruption standards in their national legislations. Their statutory laws should now be able to deliver results in reducing corruption. This section looks into the genesis of the anticorruption provisions and seeks to identify shortcomings to be addressed.

### 2.2.1. Changes to national anticorruption policies

Arguably, the most notable feature of the laws in the SELDI countries has been their pace of change. A single law could be amended dozens of times a year, amounting to hundreds of amendments in the overall

legislative framework. Anticorruption laws have been no exception. Such speed came at a cost, mainly in terms of effective enforcement, particularly as law enforcement and the courts struggled to keep up with the changes. “Frequent, unexpected and opaque changes in policies and laws restrict mechanisms of effective democratic control on the part of the government, undermine trust in public institutions, and can easily be misused to the benefit of corporate interests and corrupt political actors.”<sup>21</sup>

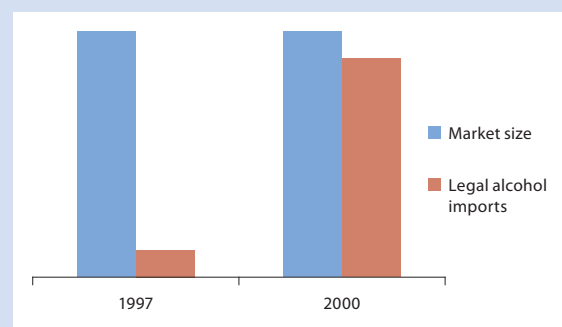
As regards priorities, there have been two significant changes in the approach to anticorruption – a shift of attention from petty corruption (that of traffic policemen or public sector doctors) to grand (of members of parliament or ministers) and criminalisation of a wider array of abuses of public office.

While petty graft is widespread but straightforward (small cash for a simple, usually one-off illicit service), high level corruption is complex not only for investigation and prosecution but also in that it occurs among shades of grey, i.e. is often borderline illegal.

#### Box 2. Proper diagnosis is half the cure: the case for smart anticorruption policies

Anticorruption policymaking is often seen as a tough act requiring considerable political courage since it is expected to upset entrenched and powerful interests. Understanding the incentives architecture of corrupt transactions, however, allows policymakers to achieve tangible impact with safe and precision interventions. The slashing of illegal alcohol imports to Bulgaria is a case in point.

In the late 1990s, smuggling in the Balkans had become such a common practice that only a severe law enforcement crackdown was thought capable of restraining it. An in-depth look into what drove smugglers and legal traders suggested a better approach. A comparison between customs data on imports and the results of market research, carried out by the CSD, showed that before 1998 only 8-10% of imported liquor sold in the country was taxed. Following advocacy by CSD and legitimate traders, the way imported alcohol was taxed was amended. Prior to 1998 the excise duty on spirits was determined on the basis of declared value, i.e. it was entirely dependent on the declared import price which in turn rationalised the spread of value-related fraudulent schemes. The change of policy had excise duty on spirits determined by alcohol content (“proof”) alone. In this changed situation, the risk return trade-off to the importer drastically shifted in favour of the legal activity. There was no longer an incentive for bribery to avoid payment or reduction of customs duties. As a result, the share of legally imported alcohol increased more than seven times in three years to reach almost 80% in 2000.

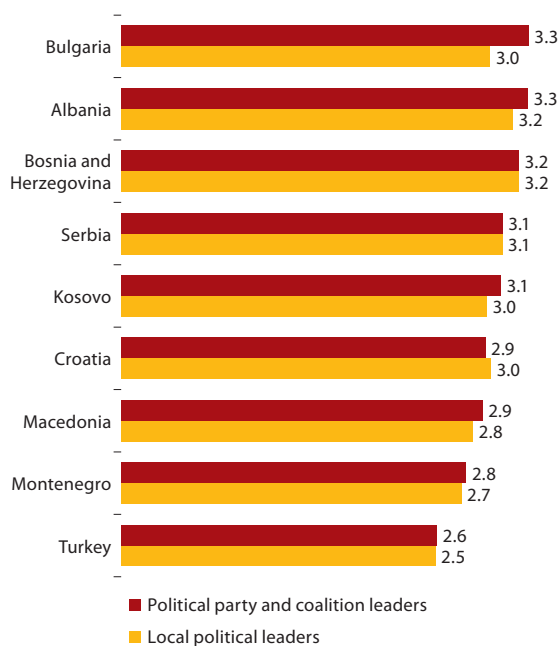


Source: (Center for the Study of Democracy, 2002a).

<sup>21</sup> (Center for the Study of Democracy, 2009, pp. 72-3).

Most complex cases do not actually involve anyone charged for the crime of corruption, but for some other crimes – tax evasion, trading in influence, etc. This has required legislators to take an equally sophisticated approach to defining and sanctioning new and complex types of illegal practices. In Southeast Europe, this shift of attention has not been warranted by any explicit reference to the damage done by the various types of corruption but is rather related to concerns about the low level of trust in political governance.

**Figure 20. Estimates of the corruptness of political leaders<sup>22</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

The incrimination of a wider range of corruption-related practices has been a worldwide trend and the SELDI countries have been no exception. **Criminal law** is expected to have a most direct impact on corruption and is among the most important anticorruption tools a legal system employs. Although the term “corruption” is rarely defined in the legislation of most of the countries in the region – it is a concept of policy rather than law<sup>23</sup> – 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. The SELDI countries have criminalised the bulk of the mandatory corruption offences under UNCAC, and some have introduced criminal liability for the non-mandatory offences (e.g. corruption in the private sector or trading in influence).

*A public official or responsible person who solicits or accepts a bribe, or who accepts an offer or a promise of a bribe for him/herself or another in return for performing within or beyond the limits of his/her authority an official or other act which should not be performed, or failing to perform an official or other act which should be performed shall be punished by imprisonment from one to ten years.*

**Article 293 of the Croatian Criminal Code**

*Whoever accepts a gift or other advantage to use his official or social position or influence to intercede for performance or failure to perform an official act, shall be punished by imprisonment of three months to three years.*

**Article 366 of the Serbian Criminal Code**

In early 2012, the **Albanian** government amended some legislation relating to corruption. The amendments were firstly in the *Criminal Code* covering cases of bribery by foreign public officials and introducing harsher sentencing for corruption in the private sector. In the same year, the parliament passed constitutional changes that restricted the immunity of high-ranking public officials and judges. The latter have been warranted by cases where immunity has served as a barrier for the prosecution of high level public officials and judges. Despite these changes, however, not much has changed concerning investigations, prosecution, or convictions.<sup>24</sup> The government has proposed new, rather drastic changes. First, the Ministry of Justice has tabled a draft law with amendments to the *Law on the Prevention and Fight against Organised Crime* (better known as anti-mafia law) to include corruption within its scope. Under it, corruption offenses are to be investigated by the Courts of Serious Crimes. The current law aims to prevent and fight organised crime and trafficking mainly through the investigation of the wealth of a suspect. The proposed changes would extend the anti-mafia provisions to individuals suspected for all kinds

<sup>22</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For the institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree”.

<sup>23</sup> Article 5 of UNCAC, for example, associates anticorruption policies with practices rather than laws.

<sup>24</sup> (U.S. Department of State, 2013d).

of corrupt affairs. More specifically, the prosecution and the police, on their own initiative or on notification from third parties, would be able to investigate the assets and wealth of individuals suspected for engaging in corruption. Family members and relatives of the suspects are also included in the draft amendments. These have been justified by referring to the fact that anticorruption has been identified as a priority and as such should be given “more importance,” corruption should be taken more “seriously” and it should be punished “more heavily.” It should be noted that these potential changes have been questioned by the OSCE Presence in Albania, the US Office of Overseas Prosecutorial Development Assistance and training, and also EURALIUS, the European Assistance Mission to the Albanian Justice System. The latter, for example, has advised that a threshold for the bribes that are to be sent to the Serious Crimes Court should be introduced.

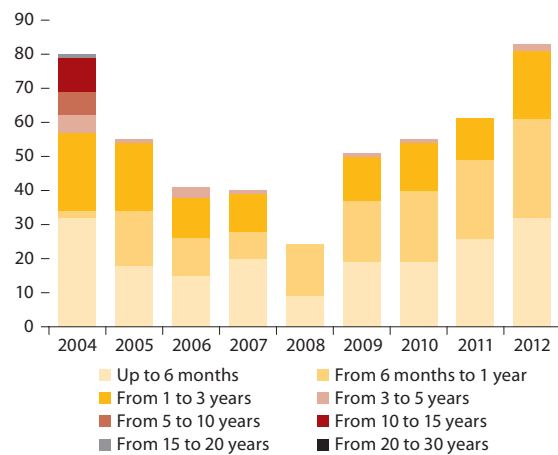
In May 2014, a revised *Law on the Right to Information on Official Documents* was drafted, which introduced administrative sanctions and procedures for the examination of complaints to the Commission for the Right to Information and Personal Data Protection. Amendments to the laws on asset declaration and conflict of interest were proposed in April 2014, aiming to strengthen the competencies of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests.

A key development in **Bosnia and Herzegovina** was the introduction of protection for persons who decide to report corruption related offences. Although with significant delay, the *Law on Whistleblowers* was adopted in December 2013 on the state level. At the level of Federation of BiH, the *Law on Protection of Persons Reporting Corruption* was adopted in late December 2013. In Republika Srpska, the *Strategy for Fight against Corruption* defines the issue of protection of “so called whistleblowers,” or persons reporting irregularities or suspect on corruption in public institutions.

In the past few years, one of the focal points of the anticorruption policy debate in **Bulgaria** has been the regulation of conflict of interests. Conflicts of interests and incompatibilities regarding persons occupying public positions have always been a potential source of corruption and illegal practices. Since Bulgaria’s EU accession, the European Commission through the Cooperation and Verification Mechanism has been monitoring and has reported regularly on efforts to

prevent and fight corruption and organised crime, and reform the judiciary including conflict of interests and related issues. Since the adoption in 2008 of the first conflict of interest law, a number of weaknesses hampering its effective implementation have been revealed. In an attempt to address these weaknesses, the law has been subject to several amendments (in 2009, 2010, 2012 and 2013), some of which introduced radical changes in the system of government bodies involved in its implementation.<sup>25</sup>

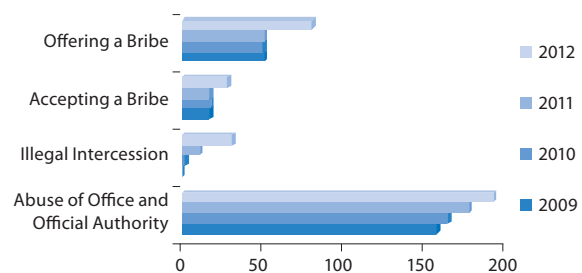
Figure 21. Trend in the sentencing of bribery in Bulgaria



Source: National Statistical Institute.

In **Croatia**, the legal environment for anticorruption has been particularly dynamic in the last couple of years. Dozens of changes with relevance to anticorruption have been made annually to laws regulating conflict of interest, public procurement, electoral campaign finance, criminal procedure law, civil service law, State Judicial Council, etc. In November 2011, the Croatian Parliament passed a new *Criminal Code* which came into force on January 1, 2013. It introduced harsher penalties for corruption crimes.

Figure 22. Convictions by type of corruption-related offence, 2009 – 2012, Croatia

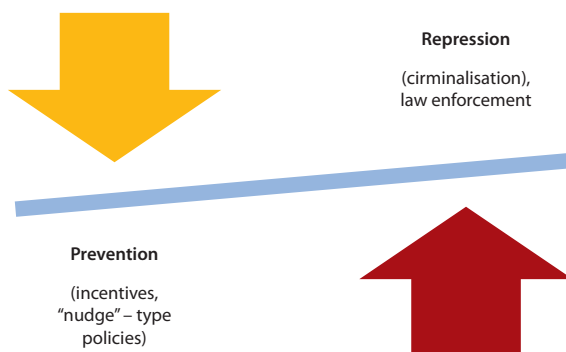


Source: Croatian Bureau of Statistics.

<sup>25</sup> This is further developed in section 2.2.3.2. below.

The criminal procedure law had been amended a number of times in the last five years in an attempt to make proceedings against corruption more effective. These were, however, criticised by judges. In February 2013, the Minister of Justice presented to parliament the final draft of changes on the *Law on Courts* and the *Law on the State Judicial Council*. According to this draft, the President of the Supreme Court would have an obligation to submit an annual report to parliament, although the latter would not decide on the report, but just acknowledge it. According to the draft of the *Law on the State Judicial Council*, the declarations of assets of judges would not be made public online, however they would have to be available to public 8 days after the official request, which can be submitted by anyone. Although the judges saw it as a threat to their security and independence of the judiciary, the government greeted the changes and the new *Law on Courts and Changes* and amendments to the *Law on the State Judicial Council* were adopted.

**Figure 23. The equilibrium of anticorruption policies**



**Kosovo** sought to tackle corruption by creating task forces and trying to improve the legislation and the mechanisms of enforcement, however, with very little real effect. One such effort was, for example, the creation of a Task Force on Anti-Corruption composed of prosecutors and police officers under the Special Prosecution Office in Kosovo. The Task Force was mandated by the Prime Minister but “the decision itself interfered with the independence of investigations and prosecutions. The overall results of the Task Force have been minimal, almost a year and half from its set up.”<sup>26</sup> One key policy development has been the amendment of the *Law on Financing of Political Parties*, which was acceptable as it was, but now determines the level of fines that shall be applicable in case of violations, and also puts more pressure on the political parties to make their finances more transparent and publish updated

statements. As regards asset forfeiture, civil society has been active in addressing some issues regarding the *Law on the Confiscation of Illegally Acquired Assets*. The amendment which extends the competences for confiscating such assets does not address the assets illegally acquired since the end of the 1998 – 1999 war, in a way legitimizing those acquired in the after-war period. Another important policy improvement has been the amendment of the *Law on Financing of Political Parties*, which now determines the level of fines that shall be applicable in case of violations, and also puts more pressure on the political parties to make their finances more transparent and publish updated statements.

During the last three years set of changes to anti-corruption policies in **Macedonia** were made as a result of the recommendations by GRECO. The country had in total 13 recommendations for improvements in the incrimination and transparency of party funding, most of which required changes to national anticorruption policies. The 2011, amendments to the *Criminal Code* eliminated the condition that bribery occurs when there is performance or omission to perform an official act which is within the scope of the official’s duties. Instead, the amendment considered bribery (both, active and passive) all acts and omissions in the exercise of the functions of a public official, whether or not they are within the strict scope of the official’s duty. Also, the amendments reformulated the offence of bribery of foreign public officials in similar terms to that of bribery of domestic public officials (the additional elements of proof formerly contained in the offence of bribery of foreign officials were eliminated). A further significant policy change was the **criminalisation of corruption in the private sector**. The amendments to the *Criminal Code* have also introduced the offence of active trading in influence. This enabled that corrupt acts cover, the tangible and intangible character of the advantage, the direct or indirect commission of the offence, and third party beneficiaries. In order to abolish the requirement of dual criminality, amendments have been introduced to the *Criminal Code* to extend jurisdiction to anyone who commits an act of bribery or trading in influence abroad, irrespective of the offender’s nationality, country of residence or any other relation with Macedonia.

Since 2010, the **Montenegrin Criminal Code** has been amended three times, including amendments to the criminal offences of bribery, illegal influence, insider dealing, fixing the outcome of a tender. These amendments were influenced by the necessity to harmonise national practice with international standards, as well

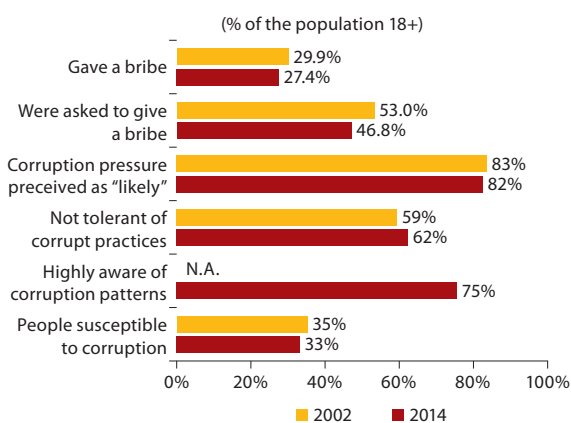
<sup>26</sup> (KIPRED, 2011, p. 6).



as to introduce new criminal offences defined as corruption. Anticorruption can also be expected from the July 2013 amendments to the Constitution which strengthened the independence of the judiciary by reducing political interference in the appointment of prosecutors and high level judicial officials. Amendments introduced new procedure of the appointment and dismissal of the President of the Supreme Court, Supreme State Prosecutor and prosecutors, the composition and competences of the Judicial Council, the election and dismissal of judges of the Constitutional Court. The very procedure for their appointment is more transparent and merit-based, which should contribute to less corruption risk in appointments and judicial proceedings.

In addition to adopting a new *Anticorruption Strategy and Action Plan*, the government of **Serbia** which took office in mid-2012 put fight against corruption very high on its agenda. One of its first moves was to reopen investigations on about 20 major privatisation cases where more or less serious allegations of corruption have existed for years (this was also a requirement by the EU). A notable development has been the compliance with the recommendations of the October 2012 report by GRECO extending the incrimination to private sector bribery, abolishing some dual criminality requirements, extending the offence of active and passive bribery in the public sector to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence, etc.

Figure 24. Corruption profile of Serbia



Source: SELDI/CSD Corruption Monitoring System, 2014.

In the past few years, the government in **Turkey** has enacted the 3<sup>rd</sup> and the 4<sup>th</sup> Judicial Reform Packages, which concerned certain amendments that directly affects the prosecution of bribery and bid rigging. With

the provision of the 3<sup>rd</sup> Judicial Reform Package in July 2012, the scope of the definition of bribery in article 252 of the Turkish *Penal Code* has been expanded and re-regulated. On the other hand, with the 4<sup>th</sup> Judicial Reform Package that was adopted by the parliament in the first half of 2013, the sentence for civil servants who rig public tender bids were decreased from 5-12 years to 3-7 years. If no public harm has been done, the penalty is reduced to 1-3 years.

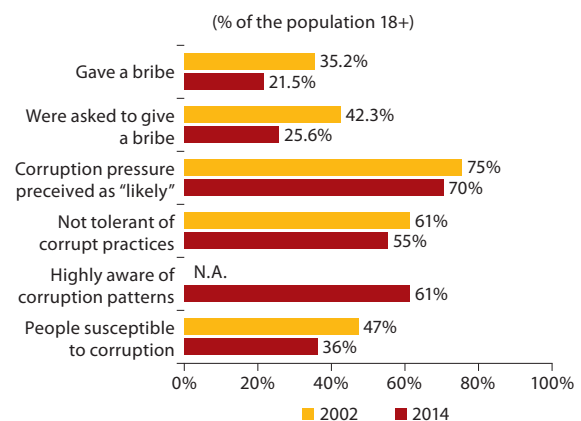
### 2.2.2. Specialised anticorruption laws

Two SELDI countries have had experiences in enacting laws that seek to control corruption, in addition to all the other provisions in the criminal law and other pieces of legislation.

**Kosovo** adopted its first *Law on the Suppression of Corruption* under the United Nations Interim Administration in Kosovo, setting the groundwork for the legislative work against corruption. It introduced important good governance concepts such as "Legal acts resulting from corruption are null" and compensation for persons whose interest have been damaged by corrupt acts of officials. In 2009, this law was later replaced by the *Law on Anti-Corruption Agency* which constituted the Agency, including the way in which it conducts its preliminary investigations.

In **Macedonia**, the *Law on Prevention of Corruption* was enacted in April 2002. The law regulates the measures for prevention of corruption in the exercise of power, public authorisations, official duty, and measures for prevention of conflict of interests, prevention of corruption in legal entities in executing of public authorisations, and corruption in commercial companies. The

Figure 25. Corruption profile of Macedonia



Source: SELDI/CSD Corruption Monitoring System, 2014.

law envisaged creation of an independent anti-corruption institution – the State Commission for Prevention of Corruption – which is competent for implementation of the measures and activities envisaged in the law. The law also defines corruption as misuse of office, public authorisation, official duty and position for the purpose of gaining any benefit for oneself or others.

There were several main justifications for adoption of the law. For instance, prior to the adoption of the *Law on Prevention of Corruption*, there were no independent institutions for prevention and repression of corruption. Moreover, there was no system of mutual and horizontal inter-institutional control (system for national integrity) and there was an evident lack of engagement from the civil society and media in raising public awareness, and significant parts of the national legislation had not yet been harmonised with international anticorruption standards.

### 2.2.3. Other relevant legislation

#### 2.2.3.1. Protection of whistleblowers

What makes corruption frustratingly difficult to uncover and punish is its latent nature. Both sides in a corrupt transaction have an incentive of not reporting it. Encouraging the “blowing of a whistle”, especially by civil servants and officials becomes crucial in prosecuting bribery and other misconduct. While legislation protecting persons who report cases of corruption, graft, abuse of power, or abuse of resources from recrimination is essential, it also needs to be combined with practices encouraging an organisational culture which equates reporting with integrity.

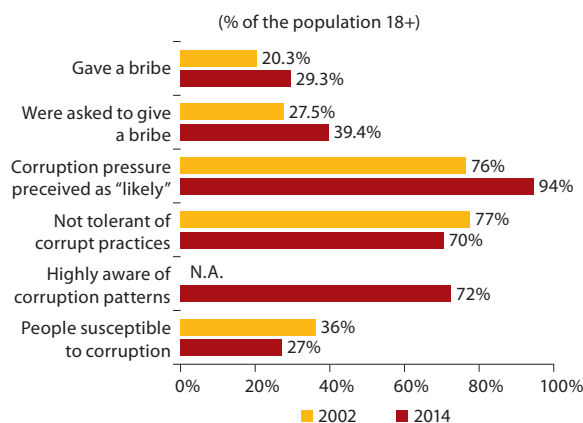
The **Albanian** the whistleblowing legislation complies with international best practice standards and the 2006 law provides adequate protection of whistleblowers against administrative, civil and criminal sanctions; the legislation was designed with the intention to take into consideration the complaints of all citizens. The enforcement of the law is, however, uneven and there have been a considerable number of cases when there various reprisals against civil servants who report corruption. The organisational culture in the public sector does not sufficiently support whistleblowing. To address this and strengthen the preventive approach to corruption, in 2014 the Albanian government started the drafting of new legislation on whistleblowers and their protection in both the public and private sectors. The amendments intend to narrow down the range of

persons that can make a complaint. It is not intended to include citizens, but only public administration officials and employees in the private sector. Besides this, another novelty would be the establishment of a public entity that will be in charge of the implementation of this legislation.

With significant delay, the *Law on Whistleblowers* was adopted in **Bosnia and Herzegovina** December 2013 at the state level. At the level of Federation of BiH, the *Law on Protection of Persons Reporting Corruption* was adopted in late December 2013. In Republika Srpska, the *Strategy for Fight against Corruption* defines the issue of protection of “so called” whistleblowers, or persons reporting irregularities or suspect on corruption inside public institutions. According to the Law, the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall assign a status of a whistleblower to a person reporting corruption within 30 days from the date of report being filed. Supervision over implementation of the Law is trusted to the Administrative inspection office within the Ministry of Justice of Bosnia and Herzegovina and to the Agency that is obligated to annually publish a special list of institutions where corruption was reported at, including information on suffered damage and corrective measures proclaimed.

In **Bulgaria**, effective administrative arrangements for whistleblowing are not yet in place. The *Administrative Procedure Code* and the *Law on Prevention and Ascertainment of Conflict of Interest* contain provisions on the protection of whistleblowers’ identities, while the *Criminal Procedure Code* requires citizens, and specifically public servants, to report crime, however, no adequate steps were taken to strengthen the protection of whistleblowers. Recommendations for legislative

Figure 26. Corruption profile of Bulgaria



Source: SELDI/CSD Corruption Monitoring System, 2014.

measures on regulating lobbying and whistleblowers protection remain on Bulgarian anticorruption agenda.

In October 2013, the proposal of the *Act on the Protection of Whistleblowers* was done and sent to the **Croatian** Parliament for the further discussion. The proposal includes protection of the rights and rehabilitation of whistleblowers, the introduction of the Ombudsman for the protection of whistleblowers and misdemeanour and criminal provisions.

The **Kosovo** law defines a whistleblower as “any person, who, as a citizen or an employee reports in good faith to the respective authority within public institution at central or local level, institutions, public enterprises or private for any reasonable doubts about any unlawful actions”. The law does provide protection for whistleblowers (which is also in large part covered by the *Law on the Protection of Witnesses*), however, there are some shortcomings. One example is the ambiguity as to how reporting of such cases should be done. Article 6, on the delivery of information, states that “a whistleblower shall submit information about the unlawful actions to the official person dealing with reported wrongdoings or to any other supervisor”. This creates some ambiguity as to what the person should do in cases when they want to report their superiors for corruption. Other criticism of this law has been that its language is too general and it does not specify the mechanisms for safe whistleblowing.

The existing legislation in **Macedonia** sets some provisions for whistleblower protection. As of mid-June 2014, there were still no direct provisions guaranteeing direct and comprehensive protection for the whistleblowers. However, this shortcoming is expected to be overcome as a draft law has been published and has entered in parliamentary procedure. The amendments will provide a legal definition of the term whistleblower (article 54b) and the mechanisms for his protection (article 64d). There are also several provisions for indirect protection. For instance, under the principle of equality, Article 4 of the *Law on Prevention of Corruption* envisages that “everyone, without suffering any consequences, shall have the right to prevent or to report an action which represents a misuse of office, public authorisations, official duty and position and serves for achievement of personal benefits or causes damage to others”. The same law provides indirect support through the principles of publicity and liability, as well as in the sections on relief of the obligation to keep classified information, protection of collaborators to justice and witnesses.

The *Law on Civil Servants and State Employees* introduced to **Montenegro** the institute of protection for whistleblowers. Such servants/employees must be adequately protected against all forms of discrimination, as well as regarding their rights related to their office. The very fact that they have reported for corruption must be held as secret in terms of their anonymity. In the event of dispute arising from the violation of any right of civil servant/state employee, the burden of proof is on the body that issued the decision violating those rights. Amendments to the *Code of Criminal Procedure* in 2013 introduced a new criminal offense for those who fire the employee who reported corruption, with a sentence of up to three years of imprisonment.

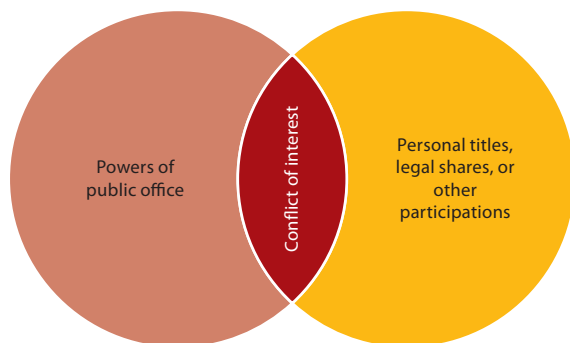
As of July 2014, in **Serbia** there is no specialised law on whistleblower protection, although a draft is in the pipeline. There are some provisions in the law establishing the Anti-Corruption Agency and in the procedural rules of the Agency.

In **Turkey** there is a *Witness Protection Act*. However, for the whistleblower to be fully protected from any prosecution, the crime in question needs to be sentenced by at least ten years of imprisonment or the crime in question needs to be part of an organised crime, which is to be sentenced by at least two years of imprisonment. As evidenced by interviews and media watch, whistleblowers who inform the authorities about corrupt acts by their superiors, have been faced with threats and mobbing. As a result, whistleblowers could lose their jobs or face relocation within the public administration.

### 2.2.3.2. Regulation of conflict of interest

Corruption in the SELDI countries, especially in the legislative process, occurs most often when officials attempt to influence decision making, regulations, tender awards, etc., in their own favour. While the use of various types of proxies to siphon off public funds is growing, the majority of corrupt elected officials and civil servants still prefer to have some type of personal control over the illegal proceeds (accounts, property, etc). In such cases, provisions in the law which preclude potential conflict between a person’s **interests** (stakes in companies, ownership of property, etc) and his or her public office are required to prevent corruption. Conflict of interest legislation in the SELDI countries sometimes goes beyond this definition and covers practices such as acceptance of gifts, money or services for performing civil servants’ duties.

Amendments to the *Law on Conflict of Interest* in institutions of **Bosnia and Herzegovina** were adopted by both Houses of Parliament of BiH at the end of 2013. Largest change is related to the institution in charge for implementation of the law. Instead of the Central Elections Commission which was previously charged with implementation, it is now to be overseen by a commission appointed by the two parliamentary houses, while at least one third must be representatives of opposition parties. Law was further amended in a part related to sanctions. Previously, the law prescribed that persons who violated the law are non-eligible to be nominated for any elected position, executive position and/or counsels in period of four years from the date of the violation. In addition, violators could have been fined. Changes provide that the new Commission may decree a seizure of up to 50% of net monthly salary and may also submit a proposal for dismissal from duty and an invitation to quit duty. Adoption of these amendments was challenged by a number of members of parliament, noting that suggested constitution of the Commission is not providing necessary level of independence, which would ensure effectiveness in its work. They find that the Commission might be a subject to political influence through such elected members that would disable decision making process. The Delegation of the European Union in BiH also expressed its concern over this issue.



In **Bulgaria** the main legal provisions are contained in the *Law on the Prevention and Ascertainment of Conflict of Interest*. There are a number of specific laws and regulations that reflect the specifics regarding certain persons – *Law on Civil Service, Labour Code, Law on Public Procurement, Law on Local Self-Government and Local Administration* as well as various internal ethical regulations on conflict of interest and assets disclosure. According to the *Law on the Civil Service*, all civil servants, upon starting employment are required to declare their property possessions to the appointing authority. By April 30<sup>th</sup> of each year, civil servants are also required to declare property possessions,

as well as any external payments, received from activities outside their official employment (reasons for such activities and the employer/sponsor, who has paid them) during the previous year. This law lists the incompatibilities, but all relevant norms related to conflicts of interests are found in the *Law on the Prevention and Ascertainment of Conflicts of Interest*. There are no specific rules on conflicts of interest applicable to public procurement officials but these are explicitly asked to disclose potential conflicts of interest in each public procurement case. According to the *Law on Public Procurement*, public procurement officials should declare that they have no private interest within the meaning of the *Law on Prevention and Ascertainment of Conflict of Interest* as regards the respective public procurement they work upon. Also, officials may not be “related persons”, within the meaning of the law, to a bidder or a participant in the procedure or with subcontractors appointed by him/her, or to members of their management or control bodies.

In an attempt to address weaknesses identified in the legislation, the law has been subject to several amendments (in 2009, 2010, 2012 and 2013), some of which introduced radical changes in the system of government bodies involved in its implementation. The 2010 amendments established the Commission for Prevention and Ascertainment of Conflict of Interest to replace the previous decentralised implementation of the law.<sup>27</sup> The establishment of conflict of interest can serve as grounds for dismissal from public office as well.

Most of the cases involving a sanction by the Commission have concerned mainly junior public officials or had to do with conflicts of interests at local and regional level (e.g. mayors). The number of investigations regarding elected politicians has been very limited and these cases are moving particularly slow into their final decisions, with too little publicly available information. Furthermore and indicative of the integrity of the Commission, its former Chair was charged with criminal breach and violation of his duties in the period December 2012 – July 2013, found guilty and sentenced by a first instance court to 3.5 years imprisonment. A further problem in the work of the Commission is its accountability. The Commission is required to submit to parliament an annual report but it is for information only; thus there is no effective oversight of its work.

<sup>27</sup> For an evaluation of the operation of the Commission, please refer to section 3.1.

In **Croatia**, the *Conflict of Interest Prevention Act* regulates the matters related to conflict of interest and incompatibilities among elected and senior appointed officials. The law regulates the prevention of conflicts between private and public interests in public office, the filing and contents of a report on the financial situation of an official, the process of checking the data from these reports, the period of duties for public officials under the law, selection, composition and jurisdiction of the Commission for the Resolution of Conflicts of Interest and other issues of importance to the prevention of conflicts of interest. The rest of the legal provisions, aside from provisions regulating the organisational structure of the commission, almost exclusively deal with the property of public officials. Most of the sanctions in the law, as well as monitoring and reporting mechanisms are tied to the declaration of assets and not to conflict of interest per se. Instruments for declaration and monitoring of the actual interests of the officials are insufficient and weak with no public control or public participation in the process, which is in contradiction with the *General Administrative Procedure Act* and/or *Criminal Proceedings Code* according to which public bodies should act upon the citizens' request for procedure, or upon citizens' report on suspicion of crime. Sanctions for conflict of interest are minor, limited to financial fines and reprimand, or "publishing of the Commission's Decision", and they do not represent any serious obstacle to the conflict of interest. The law does not clearly regulate differences between the incompatibilities and conflict of interest, or among apparent, potential and actual conflict of interest.

The **Kosovo** *Law on the Prevention of Conflict of Interest in the Discharge of Public Function* adopts all the mechanisms that should prevent conflict of interest, but the implementation is mostly based on reporting by some third party. The Anti-Corruption Agency needs to be further empowered to keep track and registry of the private interests of public officials, and to be able to act on cases of conflict of interest.

Provisions relating to conflict of interest in **Macedonia** were initially incorporated in the already mentioned *Law on Prevention of Corruption* of 2002. Later on, in 2007 a *Law on Prevention of Conflict of Interests* was enacted, in order to provide more detailed provisions for prevention of conflict of interest. Also, certain provisions on conflict of interest prevention can be found in the *Law on Public Procurement* and *Law on Lobbying*. The provisions of the *Law on Prevention of Corruption*, although largely replaced by the *Law on Prevention of Conflict on Interests*, still deal

with prevention of conflict of interest. In the *Law on Prevention of Conflict of Interests*, the offence is defined as a "conflict between the public authorisations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorisations and duties" (article 3). The State Commission for Prevention of Corruption is competent for its application. The law is an example of a broad understanding of the concept of conflict of interest as it provides that officials, while performing their duties, cannot be driven by personal, family, religious, political or ethnic interests, pressures or promises from their superiors; they must also not accept or request benefits in return for performing his/her duties, exercise or acquire rights by violating the principle of equality before the law, etc. – provisions about more straightforward forms of corruption.

The **Montenegrin** *Law on Prevention of Conflict* lists the officials that must act in accordance with its provisions, as well as their obligations in terms of reporting changes in their assets while holding public office. Significant improvement in this regard was introduced by the latest amendments to the law, giving the Commission for Determining and Prevention of Conflict of Interest competence to check the validity of data provided by the officials in their reports on assets and income, to conduct proceedings and issue decisions on the violation of the law (both as a first and second instance authority since it decides on requests for review of first instance decisions); give opinions on the existence of conflict of interest; determine the value of gifts (the law states that public officials may not receive gifts); initiate amendments to laws; submit a request for initiation of misdemeanour procedure to the regional misdemeanour authorities.

In **Serbia**, provisions regarding the conflict of interest are contained in the *Law on the Anticorruption Agency*. Although in the narrow sense the fight against corruption is not the main purpose of these provisions, the law prevents certain mechanisms of corruption. For instance, there is a provision stipulating that a public official cannot also be a consultant to legal entities, thus preventing the mechanism whereby a legal entity makes payments to a public official through consultancy fees. Likewise, the provisions on the obligation to report property to a certain extent eliminate the possibility for an official to significantly increase his property during his term in office. As regards the coverage of the law, a very large number of public officials are covered. On one hand, this is actually a shortcoming because the Anticorruption Agency must invest a large share of its

resources in the creation and maintenance of a database on public officials. On the other hand, some decision-makers are not covered by this law, such as advisors to the prime minister and deputy prime ministers, as well as advisors to ministers. The law also prohibits a public official from owning a controlling stake or holding managerial positions in a commercial company. Similarly, it is prescribed that public officials cannot sit on the management of public enterprises, although it is not clear exactly about what kind of conflict these target, since public enterprises, at least according to the law, work in conformity with the public interest. These provisions do not apply to members of parliament.

As regards the penal provisions, penalties are too mild. The first penalty, a confidential caution not disclosed to the general public, constitutes practically the first step after it has been established that a public official has violated the law. The second penalty – the public announcement of a decision that this law has been violated for elected public officials and a public announcement of a recommendation to resign for other types of public officials – is the most serious penalty.

As regards conflict of interests, in **Turkey** there is no specialised legislation. There is, however, Article 13 of the *Regulations on Principles of Ethical Conduct for Public Officials* regulates and controls matters on conflict of interest. Also, according to the *Civil Servants Law*, public officials have a personal responsibility to prevent cases that would lead to conflict of interest; they are responsible to act cautiously about potential cases and immediately inform their superiors in case there is one. The *Civil Servants Law* also state the disciplinary penalties for such issues. For instance, if a public official personally benefits financially from a property of the state, the amount is to be taken out of his/her salary.

### 2.3. RECOMMENDATIONS

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of the international anticorruption standards in their national legislations. All have some kind of strategic document containing their overall approach to tackling corruption. As regards their anticorruption laws and regulation, the key challenge now is to keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with rapid changes.

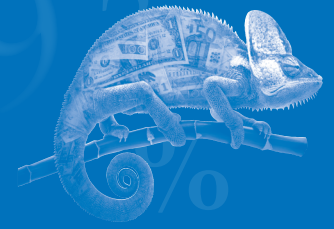
The assessment of the anticorruption legislation carried out by SELDI reveals the following gaps that need to be addressed:

1. Define national anticorruption efforts in terms of policy related to **quantifiable goals** and milestones rather than simply measures or legislation. This would entail setting **specific targets to be achieved** and selecting appropriate intervention methods. These targets should be quantified as much as feasible.
2. **Prioritise certain sectors, types of corruption and methods of intervention** and pilot different approaches before rolling out full blown measures. Corruption is a broad concept, related to various and varying types of fraud which cannot be addressed simultaneously in an effective way.
3. Countries that have not introduced **whistleblower protection** legislation should do so.
4. **Policies need to be informed.** While some effort has been made in the national anticorruption strategies to estimate previous results, none of the SELDI countries has a sustainable mechanism of evaluation of anticorruption policies. At the very least, this requires: a) reliable and regular statistics about anticorruption efforts (investigations, prosecutions, administrative measures, etc.); b) regular monitoring and analysis of the spread and forms of corruption in the various public sectors. The monitoring should be independent and/or external to the country, involve civil society and incorporate the basic components of non-administrative corruption monitoring systems, such as SELDI's CMS.

The effectiveness of anticorruption policy should be evaluated with the use of the following indicators:

- Number of draft laws and other regulatory documents related to anticorruption / number of adopted laws and other regulations;
- Number of initiated, completed, suspended or terminated corruption-related criminal investigations and number of persons accused;
- Number of indictments and number of persons indicted;
- Number of initiated, completed, suspended or terminated corruption-related court proceedings;
- Number of convictions and acquittals, types and severity of the penalties imposed and number of persons convicted;
- Number of corruption-related complaints filed/ number of inquiries conducted/number of officials sanctioned for involvement in corrupt practices (by government body).





In the SELDI countries, the 1990s and early 2000s were the period when significant parts of their regulatory landscape had been fundamentally reshaped, especially the regulations on the integrity of public governance. It was only when the bulk of the best international standards had been adopted in the national legislation, that it was realised that to achieve their intended effect, laws and regulations need a delivery mechanism that does not distort their initial intention. The widely shared conclusion now is that the **legislation is adequate but its effective enforcement remains an issue of concern**. Thus, during the past decade it had become increasingly obvious to governments and other stakeholders that to assess any policy or regulation irrespective of the experience of its implementation and its effect is meaningless, and could even be counterproductive.

The range of government institutions that are relevant to the maintenance of integrity standards in public governance is quite broad; in fact, all public sector bodies one way or another need to uphold these standards. In the SELDI countries – with high corruption prevalence – this presents a double challenge: in terms of policy, this means designing a policy framework that harmonises the roles and powers of all relevant institutions; it also means that to make a tangible dent in corruption, governments need to build the institutional capacities of a fairly large number of bodies.

If there is one leading conclusion that has emerged in the course of the studies carried out for this report, it is the **mutual reinforcement between competence and integrity in the institutions of government**. Typically, whenever the anticorruption credentials of a given government body are questioned, it is also found to be wanting in terms of institutional capacity. Conversely, any gain in professionalism has also led to improvement in integrity. A number of intervening factors ensure the linkage between the two – higher levels of remuneration, higher motivation of staff, higher premium on employment in that particular body, exposure to contacts – including international – and knowledge, better career opportunities, etc. As a result, a certain institutional momentum is gained that raises the opportunity costs of graft; a virtuous circle is then entered that further roots out corruption.

An additional consideration that is shared among all SELDI countries is the **compromised autonomy of the various oversight and repression bodies**. All countries report one degree or another of interference by elected politicians – members of parliament or government ministers – in the work of the civil service.

While all SELDI countries had one form or another of compliance control bodies at the central government level – national audit institutions, asset declarations vetting bodies, various other supervisory institutions – few report effective mechanisms for internal **integrity management within** the bodies of central and local government and other public bodies.

In the SELDI countries, the enforcement of integrity legislation needs to cover a wide range of practices contained in the concept of corruption: from the small cash bribe to doctors and traffic policemen to the sophisticated process of manipulating a law to the advantage of a party donor. In practice this entails managing repressive responses in a way that does not congest the criminal justice system. However, **none of the SELDI countries has an adequate complaints management mechanism in the public administration** as a first step to dealing with corruption. Most countries have an anticorruption body that is expected to receive complaints from the public. Complaints are then either referred to law enforcement and prosecution and/or used for analyses of corruption practices. There is little evidence, however, that these agencies add any significant value – neither as an intermediary between the public and the prosecution (if anything, this detracts trust from law enforcement agencies), nor as anticorruption think tanks. Furthermore, there seem to be no policies or guidance on complexity management of suspected corruption offences in the public administration – an automatic sorting of cases according to criteria (usually severity and complexity) which allows certain types of cases to be addressed locally by internal management, thus referring fewer cases to the (rather expensive) criminal justice system.

A deficiency that is shared in all SELDI countries is the **shortage of reliable and publicly accessible data on the performance of government institutions**, especially as relates to anticorruption. Information and statistics are either not collected, not available to



the public, or gathered so haphazardly as not to allow monitoring and analysis. Without such information no government can make a credible claim that it conducts an anticorruption policy of any kind. This is mostly due to lack of demand from policy makers; anticorruption policies are mostly limited to broadening the scope of incriminated practices and the designation of various awareness and training activities as “prevention” – neither of which relies on much evidence.

The Integrated Anticorruption Enforcement Monitoring Toolkit, developed by the CSD and the University of Trento, is intended to address precisely such gaps. It will integrate corruption victimisation data – such as provided by SELDI’s CMS – with a measurement of the enforcement of anticorruption policies. The toolkit will assess corruption risk in a given government institution and the effect of the corresponding, if any, policy that seeks to reduce it. This will allow anticorruption policy making to enter a mature phase by equipping it with a feedback mechanism.

### 3.1. SPECIALISED ANTICORRUPTION INSTITUTIONS

The establishment of specialised anticorruption institutions in the SELDI countries has been warranted on several grounds:

- It reflected the level of seriousness with which corruption was viewed as a government priority and served to reassure the public and international partners of the commitment of the government to anticorruption.
- Given the wide spread of corruption, affecting significantly law enforcement bodies, it was warranted to create an anticorruption body “from scratch” thus ensuring that it would not be easily captured by existing corrupt networks. This reasoning has come as response – as the analysis in this report shows, not a very convincing one – to the conundrum facing countries of high corruption: how is a corrupt system of governance to be reformed when it can only be done by way the same system of governance?
- Such institutions were required by the fact that corruption is a broad concept that entails interventions in a number of public sectors, through a variety of policies spanning the whole range of

public institutions, across all three branches of power, and thus necessitating a coordinating and unifying body to tie all these aspects together.

- The need to concentrate expertise: the design of anticorruption policies requires significant input from monitoring of the spread of corruption and analysis of policy options.
- There was a need to maintain a high level of public awareness of the significance of anticorruption which such agencies could achieve.

One of the key issues facing the design of a specialised national anticorruption institution is **how to combine preventive and repressive functions**. Typically, the SELDI countries have tried to have their anticorruption institutions do both, although repression is by far the lesser aspect of their work. Most of the tasks of these bodies are related to some form of supervision and control, usually of the national anticorruption strategies.

The establishment of such institutions, however, has been plagued by a number of **difficulties**, which the SELDI countries have not been particularly successful at solving:

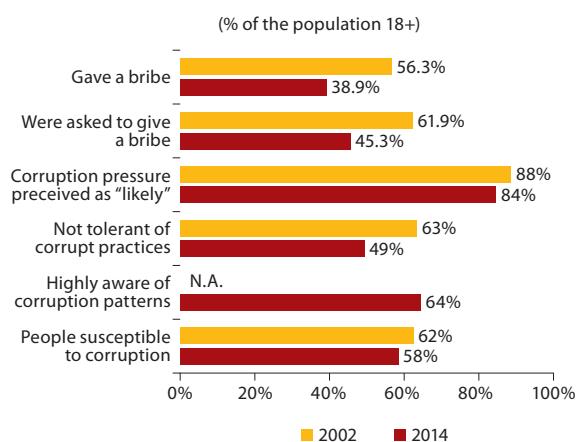
- **Constitutional considerations.** High as corruption might have been on the governments’ agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the constitutionally established balance of power. Besides, extraordinary powers would defeat the very purpose it has been created for – uphold good governance. On the other hand, such an institution could be neither ad hoc (this would undermine claims that corruption is a high priority issues) nor permanent (because of constitutional considerations). The typical compromise is for these agencies to be attached to the executive government and given supervisory powers which, however, are usually limited to requiring other government agencies to report on the implementation of the tasks assigned to them by the national anticorruption strategies.
- Such agencies had to be careful **not to duplicate powers** already conferred to other oversight bodies (e.g. national audit institutions or law enforcement).
- Most were provided with **limited institutional capacity** – budget, personnel – despite intentions to the opposite.
- These agencies were often promoted as having the powers to set the government’s anticorruption policy. There is little evidence, however, that they

had any significant influence on the government’s legislative agenda.

A much discussed aspect of the work of anticorruption agencies is their role as **coordinating bodies**. On the hand, this is justified given the broad range of institutions involved in anticorruption. On the other, concerns about “coordination and cooperation” fail to appreciate that government institutions are by their nature bureaucratic structures that are expected to strictly follow rules and procedures. Such concerns are indicative of either overlaps or gaps; in other words, either of duplicating legal provisions or lapses in policies. It is not through the good will and extra effort of the senior managers of public institutions that effective governance would be achieved. Compatibility and complementarity should be built into government policies that collate the various anticorruption aspects and institutions; institutional coordination will then follow by default.

In **Albania**, although there is no typical specialised anticorruption agency, there is a National Coordinator for Anti-Corruption – the Minister of State for Local Government – who coordinates the anti-corruption activities of government and independent institutions at the central and local level. Furthermore a network of focal points was established in all line ministries and independent institutions, which will monitor and guide the relevant officials in the implementation of the *Anti-Corruption Strategy* and report to the National Anti-Corruption Coordinator.

Figure 27. Corruption profile of Albania



Source: SELDI/CSD Corruption Monitoring System, 2014.

**Bulgaria** has no independent institution to focus efforts, make proposals and drive action against corruption. Still, there are several institutions at the central

government level mandated to determine the country’s anticorruption agenda.

The Commission for the Prevention and Combating of Corruption is chaired by the Deputy Prime Minister and Minister of Interior and has the mandate to take decisions on the course of the Bulgarian anticorruption policy. The Commission is supposed to analyse corruption and conflict of interests and propose policies to counteract them; it is also expected to carry out corruption proofing of legislation. In theory, its functions seem considerable and come close to a comprehensive body for anticorruption policy. The establishment of 28 regional anticorruption councils is a positive development, especially in the context of the very low regional engagement with anticorruption.

In practice, however, the Commission lacks the necessary capacity to perform its functions effectively. This is apparent in its coordination of the implementation of the *Integrated Strategy for Prevention and Countering Corruption and Organised Crime*, where it proves very difficult to integrate the various action plans and implementation reports into a strong, synergetic approach against corruption. The Commission’s obligation to present results of its work in the form of annual reports is performed inconsistently – the last available report is for 2011 but cannot be accessed despite being available on the official webpage.

The **Centre for Prevention and Countering Corruption and Organised Crime** (known under its Bulgarian acronym BORKOR) is a specialised anticorruption body, established at the Council of Ministers in 2010 to assess, plan and develop preventive anticorruption measures. Its main tool is software which aims at identifying weak spots and developing “network measures against corruption”. For the period of existence of BORKOR its efforts have been focused on acquiring a “cyber-system of the type V-Modell XT” claimed to be “a unique highly-technological instrument without analogue in the world” to be used in developing anti-corruption measures following the identification of environments conducive to crime.

The lack of results and clarity in its mission statement has drawn repeated criticisms from civil society and the media. With a spending of BGN 10.3 million (over €5 mln) between 2011 and 2013,<sup>28</sup> the Centre has also been criticised for unjustified spending of public money.

<sup>28</sup> (Център за превенция и противодействие на корупцията и организираната престъпност, 2014).

The number of personnel is considered excessive with a total of 155 employees (40 permanent and 115 temporarily relocated from other administrative structures). Management has also been controversial: two directors have so far been replaced – one dismissed on the grounds of unsatisfactory results and the other without any justification. According to media publications, this situation almost led to a decision to close the Centre in the autumn of 2013.<sup>29</sup> In July 2014, the Ministry of Interior withdrew its staff seconded in BORKOR and debates about closing the Centre were reopened.

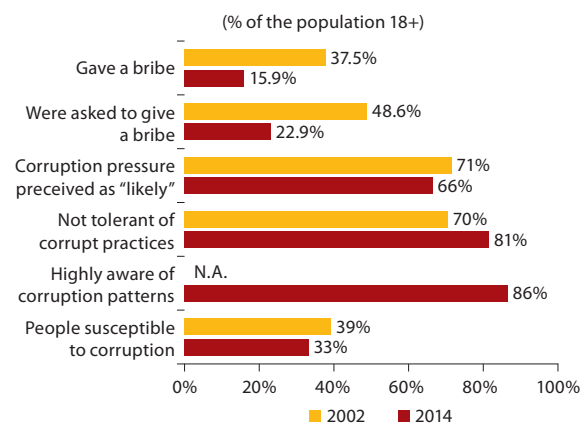
In January 2013, one year after the Consultative Council asked BORKOR to prepare and implement a model in the area of public procurement, BORKOR published its first interim report, which identified corruption risks, and listed numbers of vulnerable areas without naming them (at least they were not named in the publicly available version of the report).

One of the exotic ideas, launched by BORKOR in the beginning of 2014 was the intention to require all politicians and high-ranking civil servants to declare their personal relationships. In addition, the current chairman of the Centre has already revealed his intention to discard the cyber model and to turn BORKOR into a kind of complaints clearinghouse – receiving the complaints and referring them to the competent authorities. A plan was also revealed to scan for corruption all public procurement tenders within the government investment program.

**In Bosnia and Herzegovina**, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was established in 2009 but the management was appointed with a two year delay in August 2011; its budget was only approved in June of 2012 allowing it to establish premises (the US Department State describes the budget as “minimal”).<sup>30</sup> The Agency appointed its first civil servants in April 2013 (15 out of the foreseen 29 positions); thus, four years after it had been legally inaugurated, the Agency is still not fully operational. The delay in forming the Agency led to the delay in the implementation of the *Strategy for the Fight against Corruption* because the majority of the measures depend on the capacity of the Agency. The *Global Integrity Report 2010* finds that appointments in the Agency were made according to political criteria and it could thus “be concluded that removal also would be based on similar criteria.” Besides coordination and the

supervision of the implementation of the strategy, the Agency is expected to receive and process corruption-related complaints, including those submitted online. Initial civic activity does not seem to have been significant – in 2012 it received 75 complaints online, mostly related to the work of custom officers, health and education employees and public administration.<sup>31</sup> As with some other SELDI anticorruption bodies, it is expected to refer complaints to the prosecution and use the information for analyses of the prevalent corrupt practices.

**Figure 28. Corruption profile of Bosnia and Herzegovina**



Source: SELDI/CSD Corruption Monitoring System, 2014.

The **Croatian** government’s Committee for Monitoring the Implementation of Measures for the Repression of Corruption was envisaged as an operative and coordinative body which reports to parliament. In addition to coordinating the implementation of the *Anticorruption Strategy* and the accompanying *Action Plan*, the Committee is supposed to evaluate the risks of corruption and propose measures (again, as in the other countries, „measures” rather than „policies” is the preferred term) for prevention and better inter-institutional cooperation. It is technically supported by an “Independent Sector” at the Ministry of Justice.

The Committee does not seem to be a step forward in terms of institutional response. There had been similar arrangements before – previous governments had had the same body but some of its members were prosecuted for corruption, thus defeating its very purpose. There are no publicly available reports of behalf of the Committee on the implementation of measures for the suppression of corruption. It has had no specific agendas, or other managerially relevant documents.

<sup>29</sup> (Медиапул, 2013).

<sup>30</sup> (U.S. Department of State, 2013b, p. 19).

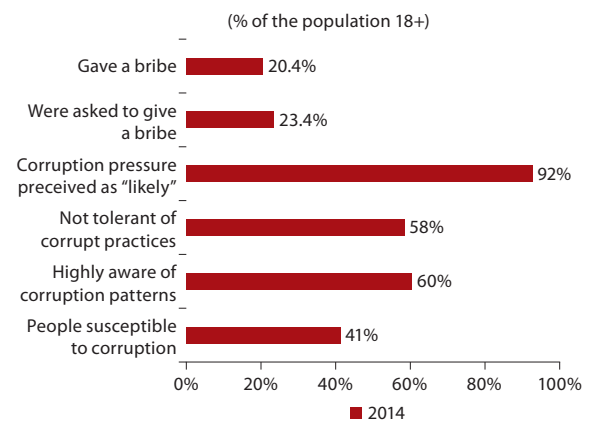
<sup>31</sup> (Agencija za prevenciju korupcije i koordinaciju borbe protiv korupcije Bosne i Hercegovine, 2012, p. 9).

The National Council for Monitoring Anti-Corruption Strategy Implementation is a body of the Croatian Parliament whose assignment is to evaluate and assess the implementation of the *Anticorruption Strategy*. Although it is envisaged to have a supervisory function, it can suggest improvements to certain institutions but cannot enforce them. There are no examples indicating that decisions of the Council have changed or improved any operation or effort against corruption. It has published 3 reports since 2006, the last being issued in 2010. This means there has been a gap in monitoring the implementation of the Strategy since 2010.

The mandate of the **Kosovo** Anti-Corruption Agency is focused on detecting and investigating corruption cases, on efforts to prevent and combat corruption and increase public awareness. The Agency is expected to analyse the causes of corruption, control potential incompatibilities with public office, including commercial activities by officials, enforce restrictions regarding the acceptance of gifts related to the performance of official duties, monitor assets, and enforce restrictions on contracting entities participating in public tenders. While its preventive work is well resourced (one of its departments is entirely focused on that, including a division concentrating on assets monitoring and one on conflict of interest and gifts), its specialisation in combating corruption through repressive means is less so. Repressive tasks are concentrated in the second division, which – besides a range of other legal tasks – deals with the Agency’s investigative activities. This means that of the overall staff in the Agency only a few are directly engaged in combating actual corrupt behaviour. “This small number of staff also have limited experience in investigative work. As for most employees within the [Agency], their background is that of lawyers with some experience in courts of law: none of them has a specific police-related background.”<sup>32</sup>

The main achievement of the Agency is the process of disclosure of assets: over 90% of officials fulfilling this obligation. However, “the Agency has been able to verify only 20 per cent of the reports received from public officials due to capacity constraints,”<sup>33</sup> while other observers noting that it is “showing minimal results.”<sup>34</sup> The best evidence for the deficiencies in this function is that most public officials, especially members of parliament, hold a second job in a public

Figure 29. Corruption profile of Kosovo



Source: SELDI/CSD Corruption Monitoring System, 2014.

institution (e.g. in the Post and Telecommunications of Kosovo). A further weakness is the “low quality of the information the Agency sends to the prosecutors resulting in most of them being rejected by prosecutors for further actions. [...] General Auditor also found serious problems in the Agency such as the failure to register its inventory; violation of employment procedures, employees received per diems while officially on vacation, etc.”<sup>35</sup>

In **Macedonia** there is a State Commission for Prevention of Corruption which functions as a specialised anticorruption institution. The commissioners are elected by parliament for a four-year professional mandate and with the right for one re-appointment. Commission’s powers are fairly typical for the SELDI countries in that they cover policy making, oversight, monitoring, training and awareness. Its policy function includes the design of the *State Programme for Anticorruption* (the national anticorruption strategy); it also prepares opinions on draft laws relevant for the prevention of corruption. Nominally, its oversight powers are quite broad, and include control of the finances of political parties and the monitoring of asset declarations of public officials. As regards political parties, in its own admission further legislative changes are needed for the Commission “to be able to adequately discharge its functions in terms of direct insight into the financial and material work of these entities.”<sup>36</sup> Additionally, it is not clear whether its coordination with the State Audit Office covers the issues of party funding, which would be crucial for effective control.

<sup>32</sup> (FRIDOM, 2010, p. 27).

<sup>33</sup> (Transparency International, 2011, p. 5).

<sup>34</sup> (KIPRED, 2014, p. 7).

<sup>35</sup> (Task Force on European Integration, 2012, pp. 19-20).

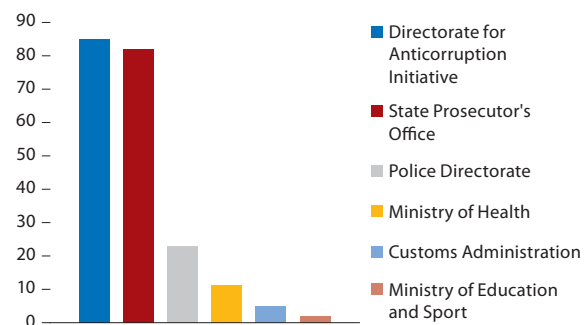
<sup>36</sup> (State Commission for Prevention of Corruption of Macedonia, 2011, p. 18).

The Commission is expected to register and monitor the assets and the change in assets of elected officials. It conducts random verification of asset declarations which could be said to have a preventive anticorruption effect. The effectiveness of this function is undermined, however, by the lack of registry of elected and appointed officials and the capacity of the Commission to go beyond checking of formal compliance. Generally, its institutional capacity – its powers are enforced by seven commissioners and 18 staff – is quite inadequate for its broad mandate. The Commission also files requests to the public prosecutor's office for criminal proceedings in cases where evidence exists for wrongdoing. No analysis is available of the follow-up on these requests or the outcomes of instituted prosecutions, in order to assess the effectiveness of this function. The EC's evaluation is that these "rarely lead to successful prosecutions."<sup>37</sup> As of November 2013, the Commission "had not filed any misdemeanor charges based on the complaints it received."<sup>38</sup>

In **Montenegro**, for the past 13 years the government has formed several specialised anticorruption bodies. Among these, the Directorate for Anti-Corruption Initiative, established in 2001, is the main one. It is entrusted with raising awareness and conducting corruption research; it is also responsible for the adoption of the international anticorruption standards in Montenegro (including cooperation with GRECO, UNCAC, etc.). The Directorate does not have policymaking powers, which undermines its overall standing. It has no internal management document, which is indicative of low institutional capacity. One of its responsibilities is cooperation with other government authorities in dealing with complaints that the Directorate receives from the public. In 2012, the Directorate has received a total of 85 complaints that have been forwarded to the competent state authorities for further action.

The Anticorruption Agency of **Serbia** is a public body accountable to the National Assembly. It has a range of competences most of which are preventive. These entail the identification of occasions and situations that offer incentives for corrupt behaviour and the design and establishment of mechanisms aimed at eliminating corruption-inducing conditions before they lead to corrupt actions. The objective of its monitoring and oversight competences is to examine whether the existing environment already contains irregularities with regard

**Figure 30. Corruption complaints received by Montenegrin government bodies in 2012**



Source: Directorate for Anti-Corruption Initiative Bulletin, July 2013.

to exercising public authority susceptible to developing corrupt conduct, and, should the examination outcome turn out to indicate a need, to undertake measures to eliminate those irregularities and their consequences, as well as to institute proceedings in order to determine the responsibility and to sanction the persons who have caused or contributed to them.

A key preventive action by the Agency has been the provision of information and advice relating to the introduction of integrity plans in a large number of public institutions in Serbia. Its function of overseeing the enforcement of conflict of interest regulations requires that the Agency establishes information exchange protocols with a number of other agencies – Business Registers Agency, Tax Police, Central Securities Depository, etc. The European Commission's 2013 evaluation stresses the role of the Agency with respect to the financing of political parties and electoral campaigns, but only 3 – 4% of the Serb public believe it is capable of complete control of the financing of political parties;<sup>39</sup> it also "lacked efficiency in publishing required reports, such as reports on political party financing."<sup>40</sup> Even though it initiated proceedings against and filed a number of misdemeanour charges against political parties that have not submitted reports on the costs of their election campaigns, "the Agency inefficiency is best seen through the fact that none of those subject to criminal proceedings for corruption by other organs were identified by the Agency to have any conflict of interest or committed any crime of corruption."<sup>41</sup>

The Serbian government also has an advisory body – the Anti-Corruption Council – which is expected to analyse

<sup>37</sup> (European Commission, SWD(2013) 413 final, p. 41).

<sup>38</sup> (U.S. Department of State, 2013c, p. 17).

<sup>39</sup> (UNDP Serbia, December 2013, p. 37).

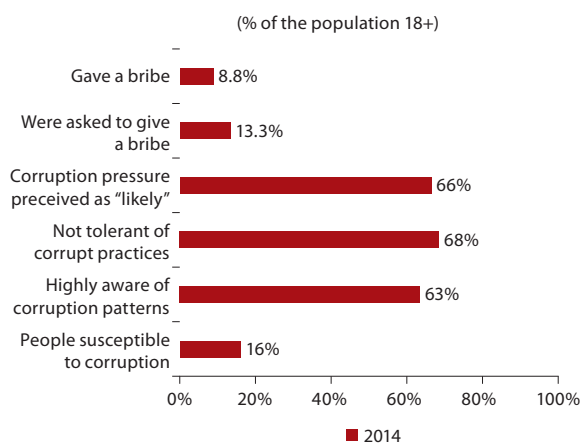
<sup>40</sup> (U.S. Department of State, 2013e, p. 18).

<sup>41</sup> (Bertelsmann Stiftung, 2014a, p. 30).

corruption patterns in the country based on complaints received by citizens. Individual complaints are used for analysis and referred to the relevant institutions. Despite having drafted many reports on the most important corruption cases in Serbia “few of the criminal complaints filed by the Council have ever been prosecuted.”<sup>42</sup>

In **Turkey**, the main body at the central government level that deals with anticorruption issues is the Prime Minister’s Inspection Board. The Board has the mandate to inspect and supervise ministries, public institutions and other public bodies in cases of corruption. It “is responsible for investigating major corruption cases,”<sup>43</sup> however, its capacity “is perceived as insufficient, in particular in terms of the number of staff, to ensure the required follow-up of proposals.”<sup>44</sup>

Figure 31. Corruption profile of Turkey



Source: SELDI/CSD Corruption Monitoring System, 2014.

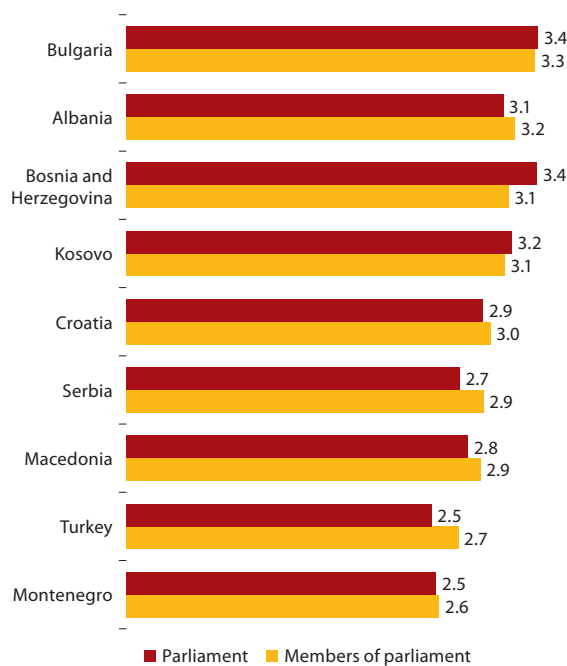
Earlier evaluation reports on Turkey had noted that there had been “no central body in charge of developing and evaluating anti-corruption policies, inadequate coordination of the various institutions involved in the fight against corruption and no independent body in charge of monitoring the implementation of anti-corruption measures.”<sup>45</sup> In 2009, the Board was given the coordination role in the implementation of government’s *Anti-Corruption Strategy*. It is doubtful whether the Inspection Board could fill this gap as its role is rather technical. In fact, the current SELDI round is addressing one of the needs identified by its working groups – a suggestion not followed up by any other institution in Turkey – namely, **conducting a national**

**survey of corruption.** The working groups have also suggested the establishment of comprehensive tracking of data on corruption, a need that this SELDI report has identified as applicable to all SELDI countries.

### 3.2. LEGISLATURE AND PARTY FUNDING

It is the executive branch of government that usually comes under most intense scrutiny as regards corruption. Legislative corruption, however, could incur even more significant damages if it allows a capture of the law-making process by special interests. Parliaments in the SELDI countries do not rank high in the public trust and this unenviable position is not without its reasons. Codes of ethical behaviour are rare and unenforced; lobbying regulation is even rarer; only recently have procedures for lifting immunity from prosecution started to be introduced, albeit timidly; wherever there is an anticorruption body in parliament, it is typically to supervise some executive agency, rather than deal with corruption among members.

Figure 32. Estimates of the corruptness of parliaments and MPs<sup>46</sup>



Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>42</sup> (Freedom House, 2013).

<sup>43</sup> (U.S. Department of State, 2013t, p. 35).

<sup>44</sup> (SIGMA, 2012, p. 14).

<sup>45</sup> (Chêne, 2012, p. 1).

<sup>46</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”

An issue of significant concern in the SELDI countries is the financing of political parties and electoral campaigns. Most countries have implemented GRECO's recommendations on part funding but a number of problems – such as anonymous donations, voter bribing, insufficient capacity to audit party finances and limited powers to enforce sanctions – persist.

The **Albanian** parliament has no anticorruption committee and the corruption and anticorruption issues are dealt with by other committees such as National Security Committee. There is no comprehensive written code of conduct for MPs. Regarding the provisions against corruption in the funding of political parties, the obligation upon political parties to submit detailed information on their annual resources and expenses was introduced only in 2011. The following year templates for financial reports to be submitted by political parties and of guidelines for the auditing of such reports by independent auditors were introduced. GRECO's third evaluation round was generally positive on the fulfilment of its recommendations in this regard.

**Bosnia and Herzegovina** has provided an example of a setback in the integrity of parliament. A 2002 law regulating conflict of interest is being changed to shift its oversight from the Central Elections Commission to a parliamentary committee; thus the enforcement of the law could be compromised as elected politicians would have to adjudicate their own cases. The move has been much criticised by observers and the head of the EU delegation and the US ambassador have gone so far as to send a letter saying that the law should not be adopted because of serious concerns.<sup>47</sup> Rules for funding of political parties are also changing in a way that is opening opportunities for abuse and manipulation. Limits for individual contributions made by individuals or companies are being increased, as well as contributions from party members. The new law allows the use of premises owned by public institutions by political parties, which was not allowed in the past. Further, while contributions to parties are made easier, the fines for breaking the law are decreasing.

The **Croatian** parliament has a commission for the resolution of conflicts of interest. Although its regulation requires that candidates for members of the commission should be of high integrity and reputation, in 2008 within the USKOK and police action "Index," the chairperson of the commission was arrested and

later sentenced to 14 months in prison for repetitive cases of bribery in relation to her position as professor at University of Zagreb.<sup>48</sup> The commission was not functioning from 2011 until the end of 2012, when its new members were finally appointed.

In February 2011, the Croatian parliament adopted the *Political Activity and Electoral Campaign Financing Act* which was a step forward in adopting best international standards and better regulation of this issue as it introduces a monitoring system over the funding of political parties, independent lists and candidates and of their electoral campaigns. The National Elections Commission and the State Audit Office were authorised to oversee its enforcement. The first test on this Act was Parliamentary elections 2011 when the National Elections Commission for the first time exercised control over the financing of election campaigns. Civil society observers concluded that results of monitoring over the funding of political parties and analysis of reports submitted indicate that the parties have made a visible progress in the transparency of campaign funding.<sup>49</sup>

The regulations of the **Kosovo** parliament define the rights and responsibilities of MPs, their immunity and procedures for revoking it, as well as the obligations that MPs have under a Code of Ethics. The Code is an annex to the regulation that each MP is expected to adhere to.

Kosovo's law on the financing of political parties was adopted in 2010. A study by the Kosovo Democratic Institute has given the law a score of 6.6 out of 10. Deficiencies are mainly related to preventive measures and reporting to the oversight body, the Central Elections Commission. Results of the study show "that political party financing in Kosovo lacks the legal infrastructure regulating preventive mechanisms such as the existence of a centralised system of bank transactions, a ban on cash deposits, and the existence of preventive measures against the abuse of government resources."<sup>50</sup> Political parties do not prepare financial reports for the public, and their bookkeeping records do not reflect incomes from private donations. Other evaluations conclude that "political parties in Kosovo do not conform to the requirements of the law and often violate its principles."<sup>51</sup>

<sup>47</sup> (European Forum for Democracy and Solidarity, 2013).

<sup>48</sup> (Metro Portal, 2008).

<sup>49</sup> (GONG, 2011).

<sup>50</sup> (Group for Legal and Political Studies, 2013, p. 8).

<sup>51</sup> (Group for Legal and Political Studies, 2013, p. 8).

The **Macedonian** parliament does not have a specialised anticorruption committee. A Commission of Inquiry can be established provided twenty members of parliament raise an issue to determine the liability for corruption involving elected or appointed officials, responsible persons in public enterprises and in other legal entities which dispose of public funding. As of April 2014, such a Commission has not been formed. Individual members can also have recourse for an opinion to the State Commission for Prevention of Corruption in case of suspected conflict of interest.

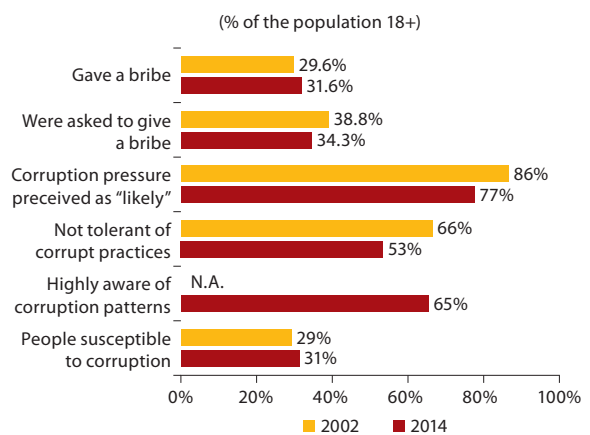
The two key pieces of anticorruption legislation (which contain some duplicating provisions) – *Law on the Prevention of Corruption* and the *Law on Prevention of Conflicts of Interest*, including fairly detailed provisions on conflict of interest, incompatibilities, gifts and asset declarations – apply to members of parliament. In addition, there are parliament-specific provisions which regulate the transparency of the legislative process, which are “fairly transparent in practice.”<sup>52</sup> Although the *Rules of Procedure of the Parliament* allow civil society representatives and other stakeholders to participate in the legislative processes through hearings and public debates, this remains an issue of concern. A recent analysis found that only part of the draft laws released for public review (41%) were open for consultation to the public.<sup>53</sup> In 2012, only 7 debates, 1 hearing and 1 public discussion were held.

Macedonian law stipulates that the financing of the political parties should be overseen by the State Audit Office. The latter evaluates the annual financial reports of political parties, and if it finds irregularities it is obliged to refer it to the Public Prosecutor’s Office. The Commission for Prevention of Corruption also has a jurisdiction in this matter, as it is mandated to assess potential criminal or misdemeanour liability in a case of complaint about pressure exerted on legal entities and individuals for the purpose of raising funds for a political party. A significant shortcoming of the laws, however, remains the lack of obligation for donors to political parties to report their financial contributions. As regards enforcement of the legislation, “control is not efficient and sanctions are not enforced in practice.”<sup>54</sup> In the last few years, stricter penal instruments and new criminal offenses were introduced in the *Criminal Code* in order to achieve transparency in the funding of political parties and preventing abuses. Sanctions were

also made more severe for perpetrators of criminal offenses against elections and voting, such as the criminal offence “abuse of funds for election campaign financing.” Nevertheless, in the *2011 Global Integrity Report* on Macedonia, the financing of political parties had the lowest score of all evaluate sectors, save for law enforcement.

In **Montenegro**, the parliament established an Anti-corruption Committee in 2012. It is a body for oversight of the executive but also examines issues and problems in the implementation of laws relating to the fight against corruption and organised crime and proposes amendments. Significantly, a member of opposition is chairing the Committee. It was granted the right of access to confidential data without prior permission. Five oversight hearings have been held: on the case of alleged corruption in the privatisation of the company ‘Telekom Crne Gore’, on the Prevlaka border issue with Croatia, on the 2004 murder of a journalist, on the alleged illegal activities and violation of state interests regarding the issue of electricity supply to the Aluminum Plant Podgorica, and on the fulfilment of the obligations stated in the report of the Council of Europe’s Commission against racism and intolerance of February 2012.

**Figure 33. Corruption profile of Montenegro**



Source: SELDI/CSD Corruption Monitoring System, 2014.

In **Serbia**, the applicable law allows the financing of political parties from the state budget to a considerable extent. Eligible private sources include membership fees, contributions from legal entities and natural persons, income from promotional activities by political parties, income from properties of political parties and legacies. The fact that the law recognises as legal any membership fee defined by the statute of the party has brought about at least one interesting development:

<sup>52</sup> (GRECO, 2013, p. 8).

<sup>53</sup> (Sazdevski & Ognenovska, 2012, p. 35).

<sup>54</sup> (McDevitt, 2013, p. 14).



party statutes often contain a provision prescribing that all the persons who hold public offices as a result of the membership of a party, have an obligation to pay a certain portion of their salaries to their party. Political parties are explicitly forbidden to receive funding from public enterprises. The purpose of this provision was not to protect the parties from the influence of these entities, but to protect the assets of these entities from being channelled into political parties. A potential for illicit financing is contained in the provision of services to political parties below market prices; cheaper advertising space in some media outlets can serve as an illustration. Despite the fact that the law does prescribe that the amount below the market price should be considered as a contribution, the procedure of who determines “the market terms” has not been defined.

The **Turkish** parliament has no standing code of conduct for MPs. In 2007, the parliament established a sub-committee which was supposed to establish an Ethics Committee to serve as an inspection and an adjudicating body for the ethical conduct of MPs. The sub-committee however, was not successful in implementing such an internal body and the proposal has been on standby since.

There is a legislative act (No. 3628) which bans MPs from receiving gifts above a certain value from any foreign person or institution. Cases of violation of this act are reported in the Inspection Board’s records; however, they are not open to public. For instance, in 2009 a civic initiative has requested the Prime Minister to reveal the value of gifts sent by US President Barack Obama during his visit to Turkey. The initiative failed to gain access to this information but was informed that the particular gift giving was appropriate according to international diplomatic protocol.<sup>55</sup>

The incompatibilities applicable to MPs are spelled out in the Turkish Constitution and include concurrent jobs in other public bodies, in corporations and enterprises affiliated with the state, in the executive and supervisory organs of public benefit associations, whose special resources of revenue and privileges are provided by law. The Constitution also regulates the parliamentary immunity of MPs, which includes the provision that they cannot be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This article poses many problems to the Turkish Grand National Assembly, given the number of official requests to remove such immunity of certain MPs due to alleged

corruption or infraction of rules. The assessment of the European Commission is that “the scope of parliamentary immunity in relation to corruption charges is particularly wide.”<sup>56</sup>

The legal provisions for the state budget funding of political parties in Turkey favours large parties since it sets a 7% threshold for eligibility of state aid. As a result, only three main political parties get financial aid from the state treasury. These parties’ finances are provided almost 90% from the state treasury. The financial auditing of political parties in Turkey is done by the Constitutional Court. Chairpersons of political parties are obligated to hand in an annual comprehensive budget report not only to the Constitutional Court, but also the Supreme Court of Appeals – Prosecutor’s office. However, political parties in Turkey are not obliged to publish their financial reporting. The auditing report that the Constitutional Court compiles is published in the Official Gazette but it does not include all the information. Thus, the public cannot get access to all the auditing reports of the political parties, which directly obstructs transparency of political parties in Turkey. Election financing of political parties in Turkey is also not regulated by any legislation. The annual budget report that is sent to the Constitutional Court must include information on budgeting of electoral campaigns. However, this section does not include records of sponsorships to individual party members or the candidate MPs’ expenditures during the campaign. GRECO’s third evaluation round concluded that its recommendation that annual accounts of political parties include income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, had not been implemented.<sup>57</sup>

### 3.3. NATIONAL AUDIT INSTITUTIONS

Supreme audit institutions are considered here as examples of the role general oversight bodies have in reducing corruption. The key starting consideration in understanding their anticorruption function in the SELDI countries is that – and this applies more generally, but especially in **countries of limited state budgets**

<sup>55</sup> (Bilgi Edinme Hakkı, 2010).

<sup>56</sup> (European Commission, SWD(2013) 417 final, p. 8).

<sup>57</sup> (GRECO, 2012b, p. 17).

**and early stages of institutional development** – the anticorruption effect of external national audit is achieved through a kind of “collateral benefit” to good governance rather than as a narrowly defined corruption-combatting task. Their ultimate effect is to bring about robust internal control mechanisms which then make graft difficult. To this end, their most effective tools are financial and compliance audits.<sup>58</sup> It is that “strong financial management systems, based on effective financial reporting and the disclosure of any deviations, have a dissuasive effect on those who might otherwise engage in corruption.”<sup>59</sup> In the anticorruption strategies of the SELDI countries the national audit institutions are rarely mentioned in reference to corruption prevention (the latter mostly understood as sets of awareness and training activities). It is, however, exactly in prevention that these bodies achieve their most significant and lasting anticorruption effect. The national audit institutions are especially valuable in closing the loopholes that high level, sophisticated corruption schemes exploit. While petty, everyday bribery can leave no trace, political corruption produces a number of tell-tale signs that can be used as clues about the nature of the schemes and the destination of the illegal profits.

*The role of the Audit Office is not primarily the fight against fraud and corruption, but to determine whether systems and procedures of internal control are established and well functioned in order to prevent fraud and corruption or to reduce the space for such action.*

**Audit Office of BiH**

Thus, several sets of **problems** emerge from the analysis of these institutions in the SELDI countries:

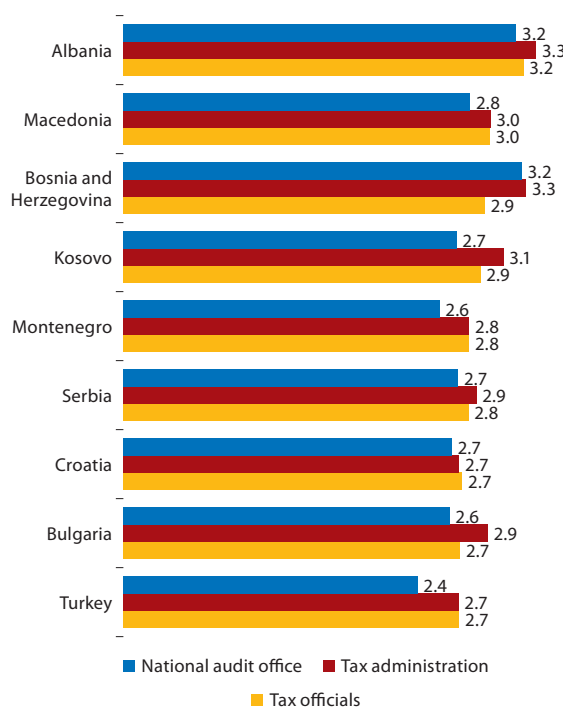
- **Capacity:** the audit institutions of SELDI countries have insufficient budgets given their wide remit. The number of auditees is quite large which risks turning audits into perfunctory checks, thus defeating their very purpose.
- **Lack of follow-up to audit reports.** National parliaments pay little attention to reports from the audit institutions and auditors have little institutional leverage to enforce their recommendations on the auditees.

<sup>58</sup> It will be some time before most of these institutions are capable of carrying out proper performance audits, as do some of their experienced counterparts in Europe.

<sup>59</sup> (Evans, 2008, p. 3).

- Discussions of the audit institutions of the SELDI countries quite often invoke the issues of “**coordination and cooperation**” with other government agencies, e.g. with the electoral commissions on overseeing political party financing. The considerations noted in the beginning of this chapter are applicable here – an appeal to more cooperation is indicative of some deficiency in policies and regulations. No amount of coordination and cooperation can make up for the lack of clarity of rules on the division of functions among government bodies or the absence of standard operating procedures in cases of cross-institutional competence.

**Figure 34. Estimates of the corruptness of national audit institutions and the tax administration and officials<sup>60</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

The Supreme State Audit of **Albania** was established early on in 1992 as a parliamentary institution; few years later it was given the power to fine auditees. It was not before 2000, however, that its model (court or collegiate) was determined. Currently, it audits the budgets of state and local government institutions and of those institutions where the state owns more than 50% of the shares. It is not untypical for its audit reports to be ignored or only given superficial attention by the

<sup>60</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”

government; “the Albanian Parliament pays limited attention to [its] reports.”<sup>61</sup> A shortcoming of the legal regulations governing the Supreme State Audit is the lack of clear criteria for a dismissal of its chairperson. In late 2012 – early 2013, proposals were made to mandate the Supreme State Audit to audit the use of EU funds in Albania, an authority which it lacked previously. After several attempts of the Supreme State Audit in addressing this issue, a draft law was presented in March 2014.

As with most other SELDI countries, the key issue at the Audit Office of **Bosnia and Herzegovina** is the follow-up on its auditing reports. Few, if any, of its recommendations are implemented and auditees seem to take little notice of these. For example, out of the 73 institutions audited in 2012, only four received a clean positive report, while all others had some remarks; there were no negative reports.<sup>62</sup> Audit reports that find wrongdoings are expected, among other things, to trigger prosecutorial investigations but this is often not the case. For example, during the past few years the Prosecution of the Brčko district worked on the investigation of 103 cases; only two audit reports resulted in filing indictments against two people.<sup>63</sup>

In **Croatia**, again typically for many SELDI countries, whenever the State Audit Office finds irregularities in the work of a certain institution, there are no penalties foreseen by the law. The only remedy is for the state audit to refer the case to the prosecution. For example, in privatization cases, State Audit has filed 178 cases to relevant prosecutors. There is no publicly available record whether any investigation was initiated by prosecutors based on the State Audit report.<sup>64</sup>

The **Macedonian** State Audit Office is the body responsible for auditing public institutions. The General State Auditor and a deputy are appointed by the parliament for a nine year term without the right to re-appointment. The legal safeguard against removal on partisan grounds is the requirement for a qualified majority in parliament in order to dismiss the State Auditor. The resources at the disposal of the Office are inadequate; the European Commission calls it “understaffed and underfunded”.<sup>65</sup> Although the range of its auditees is extensive – over 1,400

bodies – the State Audit Office is not required to audit the implementation and management of EU funds. Given its limited budget, the obligation for the Office to audit the finances of all political parties each year “restricts the independence of the State Audit Office in defining its work programme” and “may adversely affect its image of independence and objectivity, and [...] also affects the freedom to use its audit resources according to its own decisions.”<sup>66</sup> This finding is supported by the fact that on no occasion has a party been penalised for violating the law on the financing of political parties. Furthermore, “the auditors did not establish the appropriate procedures that would lead to pointing out accountability and punishing those that were responsible in the election campaign.”<sup>67</sup>

In **Montenegro**, the State Audit Institution independently decides on auditing entities; the exception are the financial reports of political parties, the obligation to audit which was introduced in 2012. The Institution looks into compliance, good management, effectiveness and efficiency of budgetary funds spending and state property management. The current audit capacity of the Institution, with around 35 positions filled, is very limited. As with the other SELDI countries, performance audit work is at a very early stage. Amendments to the law on the State Audit Institution enhancing its financial independence have yet to be adopted. Even though the law on the audit of EU funds of February 2012 provides for a separate audit authority for EU funds, it has not yet been established as a distinct body.

The Court of Accounts is the supreme auditing authority in **Turkey**. The Court’s audit mandate “covers 4,127 public and statutory funds and resources, including municipal enterprises and state economic enterprises as well as European Union funds.”<sup>68</sup> While the Court has the ability to initiate and perform its own investigations in terms of financial audits, due to several amendments and subsequent repeals of these amendments by the Constitutional Court, the Court of Accounts has not been able to conduct any comprehensive reporting in the years of 2012 and 2013. In December 2013, a decision made by the Court of Accounts has revealed that it will not be able to perform any audits in the next three years. This causes a major obstruction to its accountability and transparency.

<sup>61</sup> (SIGMA, 2013a, p. 35).

<sup>62</sup> (Ured za reviziju institucija BiH, 2013).

<sup>63</sup> (Tužilaštvo Brčko distrikta Bosne i Hercegovine, 2013).

<sup>64</sup> (Perica, 2012).

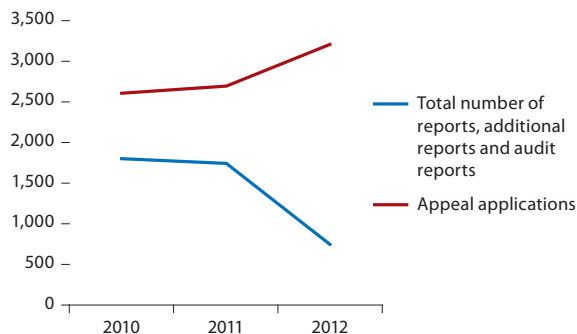
<sup>65</sup> (European Commission, SWD(2013) 413 final, p. 41).

<sup>66</sup> (SIGMA, 2013f, pp. 40-1).

<sup>67</sup> (Transparency International Macedonia, 2013, p. 53).

<sup>68</sup> (SIGMA, 2013t, p. 5).

**Figure 35. Reports, additional reports and appeal applications submitted to the prosecution by the Turkish Court of Accounts**



Source: (SIGMA, 2013t).

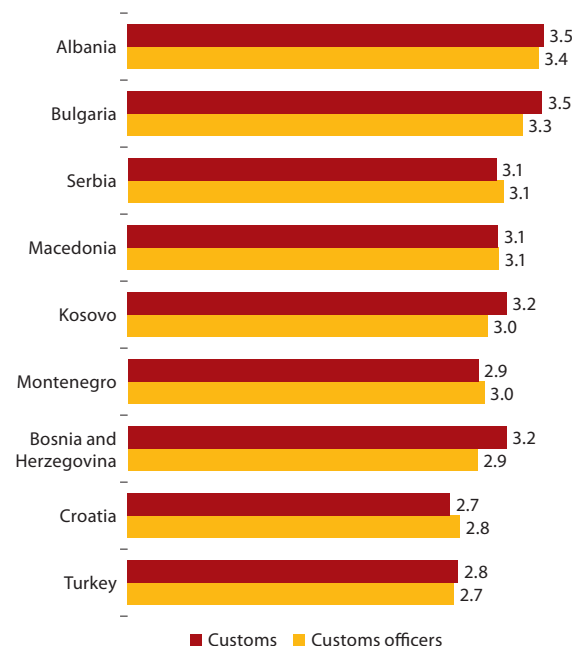
### 3.4. INTEGRITY OF THE CIVIL SERVICE

Reforms aimed at enhancing the integrity of the public administration in the SELDI countries – including an effective legislative framework and institutional environment for its transparent operation – are needed because discretionary exercise of administrative authority creates the greatest opportunities for corruption. The challenge is how to make transparency and accountability essential characteristics of the civil service while also enhancing its professionalism. Quite often, it is the lack of professionalism, poor management, obscure criteria and inadequate division of powers and responsibilities that hamper reform and undermine government authority.

The present state of the civil service corresponds to the transitional nature of the SELDI countries and the lack of adequate legal and institutional tradition. Despite some differences among the countries, the need to facilitate managerial and organisational development is common to most. The culture of “control” of the administration instead of managing its work is what obstructs both enhanced professionalism and reduced corruption.

In **Albania**, the Department of Internal Control and Anti-Corruption is a body in the Council of Ministers responsible for administrative and anticorruption control in the institutions of executive power and various ministries. It is mandated to supervise administrative investigations related to corrupt practices committed by civil servants. The Department “conducted a number of its own investigations into corruption

**Figure 36. Estimates of the corruptness of customs and customs officers<sup>69</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

complaints but produced no significant reports and referred no cases for prosecution. It was generally considered ineffective.”<sup>70</sup>

In 2013, Albania amended its civil service legislation, which marked a step forward towards depoliticisation, promotion of professionalism and meritocracy. The law came into effect in 2014, only after secondary pieces of legislation were adopted. The bylaws proposed by the Council of Ministers cover the evaluation of the work of civil servants in public administration institutions, independent institutions, and units of local government, as well as the competences for evaluation. The evaluation will be carried out on an annual basis and will be based on achievements of a set of objectives and professional behaviour of civil servants. In addition, the Civil Service Commissioner has been given more authority.

The procedures for hiring people under a civil servant status were blocked for some months until Albania obtained the status of an EU candidate country in June 2014. Since this law was considered a hot issue in

<sup>69</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”

<sup>70</sup> (U.S. Department of State, 2013a, p. 15).

Albanian politics, the government did not want to take a risk and start its adoption before the decision of EU on its candidacy status.

In **Bosnia and Herzegovina** the legal regulations on the integrity of the civil service – codes of conduct for civil servants, regulation of incompatibilities – are relatively well developed. In practice, however, “bribery, abuse of office and malpractice by civil servants are difficult to prevent, punish and eradicate, since the area is not backed by explicit local political will and sufficient prosecution of corruption.”<sup>71</sup>

In the past five years at least 267 civil servants in 33 state agencies had been appointed without going through the required civil service procedure. In all cases, appointment commissions ruled that the already employed candidates were the best qualified among all applicants.<sup>72</sup>

The Bosnian case of civil service reform provides an example of the perils of the introduction of formulaic reforms – elsewhere proven successful – without consideration of the local context. A proposed amendment to the state level civil service law in Bosnia and Herzegovina would cut in half the frequency of performance evaluation of employees in the Institutions of BiH – from every six to every three months (at the other BiH levels it is done annually). Civil servants with two consecutive negative appraisals would be fired. However, given that there is no experience in such appraisals at the state level, SIGMA’s 2013 report concludes: „The Draft *Law on Amendments to the Law on Civil Service* in the Institutions of BiH constitutes a drastic step backwards in building a professional, impartial and sustainable civil service at the State level.”<sup>73</sup>

**Croatia’s** code of ethics for civil servants establishes the institute of “ethics commissioner.” The commissioner is appointed by the head of the respective public body. Based on a report by the commissioner, the head of the respective government body may, considering the nature and severity of the violation in question, instigate proceedings for a breach of official duty or give the concerned civil servant a written warning of his/her unethical conduct and express the need to comply with the provisions of the code of ethics. According to the Ministry of Public Administration, a total of 325

<sup>71</sup> (SIGMA, 2013b, p. 8).

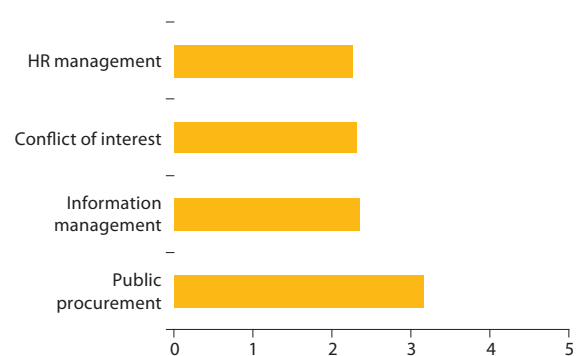
<sup>72</sup> (Center for Investigative Reporting, 2012b).

<sup>73</sup> (SIGMA, 2013b, p. 5).

complaints were filed 2012.<sup>74</sup> Given, however, that the commissioners are working in various departments and this is not their primary but an auxiliary function, it is not clear how independent they can be in their ethics work.

The appointment and employment procedures in the Croatian civil service are one of the few setbacks in terms of the control of corruption, fight against corruption, efficiency and accountability of the public administration.

**Figure 37. Performance index of selected Croatian municipalities**



Source: (Podumljak, 2012).

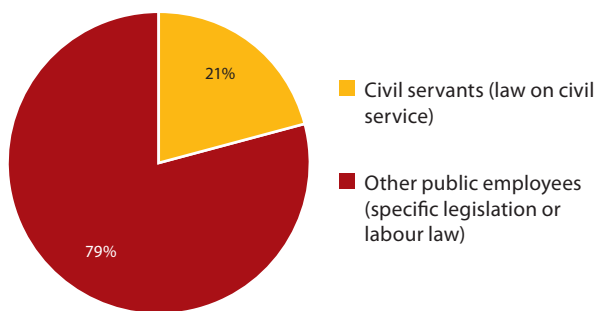
In an integrity assessment of ten Croatian municipalities (Figure 37), the average scores have indicated that Information Management, Conflict of Interest and Human Resources Management are three major obstacles in the fight against corruption and efficiency and accountability work of the public administration. On the scale from 1 to 5 (5 being the best), these three sectors have reached just little above 2, being evaluated in many subsectors as 1, meaning there are no existing measures or written procedures. The sector of specialised institutions such as USKOK, PNUSKOK and the USKOK Courts, situation is of even greater concern as the intention to control work of such institutions by the political players is even greater.

A problem specific to the SELDI countries – but also to other transition countries with large public sectors – is the **low level rent seeking from public sector workers who are not civil servants**. A large number of doctors, school principals and all kinds of employees in public agencies and enterprises are in position to extort money for services while being neither controlled nor protected by a civil service status. This can be illustrated by the cases of **Kosovo and Macedonia**. In

<sup>74</sup> (Republika Hrvatska, Ministarstvo Uprave, 2012).

the latter, the number of employees regulated by a law different than that for the civil service is four times that of civil servants.

**Figure 38. Share of civil servants and public employees in Macedonia**



Source: (SIGMA, 2013f).

In **Kosovo**, the 2010 *Civil Service Law* – which still awaits its full implementation – envisages a limited range of positions that would be considered civil servants; as a result, only 24% of public employees are civil servants. The legal definitions are, however, not very precise which “causes confusion as to whether support staff should be categorised as civil servants.”<sup>75</sup> This indeterminate state of affairs compromises the efforts to enhance the integrity of the public administration.

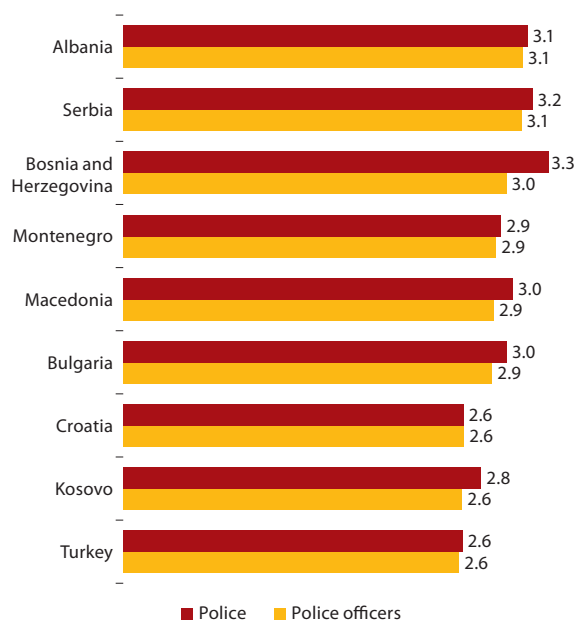
### 3.5. LAW ENFORCEMENT

The anticorruption role of law enforcement agencies in the SELDI region needs to be understood against the background of the constantly expanding range of incriminated corruption-related practices. Added to the limited capacity of other government bodies to address corruption in their own ranks, this risks channelling a disproportionate number of cases to law enforcement and the prosecution.

The anticorruption role of law enforcement agencies in Southeast Europe is further compromised by their **high vulnerability to corruption, especially by organised crime**. In one of the most comprehensive studies published on the links between organised crime and corruption in Europe, the CSD found that the “most wide-spread and systematic forms of corruption targeted by organised crime is associated

<sup>75</sup> (SIGMA, 2013k, p. 46).

**Figure 39. Estimates of the corruptness of the police and police officers<sup>76</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

with the low-ranking employees of police and public administration.”<sup>77</sup>

The police forces in most SELDI countries have units specialising in counter organised crime operations; usually, these units are also expected to work on anticorruption. Accommodating these two functions into one body is warranted mostly by the use of corruption by organised crime but also by the need for special investigative methods in uncovering sophisticated corruption schemes – expertise that is usually vested in the anti-organised crime departments. These units are, however, typically embedded in the larger police force or the ministries of interior which deprive them of the institutional autonomy that is required for a specialised anticorruption institution.

In **Bulgaria**, despite the fact that the police enjoy stronger confidence than institutions like the parliament, the prosecution and the courts, the public considers corruption to be widespread in its ranks.

“Although in the last few years, especially after the country joined the EU in 2007, important institutional and legal changes have been introduced limiting police

<sup>76</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”

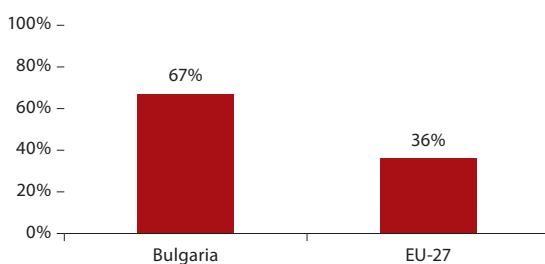
<sup>77</sup> (Center for the Study of Democracy, 2010b, p. 13).

### Box 3. How organised crime subverts law enforcement

- Young professionals are placed in relevant security sector jobs, or special service officials and volunteers are hired to provide early information for a fixed monthly remuneration.
- Security officials maintain contacts with crime bosses for the supposed purpose of using them as informers. In reality, such relations grant criminals the latitude to sustain their shady activities.
- Some security officials investigate sources and channels of leakage among corrupt inferiors linked with smugglers only in order to capture a share of the gains or to prevent such officers from further revealing discrediting facts.
- Election-time fundraising from criminal sources in exchange for immunity from investigations is particularly common.
- Certain private companies provide information to the special services, which, in exchange, help them monopolise the respective business sectors.
- Leading security sector positions are occupied by inexperienced political and economic appointees. Reshuffling at the highest levels is often followed by staff and organisational restructuring involving expert officers and key unit directors. Often professionals of undisputed expertise are dismissed to prevent them from interfering in the threefold relationship between the security sector, political corruption and organised crime.
- The unofficial privatisation of official information has become a profitable business for individual security officials. Information leaks to the media, on the other hand, are a means to sustain smear campaigns directed by corrupt officials in certain parties or by corporate interests. The public is often unaware that abuse of such information by those who hold it turns into racketeering of political and other public figures.

Source: (Center for the Study of Democracy, 2009, pp. 52-53).

Figure 40. Estimates of police and customs corruption: Bulgaria compared to EU-27<sup>78</sup>



Source: (TNS Opinion & Social, February 2014).

misconduct at medium and senior levels, conflicts of interests and corruption on both local and national levels of the police continue to present a serious challenge.<sup>79</sup> Dealing with internal corruption in the Ministry of Interior are the Inspectorate and the Internal Security Directorate. The latter focuses mainly on police abuses and is directly subordinated to the Minister of Interior. The directorate has much wider powers than its predecessor (before 2008) and in this respect

<sup>78</sup> Responses to the questions: In your country, do you think that the giving and taking of bribes and the abuse of power for personal gain are widespread among the following?

<sup>79</sup> (Center for the Study of Democracy, 2013b, p. 99).

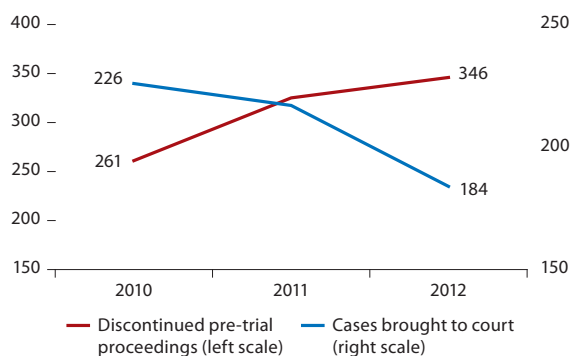
is similar to internal security structures in the US and in other EU countries. It has some functions similar to the Inspectorate: undertaking screening inspections, participating in the assessment of corruption risks, participation in disciplinary proceedings, etc. The increased capacity of the Internal Security Directorate is evident in the statistics about its inspections. In 2011, the Directorate succeeded to screen 728 such cases: in 475 complaints overt methods of verification were used, 39.4% of which turned out to be substantiated. In 305 cases covert methods were applied and in 143 of them initial suspicions were confirmed. This shows that when covert operational methods are used the percentage of uncovered misconduct is much higher although the verification process takes longer.<sup>80</sup>

The declining effectiveness of law enforcement is evident in the rising number of discontinued pre-trial proceedings against the background of decreasing number of investigations brought to court (Figure 41).

Statistics on the sentencing of corruption-related crimes reveal a collapse in the number of prosecuted cases of more sophisticated forms of corruption in the

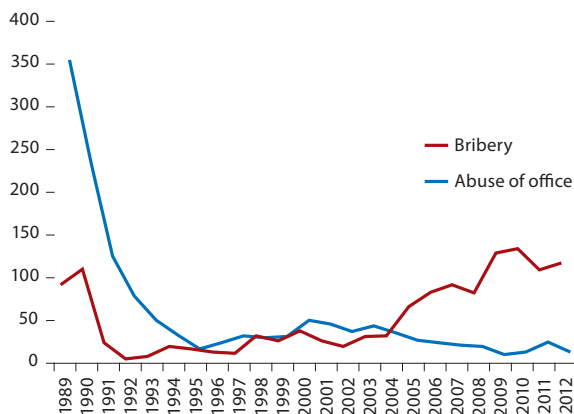
<sup>80</sup> (Center for the Study of Democracy, 2013b, p. 105).

**Figure 41. Discontinued proceedings vs new cases in Bulgaria**



Source: Prosecutor's Office of Bulgaria.

**Figure 42. Number of persons sentenced for bribery and abuse of office in Bulgaria**



Source: National Statistical Institute.

early 1990s, and an increase of the number of persons convicted for bribery since the mid-2000s.

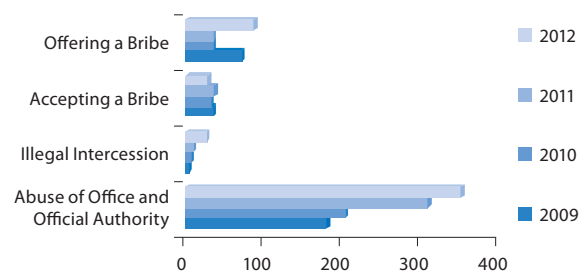
Instructive in this context is the **Croatian** experience with its Bureau for Combating Corruption and Organized Crime (better known under its Croatian abbreviation USKOK),<sup>81</sup> an institution much discussed in the literature. It is its singular status within the criminal justice system, in addition to its specialisation in corruption, that is of particular interest. USKOK is a body of the State Prosecutor's Office and its director is at the level of deputy prosecutor general. It is governed by a special law that specifies the offences – a fairly broad range – against which USKOK is to act. Other government bodies that come into evidence that an offence within this range might have been committed are obligated to report to the Bureau and provide

<sup>81</sup> Not to be confused with PN-USKOK, which is the corresponding body within the national police service and established much later. The corresponding judicial institution – the USKOK courts – are discussed in the next chapter.

it with extended assistance by delivering required files and data during its investigations. While being a prosecutorial not a police body, it is allowed to use special investigative methods, including undercover operations and surveillance.

The case of USKOK is a best practice in the way its institutional capacity – budget, personnel, professionalism – and its legal authority have grown in parallel. The US Department of State Report 2013 finds that it “operated effectively and independently and was sufficiently resourced”,<sup>82</sup> and the European Commission points to its “good track record of investigations into allegations of high-level corruption.”<sup>83</sup> In 2012, USKOK had a 95% conviction rate, “successfully prosecuting a former prime minister, a former vice president, a former top level general, and other high level officials.”<sup>84</sup>

**Figure 43. Annual numbers of corruption-related indictments, Croatia**



Source: Croatian Bureau of Statistics.

The experience of **Kosovo** is somewhat different. Its Special Prosecution Office has an Anti-Corruption Task Force composed of local and international EULEX<sup>85</sup> prosecutors, who are supported by police officers and financial experts. The Task Force with the Kosovo Ministry of European Integration finds that key weakness of the Task Force is that no prior research was made to assess the need of establishing a new anticorruption mechanism, the weakness of non-coordination and non-information between local and international prosecutors, since EULEX prosecutors deal with high profile corruption cases, while local prosecutors only deal with lower-ranking profile cases. Thus, the “establishment of the task force is not justified.”<sup>86</sup>

<sup>82</sup> (U.S. Department of State, 2013r, p. 14).

<sup>83</sup> (European Commission, COM(2014) 38 final, p. 2).

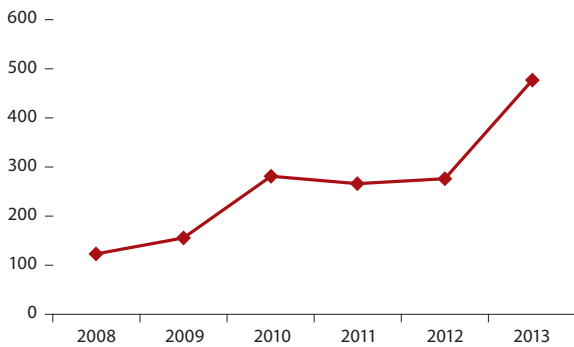
<sup>84</sup> (KIPRED, 2014, p. 13).

<sup>85</sup> The EU rule of law mission in Kosovo.

<sup>86</sup> (Task Force on European Integration, 2012, p. 20).



**Figure 44. Number of unresolved corruption-related criminal charges in Kosovo**



Source: (KIPRED, 2014).

The perils of placing high expectations in such specialised units are evident in the arrest and conviction of the Head of the Anticorruption Task Force on charges of corruption.<sup>87</sup> Further, the reliance on police officers from the interior ministry could compromise the independence of this prosecutorial body. KIPRED goes as far as suggesting that the Task Force should be abolished in order to “strengthen the overall mandate of [the Special Prosecution Office] which should have the leading role on anticorruption and fighting organized crime.”<sup>88</sup>

### 3.6. RECOMMENDATIONS

Anticorruption institutions in the Southeast European countries require the following in order to make their interventions effective:

1. Introduce a **feedback mechanism for the enforcement of anticorruption policies**. The mechanism could be based on innovative new instruments made more readily available in recent years, such as the *Integrated Anticorruption Enforcement Monitoring Toolkit* developed by the Center for the Study of Democracy and the University of Trento. It allows policy makers to assess corruption risks in a given government institution and the effect of the corresponding anticorruption policy, identifying the highest impact solutions.
2. With respect to the risk of corruption in law enforcement from organised crime:
  - 2.1. Provide **adequate resources and sufficient**

**powers of anticorruption departments** by establishing local level structures, allowing them full access to operational information and enhancing their effectiveness by introducing a method for distinguishing between minor and serious corruption cases.

- 2.2. **Introduce internal monitoring mechanisms** in order to **evaluate corruption pressures**. Internal monitoring could be designed and periodically conducted to better understand the threat of corruption in law enforcement. This would identify vulnerable departments, positions or regions where there are heightened risks from corruption.
3. The **institutional capacity** of the relevant government bodies – particularly the specialised anticorruption agencies and oversight agencies such as the national audit institutions – including their budgets, facilities and personnel need to be aligned with the wide remit these institutions are given. Alternatively, they should design more narrow annual or mid-term programmes, which prioritise interventions.
4. **National audit institutions should also have their institutional leverage strengthened**, including the powers to impose harsher sanctions. Both auditees and national parliaments should be obligated to follow up on the reports of these institutions. The national audit institutions should also be mandated to audit the management of EU funds where these are administered by national authorities. As performance audit work is at a very early stage, they should develop their capacity to carry out more of these.
5. Further measures are needed to ensure that **recruitment to the civil service is merit based** and not dependent on political party affiliation.
6. The **anticorruption work needs to be shared more evenly among government bodies**. Expanding the range of statutory incrimination should be balanced by enhanced capacity in all public bodies to address corruption in their ranks through administrative tools instead of “buck-passing” responsibility to police and prosecution. General public administration bodies should act as gatekeepers of the criminal justice system by dealing with as many corruption cases as their administrative powers allow them. At the very least, this entails the creation of effective complaints management mechanisms
7. All SELDI countries have **anti-money laundering/ financial intelligence agencies** whose role, however, in anticorruption is limited. Given that the capacity to transform illegal proceeds into political clout is of

<sup>87</sup> EULEX, Summary of Justice Proceedings in May 2013.

<sup>88</sup> (KIPRED, 2014, p. 21).

crucial significance for high level corruption, these institutions can and should acquire a more central role in investigating political corruption.

8. The **forfeiture of illegally obtained assets in corruption cases** is an anticorruption tool the application of which should be expanded. While

special care needs to be applied to balance the rights of the accused with the interests of public good – especially in an environment of often corrupt public administrations – wealth confiscation following criminal convictions is an important deterrence which is still underutilised in SEE.





In the post-communist environment of some of the SELDI countries, initial constitutional arrangements tried to ensure that the judicial branch occupied a proper balancing position in the division of powers. The judiciary was initially heavily influenced by government and all the early efforts were intended to make it as independent as possible. The basis for this autonomy was thought to be the creation of a self-governing mechanism through elections among magistrates.

The initial **strong emphasis on independence has not been balanced by equally strong requirements for public accountability**. For independence from executive interference to have become the basis of profound reform it needed a critical mass of genuinely reformist electoral body – which was not in existence. Without such body to drive the demand for openness and integrity, the newly created institutions reflected the general situation among magistrates. Even radical measures did not produce the intended effect: in 2009 – 2010, Kosovo and Serbia, for example, attempted a mass evaluation and reappointment procedure for all magistrates, with mixed results at best, and possibly with the “solution being worse than the problem.”<sup>89</sup>

Thus, an overemphasis on formal electoral independence became a typical example of the cure turning into the disease – instead of ensuring a balance to the power of the executive, self-governance perpetuated clientele-type relations between magistrates and special interests. A decade or two later, **the judicial branch had been as effectively captured as the other branches**. Once emancipated from both public scrutiny and the political factors that brought about such arrangements, there are today **no checks on the rent-seeking by magistrates**.

The capacity of the judiciary in the SELDI countries to enforce anticorruption legislation, especially as regards political corruption, has been undermined by a number of problems that have exerted their influence cumulatively:

- Constitutional issues, primarily related to **restoring the balance between independence and accountability**;

- The complexity of the criminal prosecution of perpetrators of criminal offenses of corruption, especially at the political level;
- Overall insufficient capacity and the related issues of low professionalism, excessive workload and resulting backlog of cases, case management, facilities, etc.

Although they do not enjoy as much room in the public attention as elected politicians, magistrates hold the key to proper function of any other mechanism of good governance – justice. In the societies of the SELDI countries where corruption has penetrated most social and public institutions, the judiciary is no exception. The judicial branch has been plagued by a number of problems – excessive workload, low professionalism, poor facilities – but corruption is the one that truly compromises the role of the judiciary in an open society. Corruption has this effect because it undermines the key prerequisite for the administration of justice – public trust. While other institutions of government can still perform some of its services in an environment of low trust, the effectiveness of courts is diminished with every drop in civic confidence. Thus, the effectiveness of the administration of justice in Southeast Europe should be assessed not only by the statistics on the enforcement of anticorruption criminal legislation, but also through the broader **trust the public has in the justice system**. The measurement of this trust needs to accompany the evaluation of judicial performance in the region.<sup>90</sup>

The judiciaries in the SELDI countries have been at a disadvantage compared to the other branches of power as they were not as engaged with the most powerful factor driving good governance in the last two decades – the process of integration with the EU. Magistrates have been largely side-lined in this process. Although the judiciaries were both criticised by the European Commission and provided with various kinds of assistance, they lacked the kind constructive engagement with the EU institutions that benefited the executive government.

An important finding of this SELDI round that is relevant to the judicial role in anticorruption is the

<sup>89</sup> (Romanian Center for European Policies, 2011, pp. 186-191).

<sup>90</sup> A set of indicators for measuring trust in the criminal justice system has been developed in (Center for the Study of Democracy, 2011b).

absence of feedback mechanisms that allow the public and policy makers to evaluate both the integrity of the judiciary and its effectiveness in applying criminal anticorruption laws. In none of the SEE countries is there a reliable, systematic and comprehensive mechanism for collecting, processing and making publicly available statistics on the work of the courts and the prosecution, in particular on corruption cases.

## 4.1. GOVERNANCE OF THE JUDICIARY

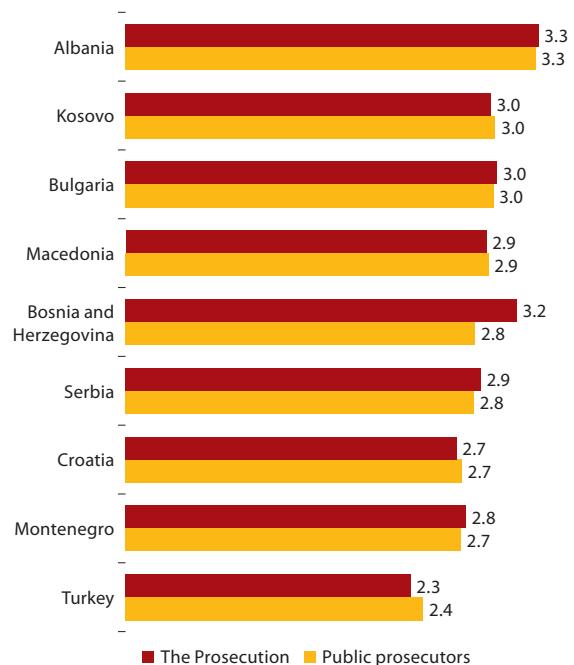
Although it has been around two decades since the first constitutional changes in the post-communist countries in Southeast Europe established independent judiciaries, the governance modalities of this branch continue to be unsettled, not least because of the effects of corruption. All countries in the region have chosen to establish autonomous institutions – “Councils” – that serve as self-governing bodies for the judiciary. As mentioned, the initial move was mostly away from the influence of elected politicians and “the procedure for appointment, assignment, remuneration, and removal of magistrates was seen as a significant prerequisite for their independence.”<sup>91</sup> Among the chief justifications and assumptions of the newly acquired constitutional autonomy was that it would be a tool against high-level corruption and state capture. Not only did these hopes not materialise, but the **judiciaries now struggle with the illegal capture** of their own self-governing mechanism.

Among the key issues that continue to plague judicial self-governance is the **composition of the Councils**. In general, some of their members are elected by parliaments, while the rest are chosen among magistrates. Two problems remain, however: which of these quotas would have a majority and whether the executive should hold a position on the Councils. For a government minister – usually of justice – to be an *ex officio* member of the self-governing body of the judiciary, typically as non-voting chair, is a controversial arrangement but still exists in some SELDI countries. In its Opinion No.10 (2007) on the “Council for the Judiciary at the service of society” the European Council for European Judges stresses that members of the Judicial Council should not be active politicians, in particular members of the government. The risks of

<sup>91</sup> (Center for the Study of Democracy; Center for Investigative Reporting, 2012, p. 35).

such an arrangement have become evident in the light of mass dismissal of judges in Turkey.

**Figure 45. Estimates of the corruptness of the prosecution and public prosecutors<sup>92</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

Another aspect of judicial governance in the SELDI area is the lack of separation between the prosecution and the courts. In some of the countries, they are both considered part of the judicial branch of power and thus both judges and prosecutors are represented in the judicial governing body. This issue is unjustifiably neglected as a source of bad practices, although it should be evident that especially with regard to disciplinary procedures, mutual control creates risk for abuses.

In brief, as would be evident from the following evaluation of the individual countries, judiciaries in the Southeast Europe have very similar governance arrangements and problems.

In **Albania**, the High Council of Justice apart from being responsible for the appointment, transfer, removal, and education of magistrates, covers also ethical and professional evaluation, as well as controlling and monitoring the activities of the judges of the courts of first instance and courts of appeal. More precisely, the Inspectorate of the Council is

<sup>92</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree”.

**Figure 46. The map of unholy alliances: separation of judicial and prosecutorial governance**



responsible for assessing and verifying complaints against the judiciary, performing disciplinary checks on the judges and evaluating them morally and professionally. There is a second Inspectorate – at the Ministry of Justice – and there is considerable debate on whether the competences and responsibilities of the two inspectorates overlap. Duplication is said to have brought ambiguity in specifying what distinct tasks each institution is supposed to carry out and consequently to have brought about ambiguous and uncoordinated monitoring of the judiciary. This has been partially overcome by memoranda of understanding between the two bodies with the assistance of EURALIUS, the European Assistance Mission to the Albanian Justice System.

“The judiciary is the weakest link in Albania’s fragile system of separation of powers. ... The effective independence of the judiciary is hampered by political nominations and other forms of political interference. With the election of president from the majority party, [...] appointments are even more open to political influence. High court and constitutional court members, as well as the general prosecutor, are under more political pressure as all presidential appointments need the consent of the parliamentary majority.”<sup>93</sup> The need for approval by both Parliament and President for a nomination of any member of the High Court, Constitutional Court, or General Prosecutor has led to many political and institutional conflicts and impasse. Furthermore, although the legal provisions for the transparency in the appointment and evaluation of the judges on merit-based criteria exist, the lack of public information about the process creates an environment in which such inappropriate influences become possible.

<sup>93</sup> (Bertelsmann Stiftung, 2014).

The state level institution governing the judiciary of **Bosnia and Herzegovina** is the High Judicial and Prosecutorial Council, an institution with jurisdiction across the whole country. In addition to appointing judges, court presidents and prosecutors at all levels, it is also the institution responsible for upholding the integrity of the judiciary, including its professionalism and impartiality. As in some of the other SELDI countries (e.g. Bulgaria), the Council members are elected from among judges and prosecutors, as well as (this is specific to Bosnia and Herzegovina) from the entities of the country. Members are required to be non-partisan; they have immunity covering their decisions made in performing their official duties. The Council has a Disciplinary Prosecutor who deals with complaints against judges or prosecutors.

„A commonly cited reason behind the moderate slow-paced progress in reforming the judicial system in BiH is the complex structure of the judiciary, with no single budget.”<sup>94</sup> The existence of almost four autonomous judicial systems, weak coordination in the fight against corruption at the state level, slow execution of the court decisions, all undermine the anticorruption effectiveness of the judiciary.

In **Bulgaria**, the Supreme Judicial Council appoints, promotes, demotes, transfers and removes from office all magistrates. The election of this collective body as well as the election of the heads of the higher courts and the Prosecutor General is subject to attempts of behind the scenes negotiations among political power brokers.

“The performance of the [...] Supreme Judicial Council and Prosecutor General [...] failed to meet the expectations for improvement in the fight against corruption and organised crime. The striving of politicians, business and financial groups to control the appointments of senior magistrates, behind-the-scenes political arrangements, and attempts to influence judicial decisions are still a deep-rooted practice.”<sup>95</sup>

Doubts about the legitimacy of the Council were raised from the moment of election of its members from the judicial chapter and, even more so, the parliamentary chapter. Despite the recommendations of the civil society organisations involved in judicial reform, including professional associations of magistrates, for a direct election of the judicial quota based on the “one

<sup>94</sup> (Center for the Study of Democracy; Center for Investigative Reporting, 2012, p. 34).

<sup>95</sup> (Center for the Study of Democracy, 2013(43)).

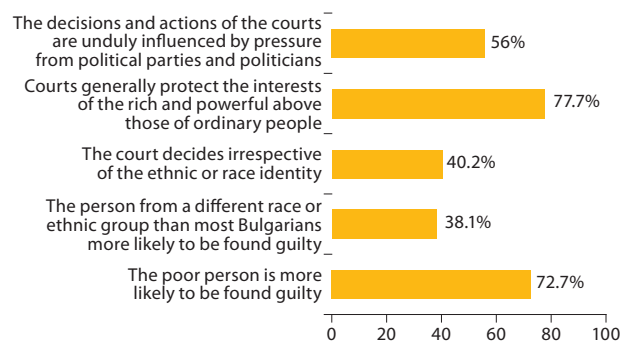
magistrate – one vote” rule and the use of electronic voting, it was never implemented and the latest election was marked by non-transparent selection of delegates heavily influenced by the administrative heads of the respective courts and prosecutor’s offices. The election of the parliamentary quota was carried out after the elections of the other quotas, thus exacerbating the suspicion that positions are negotiated behind the scenes among parliamentary parties. The vetting and hearings of the nominated candidates were also formal and did not fulfil their goal to ensure openness and public participation in the procedure.

The inaction of the Council on the allegations accompanying the two unsuccessful procedures for the election by parliament of a constitutional justice cast significant doubts on the work of the Council and especially on its standing committees directly responsible for countering corruption.

During the latest elections to the Council, the voting by representatives of the judiciary in the Council has been marked by non-transparent selection of delegates heavily influenced by the administrative heads of the respective courts and prosecutor’s offices. This has been especially visible in the election of the prosecutors’ quota, where a large number of the delegates, and most successful candidates, were among the administrative heads of various offices. Legislative provisions aimed at enhancing the transparency of the election of the parliamentary quota were introduced, including an option for a scrutiny of candidates by scholars and civil society, but parliamentarians were put under no obligation to consider this external input. Moreover, an exclusion clause was introduced in the *Law on the Judiciary*, regarding “facts from the private life of persons,” which could easily be misused to disregard corruption-related queries. As a result, the hearings of the nominated candidates were formal and did not fulfil their goal to ensure openness and public participation in the procedure.

At the beginning of 2014, the Council received another series of criticisms after the disciplinary dismissal of one of its members, a former high ranking prosecutor. The dismissal led to doubts about the very legality of the Council’s actions, since the magistrate was removed by a lesser number of votes than that required by law, following the leak of wiretapped conversations, supposed by law to be destroyed after not being used for the criminal case they were made under and certainly not for grounding the disciplining the magistrates involved.

**Figure 47. Assessment by the public of the fairness of courts in Bulgaria**



Source: (Center for the Study of Democracy, 2011b).

Doubts as to the ethics enforcement capacity of the Council and its ability to oversee the work of the judiciary through its Inspectorate continued in relation to the institutional stalemate as regards the so far failed election by parliament of a Chief Inspector of the Inspectorate of the Council.

Moreover, despite some formal steps being taken (the Committee on Proposals and Evaluation of Judges, Prosecutors and Investigative Magistrates being divided into a sub-committee on judges and a sub-committee on prosecutors and investigative magistrates), judges and prosecutors are still being governed by the same body – the Supreme Judicial Council. The risk of abuses of this arrangement was evident in case in March 2014 when a member of the prosecutorial quota allegedly proposed a harsh disciplinary penalty for a judge in a highly controversial disciplinary proceeding.

The judicial governance body of **Croatia** is the State Judicial Council. The Council regulates the conduct of judges, their appointment and career advancement, and appointment of the presidents of the courts, except for the Supreme Court. The State Judicial Council consists of seven judges, two university professors of law and two members of parliament, nominated and elected by the parliament for four-year terms, and serving no more than two terms. Unlike Bosnia and Herzegovina and Bulgaria, there is a separate institution of governance for the prosecution, the structure and election procedure of which mirrors that of the judiciary. The composition of the State Attorney Council is prescribed by the Constitution of the Republic of Croatia. In accordance with the current State Attorney’s Office Act, the State Attorney Council has 11 members elected in the following manner. Seven members of the Council are elected from among deputy state attorneys, two members from among members of the Croatian Parliament and

two members from among university professors of law. The bodies conducting the election of members of the State Attorney Council from the ranks of Deputy State Attorneys are the Commission for the Election of Members of the Council, candidature committees and electoral committees. Candidature committees collect candidates for members of the Council and conduct the candidature procedure. Electoral committees directly conduct the voting of State Attorneys and State Attorney's Deputies at State Attorney's Offices, and ensure the regularity and confidentiality of voting. Members of the Council from the ranks of university professors of law, on the proposal of faculty councils, are elected by all the professors of law faculties in the Republic of Croatia. Two members of the Council are appointed by the Croatian Parliament from the ranks of its members, of whom one is from the opposition.

Croatia's political history related to the break-up of the former Yugoslavia has influenced the governance of its judicial branch. "Judges appointed during and after the independence war of the 1990s were often chosen on the basis of adherence to official political ideology, which at that time was overwhelmingly ethno-nationalist in character. The legacy of this bias is still embedded in the system, and while overt ethno-nationalist bias has decreased in recent years, significant political will and judicial expertise will be required to address the decades of legal decisions based on such considerations."<sup>96</sup>

The functions of the **Kosovo** Judicial Council include procedures for recruitment, appointment, re-appointment, transfer, discipline, evaluation, promotion and judges and lay judges, as well as in management and administration of courts, and in the development and oversight of the judicial budget. The majority of its members are elected by parliament, while five members elected directly from among the judiciary; Kosovo's emergence as a state has determined a special feature of its judicial governance – the Council also includes two international members (EULEX judges). According to the Ministry of European Integration, the election of the Council does not meet the international standards, as the majority of members should be elected by their peers within the judiciary, thus conforming to the Venice Commission position.<sup>97</sup> The Ministry also states that court chairpersons should not sit on the Council, and in case he/she is elected, they should decide which function they want to keep.<sup>98</sup>

<sup>96</sup> (Freedom House, 2013, pp. 187-8).

<sup>97</sup> CDL- AD(2007)028.

<sup>98</sup> (Ministry of European Integration of Kosovo, 2012a).

An Office for Legal and Prosecutorial Evaluation and Verification is responsible for fair implementation process of the evaluation and verification of candidates for magistrates, including an extended evaluation and verification process of information provided by candidates and other sources, technical knowledge, skills, performance, background, financial aspect, in order to facilitate the work of Evaluation Commissions and make merit-based appointments. The Office investigates only during the application of candidates; however, it does not have the responsibility of investigating judges and prosecutors after their appointment. There have been proposals to increase its permanent competences, in order for its investigators to make continual investigations of judges even after their appointment to judicial positions.

An appointment and re-appointment process of judges and prosecutors started in February 2009 while lacking some basic laws. A number of problems arose from the fact that candidates that did not pass the test were allowed to do their job until the completion of re-appointment process; as a result, a significant number of magistrates were not re-appointed.<sup>99</sup>

The Judicial Council of **Macedonia** is the governing body intended to ensure the independence of the judiciary, composed of 15 members with a mandate of 6 years with a possibility of only one re-election. The composition is similar to the other countries (most members elected from among judges, some by parliament and couple of *ex officio* members – e.g. the non-voting Minister of Justice); the difference in Macedonia is that there is a quota for ethnic minorities ("communities that do not constitute a majority in the Republic of Macedonia"); a similar arrangement is in place in Kosovo. Despite fairly elaborate and well-designed procedures, however, "political involvement in the election process for judges is visible. The possibility of electing judges who did not succeed in the Academy for training of judges and prosecutors, is seen by the public as a way to injecting political influence in the election process of judges."<sup>100</sup>

The Council appoints and dismisses judges and jury (lay) judges; determines the end of the juridical function; appoints and dismiss presidents of courts; follows and evaluates the work of judges; decides for removal of immunity of judges and proposes two members of the Constitutional Court from the ranks of judges. Magistrates enjoy protection against removal, immunity

<sup>99</sup> (Kosovo Law Institute and Forum for Civic Initiatives, 2011).

<sup>100</sup> (Romanian Center for European Policies, 2011, p. 158).



from criminal charges for decisions in verdicts and they may not be transferred to another court without their consent; appointments are competitive. Dismissal grounds (“cancellation of the judicial function”) include (in addition to the usual circumstances – retirement, etc.) sentencing to at least 6 months of prison for criminal offence. The Judicial Council may remove a judge for a heavy disciplinary offence and for unprofessional and non-ethical conduct (which includes poor management of judicial proceedings, delays in verdicts, etc.).

Governance of the prosecution is independent from that of the judiciary. The Public Prosecutor of Macedonia is appointed and removed by parliament while the other prosecutors are elected by the Council of Public Prosecutors without limitation of the mandate. The Minister of Justice is no longer an *ex officio* member of prosecutorial council, a change that should be even more appropriate for the judicial council (a recommendation to that effect is contained in the latest GRECO evaluation).<sup>101</sup> There is an office of the prosecutor for organised crime and corruption established in 2008. The latter covers the whole country and is naturally linked with the department for organised crime and corruption from the Basic Court Skopje1. The head of this office is responsible directly to the Public Prosecutor of Macedonia.

**Montenegro** amended its Constitution in 2013 which introduced some changes in the procedure for the appointment of judges. First, political influence on the appointment of high-level judicial officials was somewhat reduced through merit-based procedures which are also more transparent. Reforms were made in the appointment and dismissal of the President of the Supreme Court (not to be appointed by parliament any longer but by the Judicial Council), the composition and competences of the Judicial Council, the election and dismissal of judges of the Constitutional Court as well as the appointment and dismissal of the Supreme State Prosecutor and prosecutors. These amendments are expected to bring about positive changes in the judicial system as a whole.

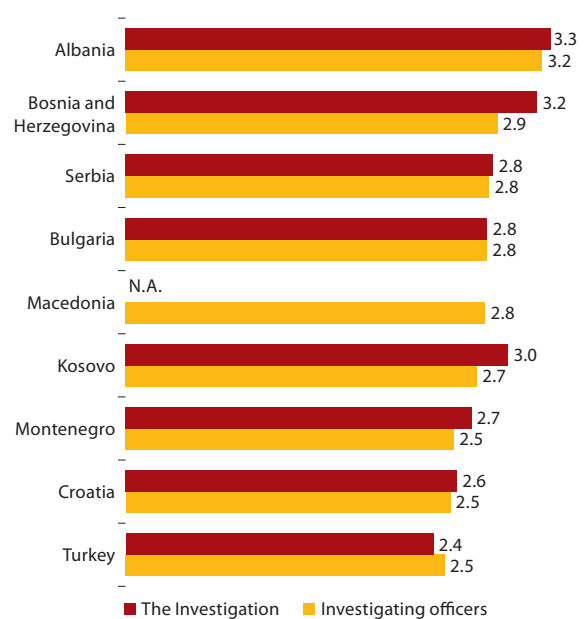
The composition of the Judicial Council was also amended. The President of the Supreme Court is now a member of the Council, and the president of the Council is now to be decided amongst the members of the Council, and could not be a judge or minister of justice. There are still four judges appointed or dismissed by the Conference of the Judges, but now the Conference must ensure proportional presence

<sup>101</sup> (GRECO, 2013, p. 24).

of courts and judges. Another four members of the Council are to be appointed or dismissed by parliament, upon the proposal of its competent body and after a publicly announced invitation. Finally, the minister with the competence in judicial affairs should take place as the ninth member of the Council but may not be its president. Also, the Constitution now provides that all judges and presidents of other courts in Montenegro not mentioned above shall be appointed or dismissed by the Judicial Council.

Thus, on the one hand, having in mind this re-arrangement of the structure of the Judicial Council, it could be expected that appointments and dismissals of judges would be more professionalised and less politicised. On the other, the selection criteria for the appointment of judges are vague and there are no clearly-defined indicators that could help determine whether a certain candidate has been effective and accountable in performance of his/her judicial duty. The criteria for the promotion of judges can also be subject to arbitrary decisions, since there are no clear indicators for each criteria (for example, one of the criteria is relationship with the colleagues and attitude towards citizens, or vocational training, without stating what kind of training would be preferred, etc.).

**Figure 48. Estimates by the public of the corruptness of the investigation and investigating officers<sup>102</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>102</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree.”

**Serbia's** judiciary is governed by two bodies: the High Judicial Council and the State Prosecutorial Council, each having eleven members – three *ex officio* members and the rest are nominated by various institutions and elected by the National Assembly (although it is not obliged to elect the nominated candidates, nor is there a stipulated period of time within which to make the election). The process of nomination is not particularly transparent because information on candidates is not published. A process of reforming the corpus of judges in Serbia began in 2009, when the Judicial Council assessed all magistrates. As a result, a quarter of the judges lost their jobs; the decision of the Council was later contested and the Constitutional Court overturned the Council's decision and ordered that all judges and prosecutors who had appealed their non-reappointment be reinstated. A significant number of these magistrates were prevented from voting in the election of the High Judicial Council (as they were dismissed at the time of election). "The fact that such a large number of judges and prosecutors did not participate in the elections clearly shows that the [two bodies] were not elected by all judges and prosecutors, which casts doubt on the legitimacy of both bodies."<sup>103</sup>

Evaluation of the performance of the judges is done by judges of the higher courts. However, criteria for the evaluation are vague, as the regulation on the criteria has still not been adopted. There is no legal ground for the evaluation of the judges' performance other than on professional grounds. The promotion of the judges to higher level courts is decided by the High Judicial Council in a manner that is not transparent to the public. While formally "a good system of accountability of judges was established," it "did not work because of the delays in the establishing of disciplinary authorities and the failure to adopt criteria and standards, for evaluating the first time elected judges, and the criteria for regular assessment, which would apply in assessing the competence of judges. In such circumstances processing corruption was slow and inefficient."<sup>104</sup>

As elsewhere in the SELDI countries, in **Turkey** magistrates are governed by a constitutionally independent body – the High Council of Judges and Prosecutors. It is the authority responsible for their appointment, promotion and removal. Following the

referendum of 2010, the composition of the High Council of Judges and Prosecutors has changed. Currently, the independence of this Council from the executive branch is problematic. The President of the Council is the Minister of Justice and the Undersecretary of the Ministry of Justice is an *ex officio* member of the Council. The Minister has powers such as determining the agenda, the appointment of the Secretary General among three candidates selected by the General Assembly and he/she takes the ultimate decision whether or not an investigation proposed by the Council shall be opened or not. This creates a risk of interference by the executive in the judiciary which could harm the independence of the tenure of magistrates by putting them under political pressure.

From the establishment of the Republic in Turkey, the judiciary has been a tool for political control of society, rather than an independent branch expected to balance executive power. It has been claimed that a group with a certain political and social agenda – the "parallel state" as the AKP government names it – has, with a clear majority, established itself within the judiciary after the changes to the structure of the High Council. Following the December 2013 corruption investigation against the members of the government, more than 2,500 judges and prosecutors have been replaced.<sup>105</sup> It is possible to read these developments as an attempt by the government to eliminate especially the high ranking officials within the judicial system belonging to this alleged group. However, it lays bare the actual core problem within the judiciary in Turkey: the current judicial structure does not consider the administration of justice for individuals and communities as a priority.

The procedure for the selection of national level judges is defined in the *Law on Judges and Prosecutors*. The candidates have to take a written computerised exam measuring general skills, general culture and knowledge on legal field subjects. Those who succeed have to take an oral examination. The Interview Board consists of seven members including the Undersecretary of the Ministry of Justice as the president of the Board, Head of the Inspection Board, Ministry of Justice Director General for Penal Affairs, Ministry of Justice Director General for Civil Affairs and Ministry of Justice Director General for Personnel Affairs and two members who are selected by the Executive Board of the Justice Academy from among its members; thus the majority of the Board are appointed by the Ministry of Justice.

<sup>103</sup> (Government of the Republic of Serbia, Anti-Corruption Council, 2014, p. 2).

<sup>104</sup> (Transparency Serbia, 2013, p. 20).

<sup>105</sup> (Hürriyet Daily News, 2014a).

## 4.2. INTEGRITY AND ACCOUNTABILITY

The **hypertrophied autonomy of the judiciary in Southeast Europe at the expense of its accountability** was reinforced by the nature of the judicial profession whose authority is founded on its judgments being unquestionable. While politicians elected by popular vote are not entirely averse to public scrutiny (since it is the price for popularity), the judicial office was thought to require a much lower public profile. The risk, however, that comes with being a **closed, self-administered branch of power** is what the Venice Commission calls “the negative effects of corporatism.”<sup>106</sup> It was such risks that justified a composition of judicial councils which includes members elected by outside bodies.

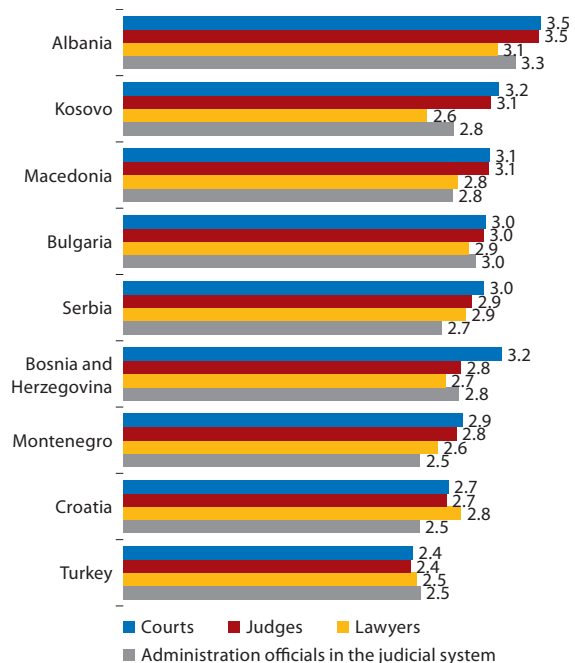
The risks are further exacerbated in the highly corrupt environment of Southeast Europe, where illegal schemes once embedded in a judiciary could then be used with impunity by special interests – unscrupulous business or politicians, organised crime, etc. It was with these considerations that in 2012 the CSD concluded that “legally guaranteeing the independence of the judiciary in transition countries has ceased to be the main focus... Instead, creating mechanisms for and ensuring judicial accountability, has emerged as a most pressing issue, as the newly gained independence of the judiciary was not matched by putting in place an adequate mechanism for accountability. As a result, observers have noted an increase, rather than a decrease, of corruption in transition countries’ judiciary in the 1990s, as judges now had a larger say and more discretion within the economy.”<sup>107</sup>

The regulations of judicial conduct in the SELDI countries do not mention explicitly corruption or organised crime. Rather, they deal with various misdemeanours as well as unprofessional and unethical behaviour. Formally, judges are accountable to their peers, but there are few incentives for the members of the same profession to vet each other too scrupulously. Thus, there is no endogenous corporate culture in the judiciary to motivate it to be accountable to the public.

Not surprisingly, then, the public does not hold the judiciary in particularly high esteem. The findings of SELDI monitoring are that **magistrates are considered**

**among the most corrupt public officials**; the absence of transparency and accountability is arguably a significant factor in such assessments. In all SELDI countries, there has been a **tangible deterioration of the assessment of the spread of corruption among magistrates**.

**Figure 49. Estimates by the public of the corruptness of courts, judges, lawyers and administration officials in the judiciary<sup>108</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

Thus, a downward spiral is accelerated: since the attitudes of the public in Southeast Europe towards the judiciary are rather negative, this brings additional incentive for judges not to consider the need to be accountable to the public. Trust, however, is not a marginal consideration in the administration of justice; rather, it is arguably a key precondition.<sup>109</sup>

A positive development in **Albania** has been the 2012 constitutional amendment which limited the immunity of judges. Following these changes, the prosecution can start an investigation on judges of Constitutional Courts, High Courts and Courts of First Instance without prior authorisation from the High Council of Justice. The judges are, however, given immunity for their opinions and decisions they take when

<sup>106</sup> Opinion No. 403/2006.

<sup>107</sup> (Center for the Study of Democracy; Center for Investigative Reporting, 2012, p. 36).

<sup>108</sup> For public officials the scale is from 1 to 4, where 1 is “Almost no one is involved” and 4 is “Almost everybody is involved”. For institutions the scale is from 1 – “Not proliferated at all” to 4 – “Proliferated to the highest degree”.

<sup>109</sup> For further analysis of the role of trust in the justice system, please refer to (Center for the Study of Democracy, 2011b).

**Table 1. Number of convicted for crimes against justice in Albania**

	2007	2008	2009	2010	2011	2012
Active corruption of magistrates, prosecutors and other officials in the judiciary	0	0	0	1	5	0
Passive corruption of magistrates, prosecutors and other officials in the judiciary	0	0	1	0	1	0

Source: Albanian Ministry of Justice.

exercising their judicial functions. Moreover, they cannot be detained or undergo inspections without the authorisation of the High Council of Justice unless they are caught committing a crime or immediately after it. In this case the Prosecutor General notifies the High Council of Justice which can decide upon the removal of this measure.

In order to harmonise these constitutional changes with the criminal procedural legislation, the Ministry of Justice drafted in 2013 an anti-corruption package. In 2014, the parliament approved of these legal changes in the *Criminal Code*. The changes in the Criminal Code were followed by changes in the so called “anti-mafia” law. These two legal interventions aimed at the forfeiture of assets obtained as a result of corruption acts.

The changes are yet to be reflected in the number of indictments which, as evident from Table 1, contrasts with the evaluations of all international stakeholders about the high incidence of corruption in the judiciary.

According to one such evaluation, “many court hearings were held in judges’ offices, which contributed to a lack of professionalism and opportunities for corruption.”<sup>110</sup> It is these kinds of practices that the *Code of Ethics for Judges* in Albania seeks to address, as well as issues such conflicts of interests, the court ex parte communications, and inappropriate political activity. Judges qualify based on the *Code of Ethics* before being officially appointed. The code is enforced by the Executive Council of the National Judicial Conference (the Conference is the association of all judges of courts of first instance and courts of appeal and the Supreme Court). As of July 2014, the Disciplinary Committee of the Conference had not started any review, and no judge had been reprimanded for violations of the code. Furthermore, the Conference is a voluntary association of judges and has no legal authority to punish judges for misconduct, thus it lacks real enforcement power. In

addition, any violations identified by the Conference, may be directed to the High Council of Justice for disciplinary action. Until now, only judges who graduated from the School of Magistrates are required to pass a one-semester course on Judicial Ethics before being appointed. Moreover, there is no requirement for the judges in office who have not graduated from the School of Magistrates, to qualify in terms of the *Code of Ethics*.

**Table 2. Estimates by the public of corruption among the institutions of governance in Albania<sup>111</sup>**

Courts	4.39
Customs	4.33
Prosecution	4.18
Tax administration	4.17
The investigation	4.11
Government	4.01
National audit office	3.97
Police	3.90
Municipal government	3.86
Parliament	3.85
Municipal administration	3.71
Presidency	3.17
Army	2.57

Source: SELDI/CSD Corruption Monitoring System, 2014.

Albanian courts have the worst score among the SELDI countries in being believed to be the most corrupt among all other public institutions – a result that has not changed since the previous SELDI monitoring in 2002.

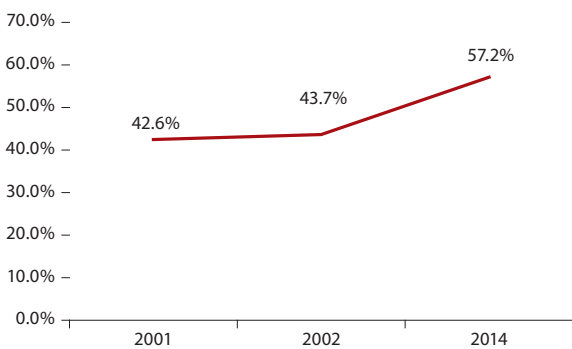
The High Judicial and Prosecutorial Council of **Bosnia and Herzegovina** has adopted *Codes of Ethics* containing principles designed to provide ethical guidance for judges and prosecutors. The Codes provide guidance

<sup>110</sup> (U.S. Department of State, 2013a, p. 8).

<sup>111</sup> On a scale of 1 to 5, 1 being the least corrupt.

under five headings – independence, impartiality, equality, competence and diligence, and integrity and propriety. The Office of Disciplinary Prosecutor within the Council is dealing with complaints against representatives of judiciary. This Office had 1,229 complaints in 2012, the majority against judges. They started 30 disciplinary proceedings which is the most since its founding, while 33 proceedings were completed.<sup>112</sup> Acts that judges were mostly punished for are carelessness or negligence in the performance of official duties and unjustified delay in making decisions or other actions in connection with the performance of the duties of a judge.

**Figure 50. Estimates by the public of corruption among judges in Bosnia and Herzegovina<sup>113</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

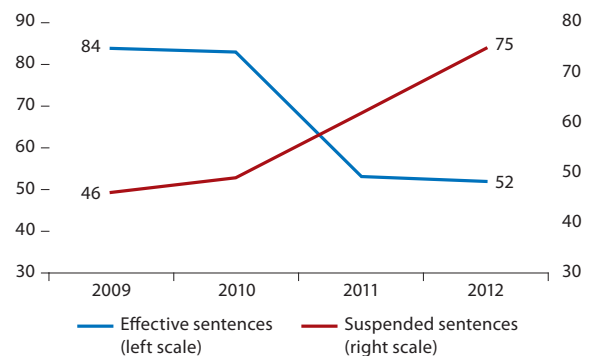
Members of the **Bulgarian** judiciary used to be covered by the same immunity as MPs, the decision for the lifting of which was taken by the Supreme Judicial Council. After two constitutional amendments, in 2003 and 2007, now they enjoy only functional immunity. The Constitution currently postulates that in the execution of their office judges, prosecutors and investigative magistrates do not bear criminal or civil liability for their official actions or decrees, unless the act is an intentional crime of general nature. This is theoretically seen as good basis for strengthening the integrity and accountability of the judiciary. In case of criminal proceedings against a magistrate, s/he is removed from office until the closing of the proceedings.

In the regulation on disciplinary liability of magistrates, there are several grounds on which penalties can be imposed for corruption-related conduct. Those are the violations of the *Code for Ethical Behaviour of Bulgarian Magistrates*, action or inaction, discrediting

<sup>112</sup> Annual report about the work of the Office of Disciplinary Prosecutor in 2012.

<sup>113</sup> Share of answers “Almost everybody is involved” and “Most are involved”.

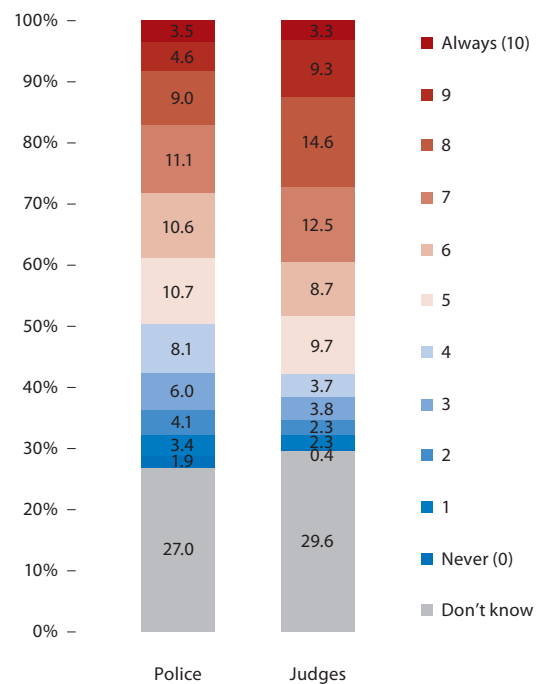
**Figure 51. Sentencing in Bulgaria: fewer effective and more suspended sentences**



Source: National Statistical Institute.

the judicial profession, non-execution of other official duties. The disciplinary penalties are official notice, reprimand (both imposed by the respective office’s administrative head) temporary reduction of payment, temporary demotion in rank, disciplinary removal from administrative manager’s office, disciplinary removal from office (imposed by the Supreme Judicial Council).

**Figure 52. Proliferation of bribery among police and judges in Bulgaria (how often do the police/judges accept bribes, %)**



Source: (Center for the Study of Democracy, 2011b).

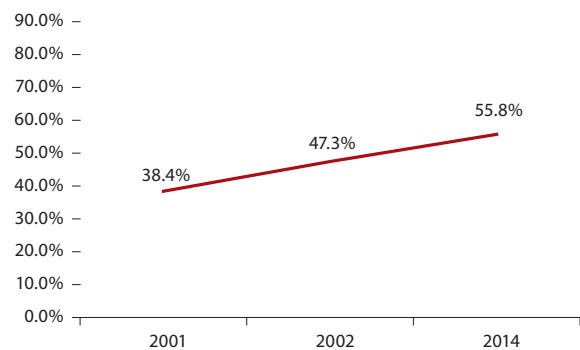
In practice, as seen from the report of the Council’s Committee on Disciplinary Proceedings for 2013, the disciplining activity of the Council is still divided

between, on the one hand, some cases of sanctioning violations of the Ethics Code and actions ruining the reputation of the judiciary, and, on the other, more cases of non-compliance with procedural deadlines and actions, unjustifiably protracting proceedings. In the continuing absence, as admitted by the Council's own Review of Disciplinary Case-Law of 2009 – 2013, of a clear vision or generally acclaimed methodology for determining the workload of magistrates putting an emphasis on disciplining magistrates primarily due to slow proceedings still steps on insufficiently clear grounds and can potentially diverge disciplinary efforts away from corruption-related cases. Moreover, lack of disciplinary action in the face of serious corruption allegations allows implicated magistrates to resign without any review or penalty for their suspected actions.

In **Croatia**, judges have immunity from detention and criminal proceedings, while prosecutors do not have immunity from prosecution. The criminal referral against a judge for all criminal offences prosecuted ex officio, should be submitted to USKOK or a competent State Attorney. Only those bodies can ask the State Judicial Council to lift the immunity of a judge in the process of deciding on a criminal charge. In addition to the *Law on Courts* and the *Law on the Judicial Council*, the conduct of judges is regulated by a Code on Judicial Ethics. Even though the conflict of interest and incompatibilities are not in focus of neither of those instruments,<sup>114</sup> the substance of the acts and articles represents instruments for prevention and suppression of conflict of interest and incompatibilities. Interests are not declared in the declaration of assets, therefore the overall segment of the monitoring of the conflict of interest and prevention of conflict of interest is not part of established legal instruments. With the latest changes and amendments to *Law on the Judicial Council* in 2013, declarations of assets for judges were made publicly available. The law prescribes that the State Judicial Council shall provide access to the declarations of assets within eight days of the submission of a written request.

The legal and institutional framework that regulates conflict of interest and incompatibilities of public prosecutors in Croatia follows a similar logic. The difference is that prosecutors do not have immunity from prosecution, and that their family members are not covered by the regulations on conflict of

**Figure 53. Estimates by the public of corruption among judges in Croatia<sup>115</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

interest and/or incompatibilities. Legal provisions on the role of the State Prosecutorial Council – the governing body of the public prosecution – deal with declaration of assets for public prosecutors as well as checking of declaration of assets and disciplinary measures related to the conduct of prosecutors. The declaration of assets does not include declaration of interests, and conflict of interest related issues – aside from incompatibilities – are not regulated. In period 2005 – 2013, there was no clear sanctioning of the situation of the conflict of interest or even situation related to the declaration of assets. In 2008, only one case was decided by the State Prosecutor's Office and the case was related to incompatibility with the State Prosecutor's duty. In the same period, the Council has issued 13 disciplinary sanctions to the Prosecutors, which indicates that such body is ineffective in guiding prosecutors in the implementation of the fundamental principles of the State Prosecutor's duty. Data on the cases are not clear and therefore public control of the work of the State Prosecutors cannot be exercised.

In **Kosovo**, both judges and prosecutors, despite being generally governed by separate councils, have the same body dealing with matters of conduct – the Office of the Disciplinary Prosecutor. The responsibilities of the disciplinary prosecutors include the initiation of investigations against judges or lay judges in cases where there are reasonable grounds to believe that inappropriate behaviour might have occurred and to provide recommendations and evidence in support of the disciplinary action to the Disciplinary Commission.

<sup>114</sup> Except in the case of the procedures related to appointment and career advancement of judges.

<sup>115</sup> Share of answers "Almost everybody is involved" and "Most are involved".

**Table 3. Estimates by the public of corruption among the institutions of governance in Kosovo<sup>116</sup>**

Government	4.36
Municipal government	4.08
Courts	3.95
Customs	3.94
Parliament	3.94
Tax administration	3.84
Prosecution	3.70
The Investigation	3.70
Municipal administration	3.54
Presidency	3.52
Police	3.46
National audit office	3.37
Army	2.24

Source: SELDI/CSD Corruption Monitoring System, 2014.

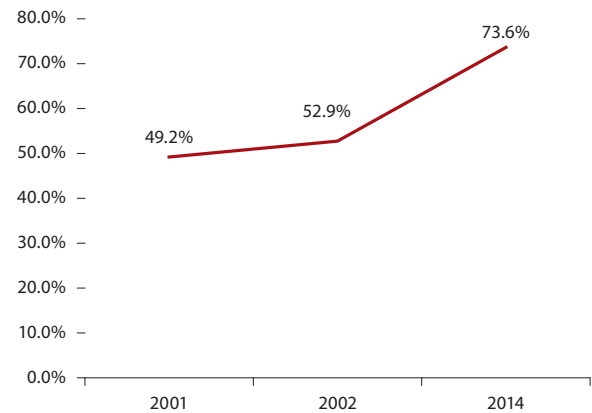
The Kosovo Anti-Corruption Task Force is part of the Special Prosecution and is the main mechanism in the fight against corruption. It is comprised of five local and three international prosecutors, who are supported by thirty police officers and five financial experts. The strength of this institution is that it is the only institution in Kosovo specialised in anti-corruption. The prosecutors who work in this task force are paid more than the state prosecutor. Its main weakness is the very process that created it: as for every other policy initiative, the decision to create the task force was not based on research that would conclude the need for a new anticorruption mechanism. The task force should not operate under the umbrella of the Special Prosecution, as this harms its legal capacity.<sup>117</sup>

In **Macedonia**, the law allows a certain amount of executive control of the judiciary: judges have the obligation to declare the acquisition and changes in their assets, and declare conflict of interest. The declarations, however, are not vetted by the Judicial Council but by the State Commission for the Prevention of Corruption since it has jurisdiction over elected and appointed public officials. In the last available Commission report (2012), it is stated that out of the 402 cases closed, 71 were in the judiciary. Nevertheless, it does not contain any further detail on the number of positive or negative cases, whether it is about corruption or other possible offences, who has launched the proceedings, etc.

<sup>116</sup> On a scale of 1 to 5, 1 being the least corrupt.

<sup>117</sup> (Ministry of European Integration of Kosovo, 2012).

**Figure 54. Estimates by the public of corruption among judges in Macedonia<sup>118</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

Among the SELDI countries, Macedonia has one of the sharpest rises in the share of the surveyed public identifying judges as being corrupt (Figure 54). This corresponds to international assessments that “political interference, inefficiency, favouritism toward well placed persons, prolonged judicial processes, and corruption characterized the judicial system.”<sup>119</sup>

In **Montenegro**, there is a mechanism allowing complaints to be filed by members of the public if they suspect that a certain judge is involved in corruption and have committed a criminal offence in this respect. Statistics on those complaints is not very detailed, although publicly available within the annual reports of the Judicial Council. For example, in 2010, 99 such complaints were submitted, only one of which actually processed but was deemed unfounded. In 2011, 119 complaints were submitted, none were followed up because no grounds were found for starting a procedure; the same was in 2012, with 75 complaints submitted and none processed.

Similarly small is the number of disciplinary proceedings initiated by the Judicial Council on the referral of court chairs (3 referrals in 2010, one rejected as unfounded, one was accepted and disciplinary measure of 20% salary decrease; one referral in 2011). These insignificant numbers contrast with the findings of SELDI monitoring indicating an almost doubling of the share of the public believing corruption to be widespread among judges.

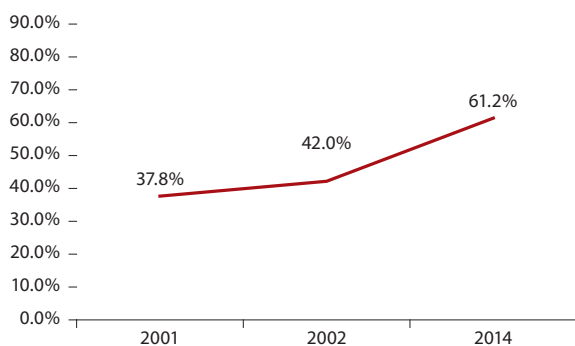
<sup>118</sup> Share of answers “Almost everybody is involved” and “Most are involved”.

<sup>119</sup> (U.S. Department of State, 2013c, p. 1).

MANS, a Montenegrin NGO, “researched 333 corruption cases between 2006 and 2012 and found that courts issued inconsistent verdicts for corruption-related crimes. Sentences were generally severe for low- and mid-level employees, while higher government employees and dignitaries received suspended sentences for more serious crimes, such as abuse of office.”

**US State Department Human Rights Report 2013**

**Figure 55. Estimates by the public of corruption among judges in Montenegro**

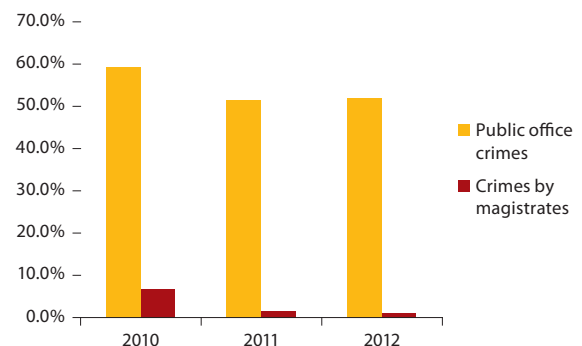


Source: SELDI/CSD Corruption Monitoring System, 2014.

A similar situation exists with respect to the enforcement of the *Judicial Code of Ethics*. The Commission established to decide upon complaints filed in relation to the breaches of the Code, received two complaints in 2011 (deciding that the Code was not violated) and no complaints in 2012. During 2013, three complaints were filed, one of them resulting in confirmation that the judge actually acted against the Code, but there is no information available on further actions in this regard.

In **Serbia**, public confidence in the judiciary is undermined by a number of clear cases of the lack of competence, much more than the perception of corruption in judiciary. According to statistics collected at the Supreme Court of Cassation, on average 20% of the verdicts of the first-instance courts are overturned. In a vicious circle, since the public opinion of the judiciary is rather negative, this brings additional incentive for judges not think about the public as someone that they are accountable to. According to official judiciary statistics, 48% of the cases are not decided 24 months from their commencement – a testimony to the consequences of no accountability.

**Figure 56. Conviction rates for general public office crimes and crimes by magistrates in Serbia**



Source: Calculations based on “Adult Culprits of Criminal Offences in the Republic of Serbia in 2012”, Bilten SK-12, Statistical Office of the Republic of Serbia, 2013.

In the Serbian Criminal Code there is a specific crime “violation of the law by judge, prosecutor or deputy prosecutor”. As evident from Figure 56, the conviction rate for this specific crime is far below the conviction rates for all corruption crimes. Although not all the crimes recorded by the indictments, based on this article of the Code, are cases of corruption, the numbers are indicative of the overall enforcement of integrity provisions among magistrates.

In **Turkey**, courts enjoy a much higher degree of public confidence in their integrity than in the other SELDI countries.

**Table 4. Estimates by the public of corruption among the institutions of governance in Turkey<sup>120</sup>**

Customs	3.44
Municipal government	3.39
Tax administration	3.39
Municipal administration	3.36
Government	3.31
Police	3.28
Parliament	3.12
Courts	3.04
The Investigation	2.98
National audit office	2.97
Prosecution	2.89
Army	2.49
Presidency	2.25

Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>120</sup> On a scale of 1 to 5, 1 being the least corrupt.



Although there is no general written code of ethics for members of the judiciary in Turkey, and magistrates do not come under the jurisdiction of the Council of Ethics for Public Service (a body within the structure of the Prime Ministry), the disciplinary provisions under the *Law on Judges and Prosecutors* specify acts or behaviours judges should evade. These include inappropriate and rude behaviour to colleagues, behaviours harming the trustworthiness and impartiality, failure to declare assets, engaging in commercial activities incompatible with the profession, receiving gifts and bribery. According to the statistics published by High Council of Judges and Prosecutors, in 2012 12 judges were removed from the profession. In 2011 and 2010, the numbers were 6 and 2. However, there are no separate statistics on the number of disciplinary proceedings on corruption grounds.

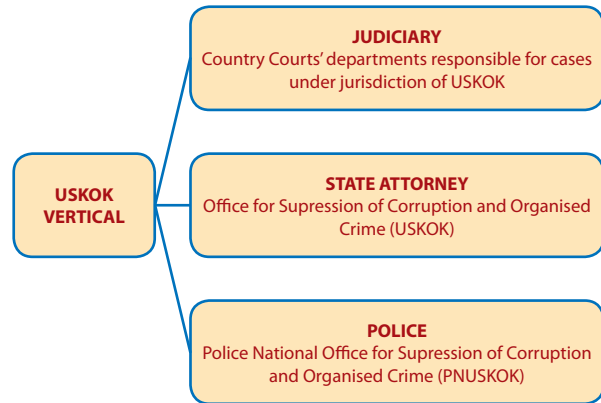
### 4.3. SPECIALISED ANTICORRUPTION COURTS

Most SELDI countries have found no reason for creating specialised courts dealing with corruption; they apply the general criminal procedure to it. Some have specialised prosecutions and courts for organised crime, which handle corruption cases; in Serbia, for example, the Specialised Prosecutor for Organised Crime investigates and indicts corruption cases in which the total material gain is over RSD 200 million (around €1.7 million); the Kosovo prosecution has an Anti-Corruption Task Force.

The only country that has set up a combination of law enforcement and judicial structures specialised in dealing with corruption and relate crimes is Croatia. The Office for Suppression of Corruption and Organized Crime (USKOK) was established in 2001, within the State Attorney's organisation of the Republic of Croatia. Special USKOK courts (at county level) were established in four regions (around the cities of Zagreb, Split, Rijeka and Osijek). The mandate of these USKOK special court departments, created to deal with corruption and organised crime, was to promptly rule in cases under the jurisdiction of USKOK. Later on, the last of the special anticorruption institutions – PNUSKOK (Police USKOK), a special police department for the suppression of organised crime and corruption – was established. With the establishment of PNUSKOK, the cycle of institution-

building to combat corruption in Croatia was complete – the so called “USKOK Vertical” was put in place.

Figure 57. Organisational chart of the Croatian criminal justice structure “USKOK Vertical”



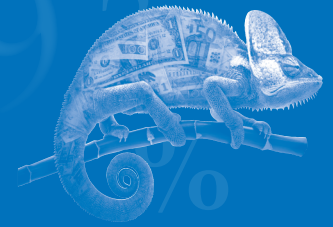
### 4.4. RECOMMENDATIONS

1. Countries where the majority of the judicial self-governing bodies are not elected among magistrates should adopt reforms increasing their voting power. Countries that have not, should adopt the “one magistrate – one vote” principle.
2. Ensure that the election of the judicial quota is as representative as possible, including judges from first instance courts. Carefully review, and if needed reconsider, the compatibility of the position of court chairperson with membership of the judicial self-governing bodies.
3. Ensure that the procedures for the appointment, promotion and dismissal of magistrates are as transparent to the public as the similar procedures for elected politicians.
4. The number of magistrates required to nominate a member of the judicial governing body needs to be increased.
5. Abolish or reduce to a minimum the role of government ministers (typically of justice) in judicial self-governing bodies, especially as regards decisions on disciplinary procedures.
6. In countries where both the prosecution and the courts are governed by the same body, two colleges – for the prosecutors and for judges – need to be separated within this body. Prosecutors and judges, respectively, would only be elected to these colleges.
7. Countries that do not have a code of ethics for magistrates should adopt one.

8. The independence and capacity of judicial inspectors should be strengthened to allow them to step up inspections.
9. Magistrates should be prioritised in the mechanism for verification of asset declarations.
10. Introduce feedback mechanisms for the enforcement of anticorruption policies, including with respect to magistrates. These mechanisms are substantially deficient or practically missing in all SELDI countries; their absence sabotages the repression aspect of anticorruption policies and

renders further incrimination of corruption useless. A possible best practice to be replicated – although it is still underdeveloped – is Kosovo’s Platform of Anticorruption Statistics, designed by an NGO. Such a mechanism should include regular information about: disciplinary and administrative and criminal measures in the public service and the judiciary; the various aspects of criminal prosecution, including indictments and convictions/acquittals, sentences by the various types of corruption offences.





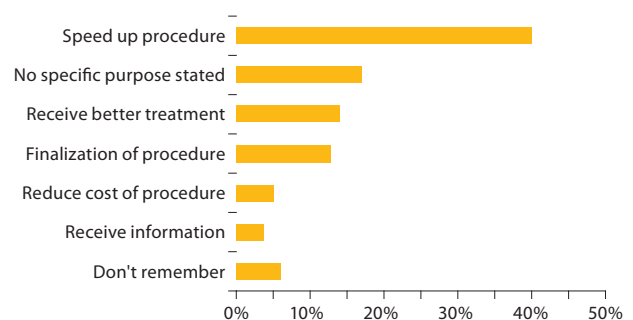
The stifling of economic growth, entrepreneurship and fair competition are among the diverse and well documented effects of corruption on society and its governance. More recent research has shown that corruption exacerbates bad fiscal policy, and deficits are skewed towards discretionary spending, and away from socially universal goods such as healthcare and education.<sup>121</sup> The correlation between corruption and economic development is so strong that the dominance of the former gets a country into a vicious circle of more corruption and less development, while when the latter dominates it generates a virtuous circle of more growth and less need for bribery. In Southeast Europe, the considerable involvement of governments in the economy generates a number of points of potential conflict between public institutions and business; in turn, this creates corruption risk.

## 5.1. BUSINESS ENVIRONMENT AND INFORMAL ECONOMY

In the SELDI area, business overregulation – mostly concerning registration, licensing and permit regimes implementation – constantly generates various barriers to market entrants and higher costs of doing business. This drives entrepreneurs in the informal sector and/or compels them to resort to bribery. In a downward spiral this then justifies further regulation and administrative barriers. Experience and studies on SEE countries demonstrate that businesses in the region pay most often to speed up procedures and to avoid penalties. The latter is related to overreliance of the authorities on mass, punitive measures.

The variety of circumstances that occasion corruption in the interactions of business and public officials illustrate the difficulty anticorruption policies face. When initiated by business, corrupt practices can be divided into two main categories – avoiding extra costs and gaining unfair advantage. In the first group are the kickbacks necessitated by poor or excessive

Figure 58. How business in Southeast Europe<sup>122</sup> justifies the payment of bribes to officials



Source: (UNODC, 2013w, p. 28).

regulation, individual or institutional incompetence, etc.; the second are related to various types of fraud – tax evasion, VAT fraud, smuggling, non-compliance with health and safety standards, etc.

A key corruption risk factor in the SELDI area is the informal or hidden economy. The Center for the Study of Democracy in its annual *Corruption Assessment Reports* has demonstrated that corruption has been the main tool for unscrupulous businesses to stay off the record books and to generate government-protected monopolies and undue rents. “The size and scope of the hidden economy provide cover for large grey and black financial flows from the business sector into politics, which in turn influence the operation of the official economy.”<sup>123</sup>

The impact of corruption on the business environment in **Albania** is evident in the raking of corruption as the second most significant obstacle to doing business after high taxes, with an average prevalence of business bribery of 15.7 percent.<sup>124</sup> Given that small enterprises are around 90 percent of companies, the fact that prevalence of bribery is higher among small businesses than among businesses of other sizes is particularly worrying. It has a detrimental effect for several reasons:

- they are more vulnerable to increases in costs;
- they are an important source of income and employ-

<sup>121</sup> (Pippidi, 2013).

<sup>122</sup> Covers Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, and Serbia.

<sup>123</sup> (Center for the Study of Democracy, 2009, p. 57).

<sup>124</sup> (UNODC, 2013a, p. 5).

ment for a large number of people;

- SMEs have a greater potential for growth and the long run impact of corruption on these businesses might be even bigger.

Corruption in the customs has been continuously ranked among the highest in the country.<sup>125</sup> The government expects to generate additional income equal to 1 percent of the national GDP by bringing in foreign monitoring of customs operations,<sup>126</sup> which is indicative of how much revenue it estimates is lost through corruption. Estimates of the informal economy in Albania are very high, generating a large part of the country’s GDP and thus hindering fair business competition as well as substantially reducing income generated by tax. There are no official figures but various estimates suggest that its share has been revolving around 30 percent of GDP in the past 5 years.<sup>127</sup> Index Mundi 2013 suggests that its share might be as high as 50 percent of GDP.<sup>128</sup> The shadow economy is regarded by most businesses as one of their main concerns and constraints due to the unfair competition. With a share as large as 30 to 50 percent of the GDP, the number of unreported transactions and resources that go for bribes is potentially large as well, with higher incentives for informal businesses to bribe public compliance bodies. As of January 2014, the government of Albania has adopted a progressive tax system, which might raise concerns of an increase in informal economy especially of the medium-sized (but also large) enterprises which would prefer to declare less and benefit from the lower tax rate. The results from the tax changes will depend to a very high degree on the government’s success in winning back trust, including by delivering on anticorruption promises.

The World Bank ranked **Bosnia and Herzegovina** 131 out of 189 countries in the 2014 Doing Business survey – last among the SELDI countries. It takes 11 procedures and 37 days to start a business in Bosnia and Herzegovina, which puts it on the 174<sup>th</sup> place in the ranking on this specific indicator. In the 2009 – 2013 period, the country introduced no reforms to reduce corruption risks in the economy; in 2012, the government replaced a required utilisation permit with a simple notification of commencement of activities and simplified process for obtaining a tax identification number.

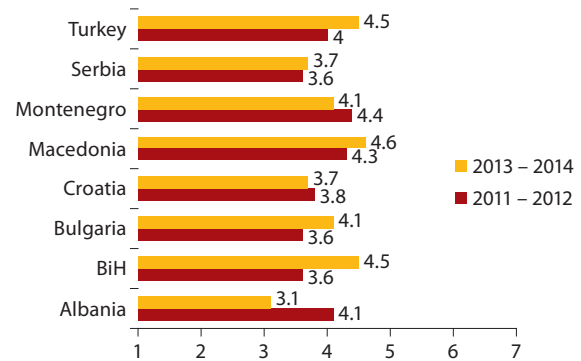
<sup>125</sup> Please refer to Table 2, page 83.

<sup>126</sup> (Doganat, “Crown Agents” 450 kontrolle në muaj, 2014).

<sup>127</sup> (Boka & Torluccio, 2013).

<sup>128</sup> Index Mundi (2013), Albania Economy Profile.

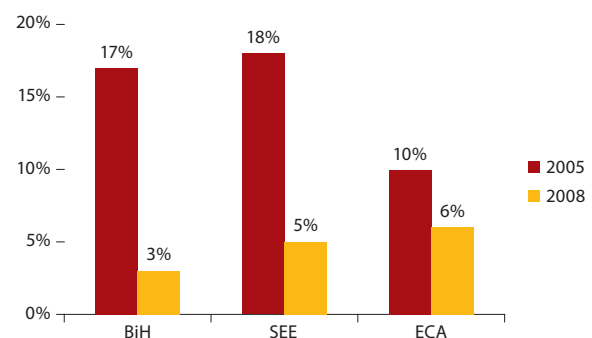
**Figure 59. Performance of SELDI countries in the indicator “Irregular payments and bribes” of the Global Competitiveness Report<sup>129</sup>**



Source: World Economic Forum.

Business in Bosnia and Herzegovina “is having hard times to survive in the difficult political environment and still needs registration in the two state entities – Republika Srpska and the Federation of Bosnia and Herzegovina (FBiH). In the former, the registration of firms was significantly reduced from 23 to 3 days and the price also dropped to €200. But in the FBiH, the establishment of a company is much more complicated and expensive. The share of non-performing loans is also high and growing. In the second quarter of 2013 they reached 14.3%. Bosnia and Herzegovina's public sector is huge and inefficient, as many of the competences overlap or are duplicated,<sup>130</sup> which creates high risks of corruption.

**Figure 60. Share of businesses stating bribery is frequent in dealing with courts, BiH compared to Southeast Europe and Europe and Central Asia**



Source: BEEPS At-A-Glance 2008, Bosnia and Herzegovina.

The hidden economy and informal employment represent one of the greatest challenges in the

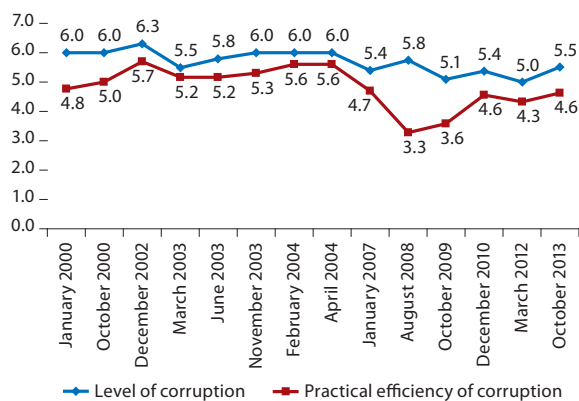
<sup>129</sup> The indicator is based on the weighted average score across responses to a survey question inquiring how common is it for firms to make undocumented extra payments or bribes. The answers range from 1 (very common) to 7 (never occurs).

<sup>130</sup> (Marini, 2014).

economy of Bosnia and Herzegovina. The labour market is characterised by low dynamics, high level of unemployment and informal employment. In the summer of 2012, the Labour and Employment Agency of Bosnia and Herzegovina announced that informal employment, by their estimations, reached about 200,000 persons.<sup>131</sup> According to other estimates, around 34 percent of working people do not pay pension and health insurance, and the government has no strategy or plan to deal with this issue.<sup>132</sup>

In **Bulgaria** 51% of the companies consider corruption as a problem to their operation. There is almost universal agreement among business – 94% – that the close links between business and politics leads to corruption. Somewhat smaller share of companies (66%) state that the only way to succeed in business is to have political connections. 85% of the Bulgarian and 69% of the European firms consider that bribery and the use of connections is often the easiest way to obtain certain public services in their country. In Bulgaria, 71% of the respondents consider unlikely that corrupt people or businesses would be caught or reported to the police or prosecutors, higher than the EU-27 average of 60%.<sup>133</sup>

**Figure 61. Level and practical efficiency of corruption in the Bulgarian business sector\***



\* **Note:** **Level of corruption:** The index ranges from 0 (nobody from the public administration is involved in corruption) to 10 (almost everybody from the public administration is involved in corruption). **Practical efficiency of corruption:** The index assesses whether corruption pays off. It ranges from 0 (not likely at all) to 10 (very likely).

**Source:** CMS, Center for the Study of Democracy, 2013.

In the business sector, the indexes for corruption pressure and involvement in corruption have not changed significantly in recent years. **Concentration**

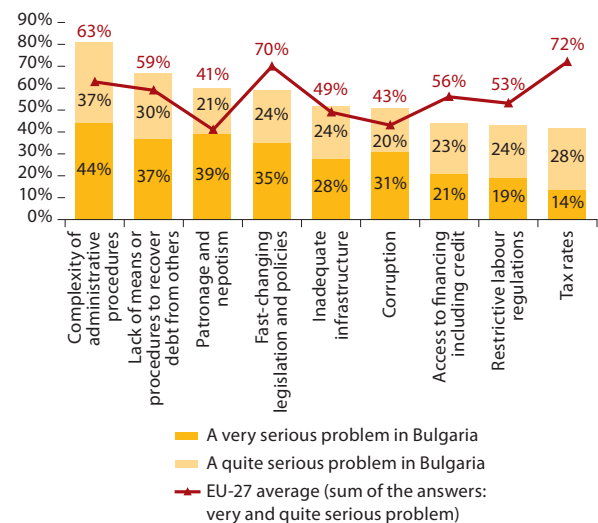
<sup>131</sup> (Labour and Employment Agency of Bosnia and Herzegovina, 2012).

<sup>132</sup> (Federalni Zavod Za Zapošljavanje, 2013).

<sup>133</sup> All data from (TNS Political & Social, March 2014).

**and the emergence of monopolies** have pushed corruption to the higher strata of administrative and political power, alleviating it at lower administrative levels. The fact that political corruption affecting the business sector is not changing is confirmed by the perception of businesses about corruption levels and practical efficiency of corruption.<sup>134</sup>

**Figure 62. Problems encountered in doing business: Bulgaria compared to EU-27**



**Source:** (TNS Political & Social, March 2014).

**Over the last 10 years the informal economy in Bulgaria shrunk** due to various factors, including the economic convergence with the EU, the deepening of the credit markets, introduction of mandatory employment contract registration in 2003 and the real-time linking of fiscal devices with the National Revenue Agency servers as well as performed inspections. Still, according to CSD's 2013 *Hidden Economy Index*,<sup>135</sup> **the share of the hidden economy in Bulgaria increased in 2013** among both businesses and the population. The main reasons behind this development can be sought in low income, harsh labour market conditions, the decline in the economic outlook, as well as the overall political instability in 2013. The high unemployment rates are of particular concern as a risk factor providing incentives to more people to engage in hidden economy activities. Among the results of the 2013 *Hidden Economy Index* two main trends stand out:

- Increase in the incidence of **hidden employment**, mainly due to seasonal work and semi-formal employment schemes. According to CSD's conservative

<sup>134</sup> (Center for the Study of Democracy, 2013(43), p. 6).

<sup>135</sup> (Center for the Study of Democracy, 2013(42)).

estimates a total of BGN 245.6 mln (€126 mln) in social security payments were lost from underreporting and non-reporting of income in 2013.

- Increase in public perceptions on **tax evasion** and mild deterioration in terms of the government's tax collection rates. The latter can be explained by the deflation in certain months in 2013, as well as a variety of other related economic conditions. Still, tax revenue growth since 2009 has been subdued – its year-on-year growth was below 1% in September 2013. At the same time, almost BGN 1.45bn (€743.5 mln) annually is lost to VAT evasion and social security contribution gaps, according to rough approximations, while the real figure could be even higher.<sup>136</sup>

Almost half of the business representatives in **Croatia** consider corruption to be a serious obstacle in doing business, which affects the overall business climate and investment decisions and results in the Croatian economy being one of the most affected by cancelled investment projects in the Western Balkans (5.6%).<sup>137</sup> Starting a business was made easier in Croatia by the introduction of a new form of limited liability company with a lower minimum capital requirement and simplified incorporation procedures. Tax payments were reorganised by introducing an electronic system for social security contributions. Streamlining litigation proceedings and transferring certain enforcement procedures from the courts to state agencies and introducing an expedited out-of-court restructuring procedure contributed to overall improvement in doing business in Croatia.<sup>138</sup> The *Index of Economic Freedom* concurs with the World Bank's assessment, stating that the business start-up process has become less burdensome, taking less than 10 procedures. However, it is emphasised that obtaining necessary permits takes over 200 days and costs over four times the level of average annual income. Despite ongoing reform efforts, the labour market remains relatively rigid.<sup>139</sup> In 2012, the shadow economy in Croatia was 28 per cent of GDP, close to the levels of Bulgaria (31%) and Turkey (27%).<sup>140</sup>

As in the other SELDI countries, **business in Kosovo** claims to employ bribery mostly to overcome bureaucratic inefficiency: the lead reason it gives by for

bribing government officials is to “speed up business-related procedures” (28.4%), although only 3.2 percent admit to have done so.<sup>141</sup> As for how corruption discourages business activity, “some 3.3 per cent of business representatives decided not to make a major investment [...] due to the fear of having to pay bribes to obtain requisite services or permits.”<sup>142</sup> This is especially the case for smaller businesses.

Kosovo has improved its position in the World Bank Doing Business rankings moving up from the 96<sup>th</sup> spot in 2013 to the 86<sup>th</sup> in 2014. The greatest progress has been achieved in the “Starting a business” category. In this category Kosovo has moved from the 126<sup>th</sup> place to the 100<sup>th</sup> due to the decrease in the number of procedures, time, and cost of registering a business. Progress related to many corruption cases and the environment for doing business has been made in the “Dealing with construction permits” category. Construction permits red-tape has led to so much corruption that anyone even associated with these activities is perceived as highly corrupt and responsible for the spatial planning degradation, especially in the capital city. It is debatable whether the removal of red-tape will have a positive effect; however, shortening the time and the making the process of obtaining construction permits more efficient will surely help the business environment. Improvement has also been registered in the ease of registering property. Property disputes in Kosovo have had a devastating effect in the economy, especially in pushing up interest rates as the banks take more risks due to the uncertainty regarding who owns what.

In 2013, businesses in Kosovo reported on average only 65.6 percent of their sales for tax purposes – a 34.4 percent evasion rate.<sup>143</sup> Research finds the main causes of informality in the economy to be factors such as fiscal morale, trust in institutions, and the cost of compliance. Trust in institutions was found to be statistically significant at the 95% confidence level. The discrepancy between what businesses pay in taxes and what they receive in form of public goods and services – a discrepancy which most likely is explained by corruption – is another factor for such a high rate of informality.

Given the share of the public sector in the economy in Kosovo the system is still highly vulnerable. When

<sup>136</sup> (Center for the Study of Democracy, 2013(42)).

<sup>137</sup> (UNODC, 2013c)

<sup>138</sup> (The World Bank, 2013, p. 162).

<sup>139</sup> <http://www.heritage.org/index/country/croatia>

<sup>140</sup> (Schneider, *The Shadow Economy in Europe*, 2013, p. 4).

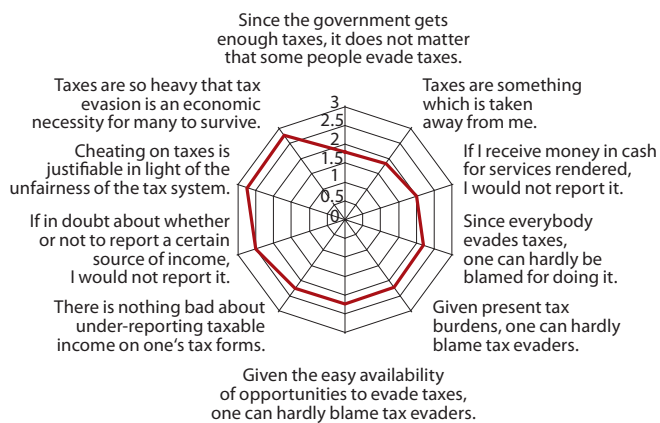
<sup>141</sup> (UNODC, 2013a, p. 4).

<sup>142</sup> *Ibid.* p. 6.

<sup>143</sup> (Riinvest Institute, 2013, p. 8).

private domestic consumption and exports increase, and businesses rely less on public contracts, corruption will not be such an important barrier to business.

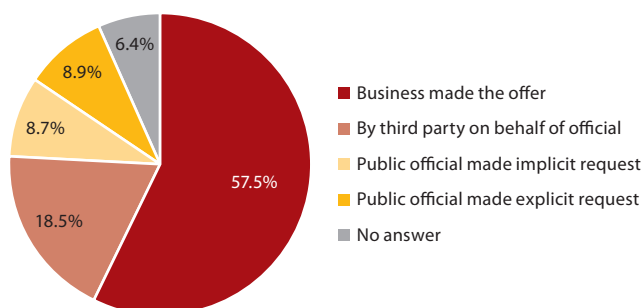
**Figure 63. How tax evasion is justified by Kosovo business**



Source: (Riinvest Institute, 2013, p. 19).

**Macedonia** has the highest rank among the SELDI countries in World Bank's 2014 Doing Business index. Nevertheless, the Macedonian business environment is affected by corruption: „Investors and businesspeople have reported being solicited for bribes, particularly when participating in public procurements and government projects.”<sup>144</sup> The share of businesses reporting to have paid a bribe in the preceding year is double that in Kosovo – 6.5 percent.<sup>145</sup> As in the other SELDI countries, the prevalence of bribery is slightly higher among small businesses than among businesses of other sizes.

**Figure 64. Origins of bribe offers in the business-government transactions in Macedonia**



Source: (UNODC, 2013m, p. 24).

As measured by the electricity consumption method, the informal economy in Macedonia has decreased

over the period 2000 – 2010 from 34% of GDP in 2000 to 24% of GDP in 2010, measuring almost €1.7 billion in 2010.<sup>146</sup> The main causes of the grey economy are considered taxes, unemployment, regulation intensity, bureaucracy, etc. According to the latest data from the State Statistical Office (Labour Force Survey, 2012), informal employment accounts for 22.5% of total employment in the country.

**Businesses in Montenegro** rank corruption as the “fifth most significant obstacle to doing business, after high taxes, complicated tax laws, limited access to financing and labor regulations.”<sup>147</sup> Furthermore, the “establishment of a sound business environment continues to be hampered by the weak rule of law and corruption.”<sup>148</sup> Such conditions and perceptions are not encouraging for foreign or domestic investors. On average, 1 out of 12 (8.5%) entrepreneurs in Montenegro state that they had not made some investments in the previous period because of fear of corruption and organised crime.<sup>149</sup>

In **Serbia**, most studies find that the government intervention is ubiquitous, that barriers to business, i.e. costs of doing business, are substantial, and that there are two main consequences of such an arrangement: low level of economic freedom and breeding ground for corruption. The most important barriers to economic activities and the most important contributing factors to the low overall ranking of Serbia are: (1) dealing with construction permits; (2) paying taxes; (3) enforcing contracts and resolving insolvency.<sup>150</sup> Not only are all of these obstacles government-created, but all of them are also prone to corruption. Construction permits are a corruption risk of the investment process and it discourages greenfield investments in Serbia, thus affecting the economic growth rate. The costs of paying taxes affects corruption in taxation as there is an incentive to speed up the procedure – not necessarily breaching tax regulation, but paying a bribe for tax authority officials to do their job properly. Problems related to enforcing contracts, mainly due to the inefficient and overloaded judiciary, provide incentives for corruption in the judiciary. The aim of bribery is not necessarily to get a favourable outcome, but to get the outcome as soon as possible, without considerable delays. The same appears to be the case of resolving

<sup>146</sup> (Centre for Economic Analyses, 2012).

<sup>147</sup> (UNODC, 2013n, p. 9).

<sup>148</sup> (European Commission, SWD(2013) 411 final, p. 3).

<sup>149</sup> (UNODC, 2013n, p. 7).

<sup>150</sup> (The World Bank, 2013).

<sup>144</sup> (U.S. Department of State, 2013m).

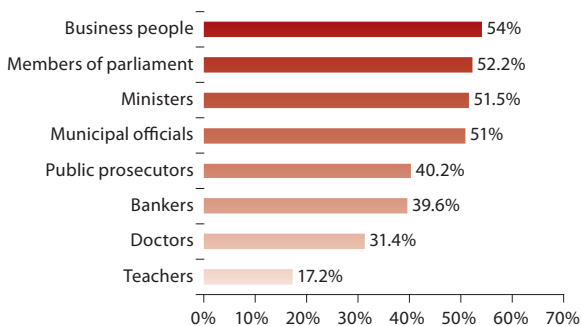
<sup>145</sup> (UNODC, 2013m, p. 5).



insolvency, the process that is time-consuming beyond any reasonable standard. Furthermore, the main developments in the past five years in the fields of these major costs of doing business are not favourable, i.e. the cost of doing business has increased.

In **Turkey**, 52% of international companies operating in the country believe that bribery/corrupt practices happen widely in business.<sup>151</sup> In addition, 56% believe that corrupt practices have increased due to the economic downturn. In contrast, only 2.4% of business executives surveyed in the 2013 – 2014 Global Competitiveness Report consider corruption among the truly problematic factors for doing business (compared to tax rates with 14.8%). The same businesses executives, however, do not seem to be trusted by the general public (Figure 65), which creates a unique picture of corruption perceptions in Turkey, with the main culprit seen on the business side, and not on the side of the government.

**Figure 65. Businessmen considered most corrupt in Turkey<sup>152</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

In 2009, the informal economy in Turkey was estimated at 33% of the 2004 – 2005 GDP.<sup>153</sup> More recently, however, Turkey’s Minister of Finance noted in an article<sup>154</sup> that informal employment in Turkey has declined by 14.5 percentage points since 2002, to 37.6% in April 2013. He also added that the informal economy as a share of GDP declined by six percentage points during this period, to 26.5% in 2013. This is almost in line with another study, which estimates the size of the shadow economy in Turkey as 27.7% of GDP as of 2012, compared to the OECD average of 19.2%.<sup>155</sup>

<sup>151</sup> (Ernst & Young, 2013, p. 4).

<sup>152</sup> Share of respondents answering “Almost everybody is involved” and “Most are involved” in corruption.

<sup>153</sup> (Reis, Angel-Urdinola, & Torres, 2009).

<sup>154</sup> (Şimşek, 2014).

<sup>155</sup> (Schneider, Shadow Economy in Turkey and in other OECD-Countries: What do we (not) know?, 2012).

## 5.2. GOVERNMENT BUDGET AND REDISTRIBUTION

The composition of public spending and the redistribution of the budget have major implications not only for the efficient and fair allocation of public funds, but also the risks and vulnerabilities for corrupt practices. “Public expenditure – and especially public investment – is known to offer some of the best opportunities for corruption.”<sup>156</sup>

In the SELDI area, fiduciary risk is enhanced because of a number of reasons which include corruption:

- Large share of public spending in GDP;
- Large share of the informal economy which, among other things, compromises revenue planning;
- Corruption in public procurement, which compromises the value for money aspect of public expenditure;
- Low transparency of the budget process and fiscal management;
- Confusion – deliberate or not – among aspects such as budgetary and extra-budgetary figures, and between functional and administrative allocations.
- Poor institutional monitoring, oversight and auditing.

Thus in these countries corruption could be associated with all stages of the budget process – preparation, adoption, use of funds and ex post control.

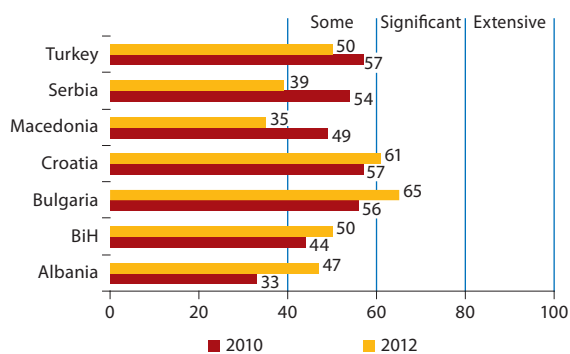
An important factor in the corruption risk associated with public finances is poor transparency. While some SELDI countries have improved the level of publicity of their budget process, in a number of others there has been tangible backsliding (Figure 66).

Evidently, most SELDI countries fall into the “Some information” range associated with some corruption risk. While EU member-countries, like Bulgaria, provide much more information on the planning, execution and evaluation of the budgetary process to their citizens, actual accountability in terms of programme budgeting and efficiency indicators remain underdeveloped. All the other SELDI countries are even further back on the road to budget transparency and accountability.

Another measure of the integrity of public finances is contained in the views of private business of the

<sup>156</sup> (Isaksen, 2005, p. 4).

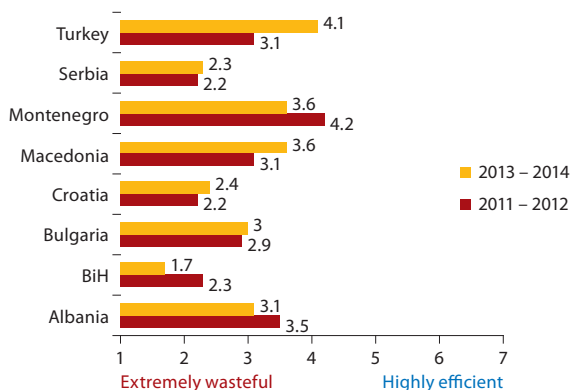
**Figure 66. Performance of some SELDI countries in the index of the Open Budget Survey<sup>157</sup>**



Source: International Budget Partnership.

composition of public spending. In this, again the performances are mixed – while Montenegro, Bosnia and Herzegovina and Albania have deteriorated, the governments of Turkey, Macedonia, Croatia and Bulgaria are believed to have become more wasteful (Figure 67). With the exception of Turkey in 2013 – 2014 none of the other countries reached even half of the maximum score on efficiency.

**Figure 67. Performance of SELDI countries in the indicator “Wastefulness of government spending” of the Global Competitiveness Report<sup>158</sup>**



Source: World Economic Forum.

Some of the outstanding issues in the management of public finances in **Albania** include the quality of the budget analysis, the parliamentary debate on

<sup>157</sup> Scores out of 100. The index has four ranges according to the amount of budget information provided to the public: 81-100 Extensive; 61-80 Significant; 41-60 Some. Kosovo and Montenegro are not surveyed.

<sup>158</sup> The indicator is based on the answer of a sample of global business executives to the question “How would you rate the composition of public spending in your country?” with answer ranges from 1 (extremely wasteful) to 7 (highly efficient in providing necessary goods and services).

the national budget, proper monitoring of public expenditures, and production of consistent evaluation reports. Despite the process of budget hearings in parliament being generally well regulated and organised, doubts about the quality of the debate have been raised, including that individual debate sessions in the Committee on Economy and Finance of the Ministry of Finance are too short to allow for in-depth discussion. Although parliamentary groups have the right to call for sessions with the government including the Prime Minister, ministers are unlikely to participate in the hearings unless there is a political issue. Since the committee in charge of budget approval and budget oversight is chaired by an MP of the majority party, the opposition does not have much influence on budget oversight. To improve the quality of budget discussions the Albanian parliament should reconsider establishing a non-partisan budget office in order to address the lack of independent analytical capacity for MPs, as OECD experts have advised.<sup>159</sup>

Controls of non-payroll expenditure are primarily ex-ante voucher checking. There is very little internal audit functionality at the ex-post stage as required by international best practices. Budget institutions receive invoices from suppliers and prepare expenditure documents and perform ex-ante controls. Since “many budget institutions do not have access to the treasury system they send expenditure documents to the relevant Treasury district office that records and performs an additional ex ante control before payment. Through this practice the Ministry of Finance keeps a strong central control on budget execution.”<sup>160</sup>

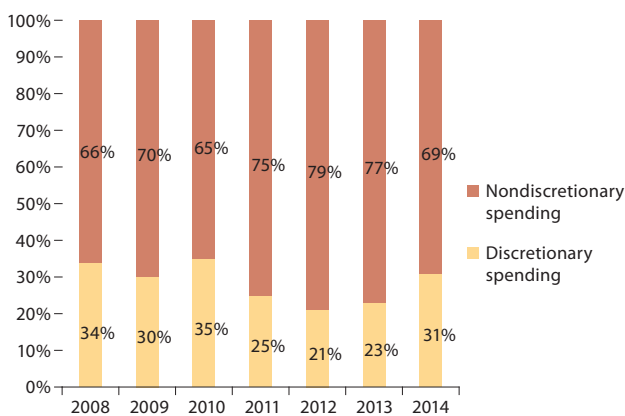
In **Bulgaria**, the 2014 draft budget represents a mix of social pledges including employment, education, healthcare and regional development and a statement for reduced administrative burden on the business. One of its major assumptions providing for higher revenues is the improved collection of VAT. This is expected to come from a reverse-charge mechanism for VAT and stricter control over goods with higher fiscal risk. While these measures can improve budget revenues, they are unlikely to change the overall business environment, and hence the level of hidden economy in the country. The success of the measures hinges critically on the ability of the government to end political patronage of selected companies involved in VAT fraud, in particular at the local level.

<sup>159</sup> (Klepšvik, Emery, Finn, & Bernhard, 2013).

<sup>160</sup> (Klepšvik, Emery, Finn, & Bernhard, 2013, p. 38).

The Bulgarian 2014 budget plan indicates growth in discretionary government spending compared to 2013 and preceding years, including slight rise in capital expenditure, annual budget deficit expansion and a two-fold increase of the size of the contingency fund. Large part of the contingency fund will be used for financing investment projects at the municipal level. The fund is part of the government’s decentralisation program but raises transparency and accountability issues as the contingency reserve allows for disbursing the funds without any official rationale. The government has set vague procedures and criteria guidelines for the public investment program for financing municipality projects. According to government reports, the projects will be evaluated by the ministers of six departments – finance, economy, regional development, investment, transport and environment, together with a representative from the National Association of Municipalities. The overall result has been inefficient spending of public resources, with some estimates showing that the government approved some of the projects within a day, which clearly is insufficient for any proper evaluation of the feasibility, let alone the quality of the project. Overall, it is expected that although Bulgaria has quite high level of budget transparency, in 2014 the country will have a steep rise in its budget deficit, due in part to lack of accountability and indiscriminate discretionary spending.

**Figure 68. Shares of discretionary and non-discretionary government spending in Bulgaria**

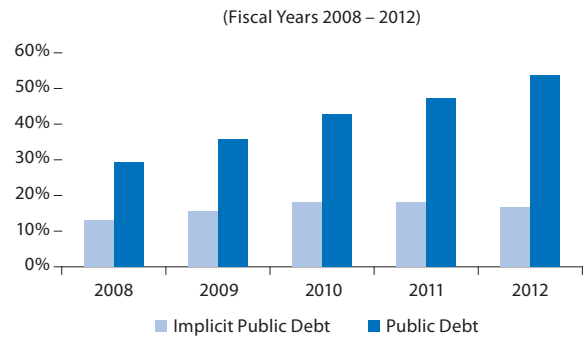


Source: Bulgarian Ministry of Finance.

The case of **Croatia** illustrates the threat to the viability of the budget represented by the level of the public and implicit public debt (including issued state guarantees and total debt of the Croatian Bank for Reconstruction and Development). Failing to account for public debt impact on current spending is often indicative of high

level political corruption, often associated with large-scale infrastructure projects.

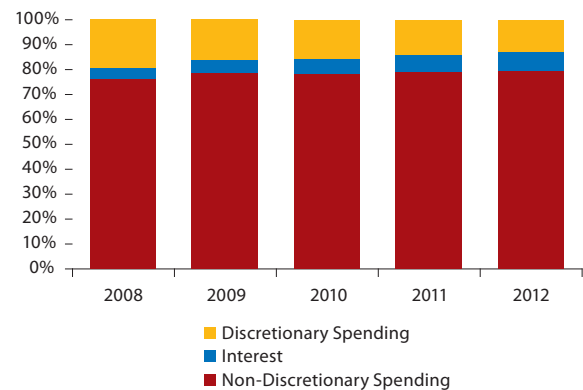
**Figure 69. Share of public and implicit public debt in the Croatian GDP**



Source: Ministry of Finance, Yearbooks (2008 – 2012).<sup>161</sup>

Discretionary spending over the years has been in the 13.3% – 19.4% range. Criteria for awarding and monitoring of certain programs, grants and support have not been established.

**Figure 70. Discretionary vs. non-discretionary spending in the Croatian national budget**



Source: Croatian Ministry of Finance.<sup>162</sup>

The Croatian *Fiscal Responsibility Act* defines rules that limit government spending, strengthen accountability for the legal, functional and purposeful use of budgetary resources and strengthen the system of controls and supervision to ensure fiscal responsibility. The Fiscal Policy Committee has pointed to the need for the government to prepare projections of the fiscal rules application according to the appropriate methodology as an integral part of all official budget

<sup>161</sup> Calculation of PSD researchers based on Ministry of Finance data.

<sup>162</sup> Calculation of PSD researchers based on data from the Ministry of Finance, Annual Reports of the Execution of the State Budget.

documents within the framework of the state budget adoption procedure.<sup>163</sup>

Since Croatia has very large public spending, budget planning over the years has become unsustainable. The government refused to accept significant reduction of current income considering that current revenue had not been realised repeatedly, and had to sharply increase indebtedness instead. Part of the debt has been amassed through subsidies or state aid awarded as rescue policy to state-owned enterprises. Worryingly, the share of subsidies to financial institutions and companies outside the public sector varies from 9% – 20% of the total subsidies. This creates a clear risk of corruption and favouritism with strong negative consequences for fair competition and economic viability.

In **Montenegro**, the government has an absolute monopoly over the process of budget proposal development: parliament, CSOs and other stakeholders do not have an institutional mechanism enabling their participation in the decision making process. MPs are left with the option of proposing amendments, advocating reallocation of the specific amounts for certain spending units, but not applying a systemic approach in reference to the analysis of the principles governing the budget. This side-lining of the parliament from the early stages of budget preparation compromises the effectiveness of its participation in the later stages of the budget cycle. The parliament is therefore placed in a situation of *fait accompli*: unable to consider the principles governing the planning of the budget for the next year and unable to exercise the influence to the main capital budget directions or to be consulted in reference to the strategic economic policy priorities.

Further, lately the process of the parliament's review of the budget proposal was to a great extent hampered due to poor implementation of the programme – or performance – budgeting. The introduction of performance budgeting in Montenegro has been slow and hesitant. Although currently all spending units have their programmes on paper, they still do not contain performance indicators to monitor achievement of programme goals. The action plan for introducing programme budgeting announced in 2007 has not been adopted. Numerous deadlines for establishing full programme budgeting with performance indicators and their top-down implementation in budget preparation and planning have been missed. Although certain

delays and problems in the implementation could be expected – since this is a long-term reform – the problem is that the current situation suggests that the reform has stopped and that no efforts are made to move to the next steps of implementation.

The *Annual Report of the State Audit Institution* for the year 2012 – 2013 reveals the worrying degree to which its recommendations on the year-end budget report (which parliament adopts as its own conclusions) are not being implemented. Out of 47 recommendations, only 7 recommendations were fulfilled, 12 recommendations were completely neglected, while the others are in the early stages of implementation. This means that the auditees fulfilled only 15% of the recommendations, while the State Audit has found that many of the government's figures on the implementation of the State Audit's recommendations are not accurate. A similar situation happened the previous year, when the State Audit Institution found that more than 70% of its recommendations remained unfulfilled. This suggests that there is a systemic problem in the government's attitude towards the work of the public audit, namely towards solving the problems that cause breaching of the *Law on Budget* during the fiscal year and other related laws (such as the *Public Procurement Law*).

State aid in Montenegro, although it has been decreasing over the years, is still high, especially when compared to the average in the EU countries, or the SEE countries. In 2012, it amounted to 1.14% of GDP, which is more than double the average of the EU countries, which is 0.51%.<sup>164</sup> Additionally, its structure is problematic, since it is given almost entirely for the purposes of recovery, restructuring and sectoral assistance, while the analysis of the effects to that aid shows that the money was not spent in accordance with the plans of restructuring.<sup>165</sup>

In April 2014, the parliament of Montenegro adopted a new *Law on Budget and Fiscal Accountability*. The Law brings several changes that are quite important for the aspects of transparency and accountability in the budgetary cycle:

- the introduction of liability provisions – the previous law could be breached without consequences;
- the introduction of the budgetary inspection, as a new body that will carry out controls on how the budgetary bodies comply with the law.

<sup>163</sup> (Croatian Ministry of Finance, 2013).

<sup>164</sup> (Komisija Za Kontrolu Državne Pomoći, 2013).

<sup>165</sup> (Turković, 2012).

Consolidated government spending in **Serbia**, which includes central government, local and provincial governments and social security funds (health, pension and unemployment funds) is considered high, at more than 46% of GDP in 2013. From the viewpoint of economic classification of expenditures, spending is dominated by mandatory spending (pensions, wages, interest, social assistance, health), while nominally discretionary spending (capital expenditures, goods and services and subsidies) is about 25% of total spending. However, large part of these items is in effect also mandatory. For example, about one third of the subsidies is related to agriculture, where most of the subsidies are actually entitlement (for example, per hectare subsidies), and also a large portion is given to the railways company for the payment of wages. Regarding goods and services, the most significant part are medicines purchased through the Health Insurance Fund, and another large part are actually wages (for government research institutes) and also large parts are communal services, electricity and gasoline. In summary, the discretionary spending share is probably below 10% of the total spending, and the largest component is capital expenditures.

However, the fact that there is not much room for discretionary spending in the budget does not mean that corruption risk is low. Much of discretionary spending is in state-owned funds (such as the Development Fund and the Export Credit and Insurance Agency) with not effective oversight mechanisms, state owned banks (three have collapsed in the past several years) and state owned companies (several large public enterprises and hundreds of still not privatised companies). The level of transparency, accountability and public oversight of these institutions is much lower than in the case of the state budget. For example, the Development Fund currently has a portfolio with more than €1 billion in loans issued to private companies and absolutely no data is available publicly on the quality of the portfolio and, for example, who the major beneficiaries of these “cheap loans” are.

Within the central government budget in **Turkey**, the share of mandatory primary expenditures (non-discretionary spending) grew from 47% of total spending in 2008 to almost 60% in 2013.<sup>166</sup> This leaves the share of discretionary spending extraordinarily high by regional standards.

Turkey had planned to implement a fiscal rule in 2010, which aimed at introducing anti-cyclicality to

<sup>166</sup> (International Monetary Fund, 2013, p. 16).

budget performance by making growth and previous year's budget performance part of the current year's budget performance. After having been discussed in a parliamentary commission, the proposed law was withdrawn the night before voting as the government changed its mind on the necessity of a fiscal rule. This episode is telling in terms of the low stability and predictability of fiscal rules.

After 2008, budget expenditures exceeded the planned amounts every year by margins that were not negligible. The parliament's approval was not sought during the year and it was circumvented in the following way:<sup>167</sup> the allowances for wage expenditures were released for other purposes and the Ministry of Finance exceeded the target budget expenditures by the end of the year as it had to make wage expenditures. The exceeding expenditures were approved by the parliament at the end of the year when conclusive figures for the ending year were submitted. Government's breach of expenditures during the year without the parliament's approval is also pointed out in the annual report of Turkish Court of Accounts.<sup>168</sup> While this is not necessarily linked to corruption risks, it leads to increased opportunities for corrupt exchanges at the highest governmental level, usually related to the large businesses and/or public investment projects.

### 5.3. PUBLIC PROCUREMENT

Procurement by government bodies and state-owned companies is one of the significant corruption risk areas in the SELDI countries. In the post-communist among them, it is privatisation that is often referred to as the “original sin” from which current integrity problems sprang. Divesting significant publicly owned assets over short periods of time in weak institutional environments gave rise to a momentum of corruption that has not been stemmed yet. “The institutions in charge of privatisation had been typically granted large discretionary power that is generally seen as a hotbed of corruption. Moreover, the administrative capacities of the privatizing agencies appeared overall weak and these institutions have practically remained under rather strong political influence despite their nominal independence.”<sup>169</sup> Later on, the nominally

<sup>167</sup> (TEPAV, 2012, p. 18).

<sup>168</sup> (T.C. Sayıştay Başkanlığı, 2013a, p. 14).

<sup>169</sup> (SELDI, 2002, p. 115).

private enterprises, in particular the largest ones, either capable of inflicting significant social pressure through layoffs or controlling critical parts of a value added chain (e.g. repairs in coal fired plants), could continue draining public resources through receiving state aid, public procurement, etc.

When later public procurement took over as the main channel for transferring money from the public into the private sector, it became the major source of corruption in the SELDI countries as this area typically gives officials large discretionary power. Currently, corruption risk in government procurement in the SELDI area is associated with a number of deficiencies: insufficiently transparent procedures, large share of non-competitive procedures, weak oversight and ineffective judicial review (given judicial corruption), etc. Although more than a decade ago a SELDI study found that the countries in the area had “made recent progress in strengthening the legal framework of the process and its harmonisation with the EU Directives,”<sup>170</sup> public procurement continues to be among the weakest aspects of public governance.

In the current SEE environment, finding solutions to a problem in a complex system such as public procurement, requires identification of vulnerabilities at each stage of the cycle – pre-tendering, tendering and post-award. “In order to implement good practices and mechanisms for enhanced performance at each stage of the public procurement cycle, there is a need for in-depth exploration of the associated risks. [...] It is imperative, therefore, to identify the techniques used to misappropriate public funds, and look at the various types of fraud.”<sup>171</sup> Recent European research into corruption and fraud in public procurement in the EU has shown that very often public procurement falls within the domain of “legal” corruption, i.e. high-level understanding between politicians and large companies, which is then pushed through the channels of formal approval. The main risk characteristics or red-flags associated with such public procurement corruption have been identified as the following:<sup>172</sup>

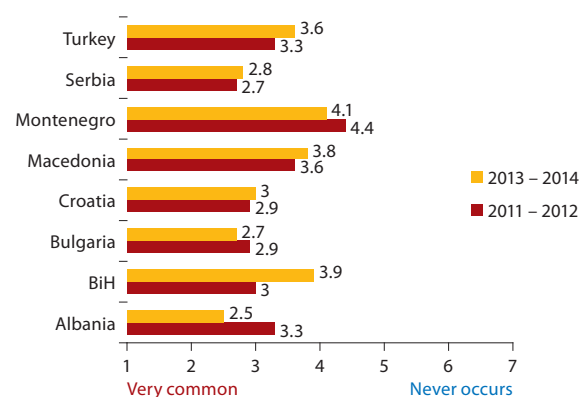
- no published call for tenders in the official journal and/or not all data for the call available in the journal;
- non-open procedure;
- single bidder.

<sup>170</sup> (SELDI, 2002, p. 126).

<sup>171</sup> (Center for the Study of Democracy, 2013c, pp. 13-14).

<sup>172</sup> (Pippidi, 2013, p. 78).

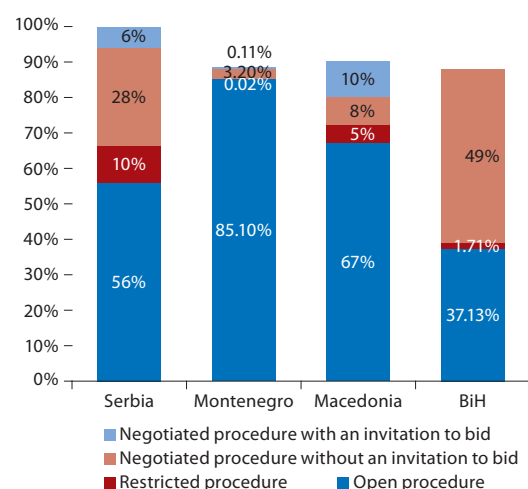
**Figure 71. Performance of SELDI countries in the indicator „Diversion of public funds“ of the Global Competitiveness Report<sup>173</sup>**



Source: World Economic Forum.

There are a number of similarities in the institutional arrangement of public procurement in the SELDI area. For example, a number of countries – Bosnia and Herzegovina, Macedonia, Montenegro, Serbia – apply the so called dual-centralisation model in which public procurement functions are performed by two government institutions, usually termed a directorate or an office and an administration or a commission. There are also significant differences, notably in the share of the various types of procurement procedures. Montenegro has the highest share of open procedures in public procurement, while Bosnia and Herzegovina has the lowest (Figure 72). However, these numbers should be

**Figure 72. Share of various types of public procurement procedures in four SELDI countries, 2012**



Source: (Balkan Tender Watch, 2013, p. 14).

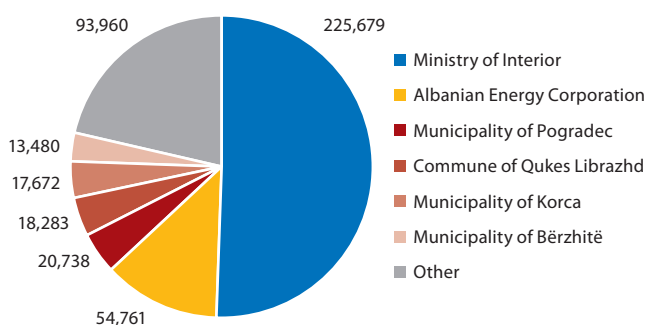
<sup>173</sup> The indicator is based on the weighted average score of the following Executive Opinion Survey question: “In your country, how common is diversion of public funds to companies, individuals, or groups due to corruption? (1 = very common; 7 = never occurs).”

treated with caution as data availability is not universal, and often it is exactly the most corruption ridden cases that are missing from data-bases.

**Albania** has implemented an e-procurement system which has made the process more transparent by making public bids accessible for free on the Public Procurement Agency website. Despite this, concerns still remain about the effectiveness and the real extent of the reduction in corruption. The 2011 report from the Procurement Advocate suggests that there are problems in implementing the selection criteria and, according to the State Audit report for data from 2011, public procurement is the sector in which the biggest abuses were registered. According to the latest data from 2012 in the Supreme State Audit report, the economic cost in public procurement in 2012 amounted to ALL 444.5 million (€3.1 mln), marking the highest level in four years.

The institution with the highest losses through procurements for 2012 is the Ministry of Interior, with ALL 225.6 million or 50% of the total cost to the sector. This was due to the actions of the Public Procurement Commission in violation to the tender rules, disqualifying economic operators which offered lower bids. In total, municipalities are estimated to have caused approximately ALL 401 million worth of damage to public finances. Much of the identified cost comes from the procurement sector as result of violations of tender rules and slow implementation, followed by the urban sector. These sectors, together, explain about 66% of the fiscal damage caused by local government.

**Figure 73. Economic losses due to irregularities in public procurement in Albania, 2012, (in 000 ALL)**



Source: Supreme State Audit of Albania, 2013.

**In Bosnia and Herzegovina**, “the enactment of the anti-corruption legislation has equipped authorities with the right tools and the legal framework for fighting

corruption in public procurement.”<sup>174</sup> Nevertheless, public procurement law has not been sufficiently harmonised and upgraded, evident in the many flaws and practical problems detected in its nine-year implementation.<sup>175</sup> There has been a clear regress in this area in the last few years, particularly as regards transparency. While in 2008 there were 9,074 open procedures, which was around 90 percent of all procedures, in 2012, there were 6,376 advertised and open procedures, which was around 30 percent of all tenders. The cost of poor governance is evident in the fact that the prices in direct agreements and negotiated procedures are 20 to 60 percent higher than the prices in the open procedures.<sup>176</sup> Three out of five procurers think that corruption has a major influence on public procurements in Bosnia and Herzegovina, while all believe that corruption in public procurements has not decreased in the last five years.<sup>177</sup> It all results in an estimated annual flow of more than BAM 700 million (around €350 million) into private pockets.<sup>178</sup> Further, in 2012 there were a total of 2,391 annulments of public procurements with open procedures, and one of the main reasons was because there were not enough bidders. The second reason for annulment was manipulation of information in the call for bidders, where authorities sometimes deliberately ask for goods that are not available on the market, so that they could – after two failed open procedures – conduct negotiations without tendering.

In **Bulgaria** legislative developments have brought about a level of complexity that is impeding effective enforcement of the law. The e-procurement system still has limited functionalities. Inspections by the Public Procurement Agency do not cover decisions for derogations from the application of EU procurement legislation, nor the technical specifications of the tenders. More importantly, however, there are doubts about the effective enforcement of rules and the application of sanctions.

Among EU businesses, it was Bulgarian companies that mostly agreed that “in the last three years corruption has prevented a company from winning public tender or public procurement contract” – 58% in Bulgaria vs. 32% EU average.

<sup>174</sup> (Center for the Study of Democracy; Center for Investigative Reporting, 2012, p. 14).

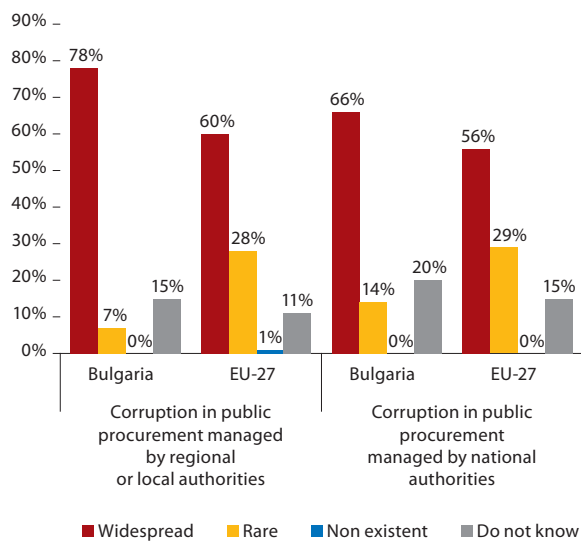
<sup>175</sup> (Balkan Tender Watch, 2013).

<sup>176</sup> (Civic Association “Tender”, 2013, p. 3).

<sup>177</sup> (Center for Media Development, 2013).

<sup>178</sup> (Civic Association “Tender”, 2013, p. 3).

**Figure 74. Corruption in public procurement: Bulgaria compared to EU average**



Source: (TNS Political & Social, March 2014).

A kind of centralisation of corruption is discouraging all but big companies from bidding in public tenders.<sup>179</sup> Because large enterprises have started to dominate the various public procurement markets, the number of enterprises bidding has shrunk while enabling the substitution of illegal influences on authorities by means of bribes with the more legal, but still often secret, means of lobbying or silent political pull.

Although the Public Financial Inspection Agency only monitors the legality of the costs incurred, its financial inspections of sectoral contracting authorities suggest certain conclusions about the contractors' decision-making. The capacity of the Agency to tackle problematic public procurement increases, but its deterrence and prevention effects are very limited and violations continue to be widespread. One reason is the constant political interference in its work in particular on bigger public procurement contracts.<sup>180</sup> According to its latest report, in 2013 the Agency inspected 2,484 procurement tenders and found irregularities in 1,376. Most of the violations were related to the work of hospitals and the procurement of medicines, food for the patients and other hospital materials. Notable cases also relate to road infrastructure, the energy sector, and the EU funds.

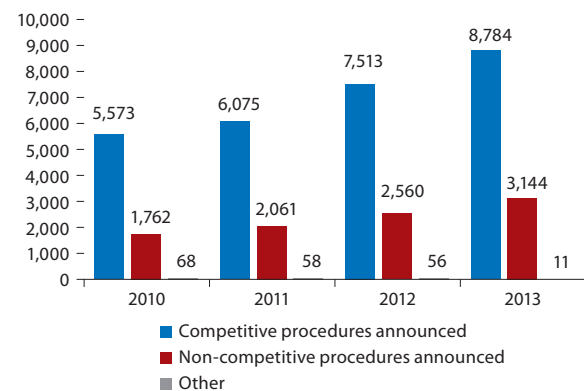
An issue of concern remains the **share of non-competitive procedures** among announced public procurements

<sup>179</sup> (Center for the Study of Democracy, 2011a).

<sup>180</sup> (Stoyanov, Stefanov, & Velcheva, 2014).

(25% in 2012 and 26.3% in 2013), including negotiated procedure with and without publication of a contract notice, which are generally considered an instrument particularly vulnerable to fraud and corruption.

**Figure 75. Number of announced public procurements in Bulgaria by type of procedure**



Source: Bulgarian Public Procurement Agency.

According to data from the Public Financial Inspection Agency the volume of the public procurement contracts with discovered violations range from BGN 601 million in 2007 to BGN 1,488 million in 2012 (€308mIn – €763mIn).<sup>181</sup> Another method to estimate the losses could be based on the data of the latest PricewaterhouseCoopers and Ecorys report on the topic.<sup>182</sup> If the same shares of losses, as suggested in that report, are applied for Bulgaria and corrected with the weighted Transparency International 2013 scores, the direct cost of corruption in public procurement as share of the overall value of the published public procurement contracts in Bulgaria for 2013 could be assessed to be **between BGN 334.1 and 506.9 million**

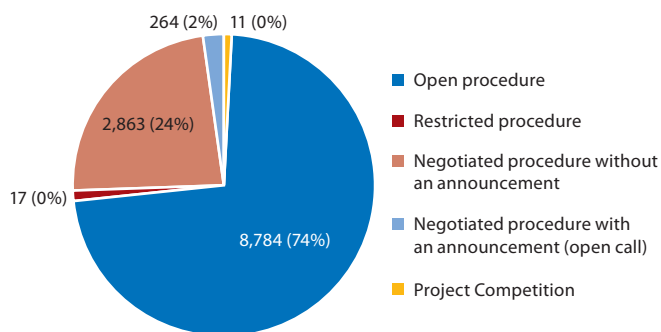
<sup>181</sup> Between 3 and 8% of the government budget.

<sup>182</sup> (PricewaterhouseCoopers, 2013). PwC estimate that for eight countries, out of the 86 corrupt/grey cases, there are 53% encountered cost overruns. The cost overruns (winning high price of a bid meeting the technical specifications) from public procurement contracts amounted to 22% of the total average budget involved. In addition, the cost increases during implementation, delays in the implementation and overall loss in effectiveness are also considered and assessed. As aggregated value, the total direct public losses are estimated to be 31% of the average case budget or 18% of the total budgets of all 86 corrupt/grey cases combined (this is a different value as both large and small corrupt/grey cases are assessed, and as they have a different weight). The report also notes that out of the 18% calculated budget volume loss from corrupt / grey public procurements in the 8 analysed Member States, 13% of budgets' loss involved can be attributed to corruption and clean cases generate a public loss of 5% of their projected costs. In addition, the overall direct costs of corruption in public procurement in 2010 for the five sectors studied in the 8 Member States constituted between 2.9% to 4.4% of the overall value of procurements in the sector published in the EU Official Journal.



(€171mln and €260mln). The above is an approximation and the value is calculated just for general reference.

**Figure 76. Number and share of all announced public procurements in Bulgaria by type in 2013**



Source: Annual Report of the Bulgarian Public Procurement Agency 2013.

**Public procurement using the EU funds** in Bulgaria presents a distinct subset of problems. One of the major shortcomings of the process is the focus placed on documentation checks, and not on the value for

money (a deficiency, incidentally, that applies to all government spending in the SELDI area). The process presents a kind of vicious circle – the pressure by the European Commission aims at introducing additional controlling mechanisms to prevent abuses, while this strengthens the bargaining position of the administration and increases its bureaucratic leverage on the citizens and business, along with the corruption risks.

Corruption risks appear in several areas:

- **Large projects** create corruption risks, similar to large public procurement contracts. The online information system for the management and oversight of the EU Structural Instruments in Bulgaria presents data on the largest beneficiaries (mostly public entities), some of them awarded 40-80 projects each.
- **Burdensome administrative procedures** both during the application and reporting stages are also a factor for petty corruption.

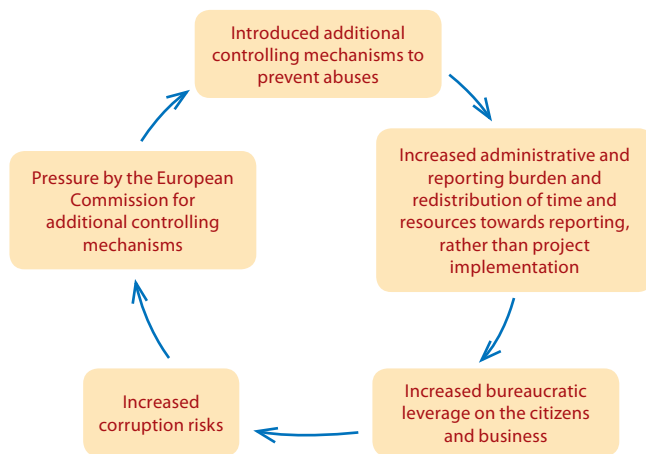
#### Box 4. Procurement in the Bulgarian energy sector<sup>183</sup>

In Bulgaria, one in four public procurement contracts relates to the energy sector, which renders it one of the biggest spenders of taxpayer money. However, 38% of all procedures for the awarding of public procurement contracts in the energy sector for 2012 were non-competitive, encompassing the various negotiated procedures with or without the publication of a contract notice under the *Law on Public Procurement*, and negotiated procedures following an invitation under the *Regulation on Small-Scale Public Procurement*. The share of non-competitive public procurement contracts in the energy sector is systematically higher than the share of non-competitive contracts for the rest of the economy for the period 2010 – 2012 (the non-competitive public procurement contracts in the economy ranged between 23.9% in 2010 to 25.2% in 2012). Still, it should be noted that in 2012 the percentage of contracts awarded on competitive basis in the energy sector increased to 62%, compared to 48.1% in 2011 and 46.4% in 2010. This improvement could be interpreted as the result of increased public scrutiny and criticism by various stakeholders.

The sector is of particular social importance, since most of the Bulgarians are energy poor – 14.4% of the average yearly income per household is spent on energy (electricity, water, heating), according to 2013 Eurostat data. There is non-transparent formation of electricity prices, and high concentration at the Bulgarian gas market in terms of monopoly of supply and distribution. When audited, most of these procedures are found to contain irregularities and other abuses. The analysis of 13 inspections of energy enterprises carried out by the Public Financial Inspection Agency over a period of four years shows that 39 violations were found in 41 cases. Most big energy projects (e.g. the Belene nuclear power plant, Tsankov Kamak hydro power plant and the rehabilitation of facilities) can serve as examples of the misuse of public procurement mechanisms. The failure of the checks and balances system raises legitimate concerns of corrupt practices at all levels in the energy sector and questions government's ability to manage large infrastructure projects worth over €500 million.

<sup>183</sup> Compiled from: (Center for the Study of Democracy, 2014); (Center for the Study of Democracy, 2013(43)); (Center for the Study of Democracy, 2013a); (Center for the Study of Democracy, 2011a); (Center for the Study of Democracy, 2011).

**Figure 77. The escalating corruption-bureaucracy-corruption cycle of EU funds management in Bulgaria**



Source: CSD/SELDI.

- **Inspections and audits**, as well as imposing financial sanctions, also present corruption opportunities.
- **Public procurement contracts** commissioned by EU funds beneficiaries bear similar corruption risks to public procurement contracts in general. During the recent economic crisis the value of public tenders fell sharply, which redirected corruption pressure towards EU-funded tenders. Another specific feature in the case of EU funds is the high risk of appeals and complaints that can stop the procurement procedure

and result in missed deadlines by the beneficiaries.

- **Lack of understanding of the technical aspects** of the implemented projects can easily lead to misinterpretation of the results. Although the managing authorities use external experts in different areas for evaluation of project applications, expert knowledge and consultations are not readily available on all stages of the project monitoring process.
- The pressure to **achieve fast absorption in the 2007 – 2013 period**, and at the same time to prepare for the next 2014 – 2020 programming period, are other factors that need to be taken into account. The end of programming period 2007 – 2013 was marked by increase in the number and value of contracts, as well as increased payments, to compensate for the initial low absorption rates. This trend, especially when focusing on larger projects, also presents risk factor in terms of decreased control and corruption. In addition, in order to accelerate absorption some managing authorities shifted away from competitive distribution of funds to direct contracting.<sup>184</sup>

In 2008 – 2009, **several cases of embezzlement of EU funds** led the EC to block pre-accession funding for all seven operational programmes. EC also asked Bulgaria to improve its procedures for absorbing the EU funds before access can be restored. Similar freezes occurred in 2014.

#### Box 5. Irregularities in the distribution of EU funds in Bulgaria

- European Agricultural Guarantee Fund and European Fund for Rural Development: 149 cases of financial irregularities for € 5,356,732.
- Structural Funds (European Regional Development Fund and European Social Fund): 49 cases of financial irregularities for € 5,423,511.
- Cohesion Fund: 2 cases of financial irregularities for € 571,350.

Examples of violations and irregularities included:

- Timely investigations of the credibility of complaints in relation to the Structural and Cohesion Funds are not initiated; rather, only planned inspections at various stages of project implementation are carried out.
- Lack of timely updates to the information entered in the records of received signals for irregularities.
- The follow-up activities and other changes in previously reported cases of irregularities are not reported to AFCOS.
- Delays in taking measures for forced recovery of undue or overpayments, as well as unduly or improperly utilized resources.

Source: (Дирекция АФКОС, МВР, 2011).

<sup>184</sup> (Обединение „Европейски анализи и оценки“, 2012).

The most common irregularities in public procurement in **Croatia** are related to procurement planning, delivering public procurement reports to responsible bodies, publishing the register of public procurement contracts and framework agreements on the website, as well as monitoring the execution of the contracts.<sup>185</sup> As in the other former communist SELDI countries, in Croatia the public procurement system inherited the flaws of the earlier process of privatisation. Although Croatia has changed its Constitution in order to avoid the statute of limitation in cases of privatisation,<sup>186</sup> such changes do not represent a safeguard from the corruption and crimes in privatisation. The 2013 *Act on the Management and Disposal of Assets owned by the Republic of Croatia* closed down the Asset Management Agency and transferred its powers to the following bodies: the State Office for State Assets Management as the central body of management and disposal of state assets, which acquires the power of management and disposal of real estates and shares in strategic companies; the newly established Sale Centre as a new body that acquired the power of management of the minority shares of the state in companies which are not declared of strategic interest for Croatia. The Act also defined the overall legal framework for the establishment of the Central Registry of State Assets

that includes the widest possible number of types of assets owned by the state. The main goal of this law is to ensure more efficient and transparent use of state assets, in order to create a new value and achieve greater economic benefits; whether this new system of management and disposition of state assets would bring the expected results remains to be seen. Overall, the public procurement process in Croatia continues to be opened up, including through initiatives of civil society, such as the Integrity Observers' database, which contains some 50,000 public tenders and 13,000 contracts which citizens and other interested stakeholders can search freely.<sup>187</sup>

In **Kosovo**, the legal framework on public procurement is generally "sufficient and allows for centralised purchasing, although some technicalities regarding the signature of the contract need to be adjusted."<sup>188</sup> According to the Public Procurement Regulatory Commission the annual value of public contracts in Kosovo fluctuates around €800 million.<sup>189</sup> Businesses in Kosovo have come to take it for granted that winning public contracts comes about as a result of some informal favour to the officials with vested power in granting contracts in the contracting authorities.

#### Box 6. Oiling the wheels: collusion between ministers and businessmen in Croatia

On March 13, 2014 the State Attorney's municipal office in Karlovac indicted Jozo Kalem, a businessman from Rijeka and close friend of Minister of Finance Slavko Linić, and his company "RI Petrol" on suspicion that they illegally gained 103 million kuna (€13.5 mln). Following the information that the Karlovac office of State Attorney raised the indictment against Kalem, Minister Linić confirmed in an interview that he was a close friend of the suspect and that Kalem was being used to smear him. Media had written about their friendship many times before. Though Kalem's work flourished during the war years, he achieved a real business boom a little more than 10 years ago after his friend Slavko Linić became Deputy Prime Minister and Head of the Supervisory Board of oil company INA in which the Croatian state is a majority shareholder. An investigation was launched regarding the preferential position which was allegedly given to Kalem's company "Europetrol" in petroleum product selling and favouritism by INA. In 2010, Kalem's company Europetrol was mentioned in relation to favouritism by the state-owned companies Rijeka – Zagreb Motorway and Carrier Autotrolej from Rijeka. There were allegations that lower offers from other oil companies participating in competition were rejected because of trivial reasons, and a contract was signed with Kalem whose offer was more expensive. However, the relevant institutions never proved these allegations. Moreover, the State Commission for Supervision of Public Procurement rejected every objection to the legality of the procedure, even though they themselves admitted that there were some incongruities.

*Sources:* (Index.hr, 2013) and (Dalje.com, 2014).

<sup>185</sup> (State Audit Office of Croatia, 2014).

<sup>186</sup> (Hrvatska Radiotelevizija, 2010).

<sup>187</sup> [www.integrityobservers.eu](http://www.integrityobservers.eu)

<sup>188</sup> (SIGMA, 2013k, p. 59).

<sup>189</sup> (Riinvest Institute, 2012, p. 26).

The Procurement Review Body is the oversight institution in public procurement. An issue of concern is that as of May 2014 it still had no full board. Parliament has not yet designated anyone on the vacant positions and appeals are being left unaddressed. In its latest annual work report it has found that:

“Legal violations and repeated irregularities by the Contracting Authorities are found in particular in some important aspects of development of public procurement procedures. Review panel in most of the cases has encountered irregularities during the bid evaluation process and on wrong decision making for announcing the successful bidder. Violations were also found of the *Law on Public Procurement* which resulted into annulment of announcements for award of the contract by the respective Contracting Authority or the matter has been returned to Review Panels for re-evaluation.”<sup>190</sup>

In 2012, 82% of the cancelled procurement procedures were due to the absence of competition (fewer than two valid bids or requests to participate).<sup>191</sup> On the positive side, there are fewer “unjust or ill-grounded appeals to the Procurement Review Body, which is particularly encouraging when taking into account the relatively negligible effort made to provide the training for economic operators in public procurement.”<sup>192</sup>

In **Macedonia**, a number of bodies exercise the regulatory and oversight functions with respect to public procurement: the State Appeals Commission on Public Procurement, the Public Procurement Bureau, the State Commission for Prevention of Corruption, and the State Audit Office. The State Appeals Commission “received and resolved 658 complaints [...] in 2012, a slight decrease from 690 in 2011.”<sup>193</sup> The Commission attributed the decrease to better knowledge of procurement law by the public and private sectors, the publication of its decisions online and the requirement for 100% e-auctions, most of them based on lowest price criteria only. Compared with 2011, 4% fewer cases went to the administrative court. In 2013, the Commission was presented with a total of 569 motions for appeals related to public procurements.<sup>194</sup>

Due to the electronic procurement system, media campaigns and greater awareness of the general public, more corruption cases are being uncovered. In 2012, for example, the number of reported corruption related procurement cases more than doubled in comparison to the previous year: 28 cases (up from 12 in 2011); 12 persons were convicted for procurement related crimes and misdemeanours in 2012 (no convictions in 2011 and 2010).<sup>195</sup>

Still, competition in public procurement in Macedonia remains low. The average number of bids submitted in

### Box 7. Dealing with high level corruption in Kosovo

A notable case of high level corruption is that of the former Minister of Transport, Post and Telecommunications Fatmir Limaj, and some of its staff. EULEX has been investigating Limaj since April 2010 when police raided the Transport Ministry and Limaj’s properties in Pristina as part of a corruption probe linked to road tenders issued between 2007 and 2009. The public raid in 2010 was a historical point as it was the first time a high profile figure was brought to such a position, as before they were thought of as untouchable. Having delegated some judicial powers to the European Union Rule of Law Mission, Kosovo was thus able to engage in more active fight against corruption at the highest levels. It took years after the raid to prepare the case against him, and there was insufficient proof to bring a conviction.

Another notable case has been that of the mayor of Prizren, the second largest city in Kosovo. The mayor and others were accused of misappropriating public property which was managed by Kosovo’s Agency for Privatisation. The mayor was convicted and the case got wide attention as it was the first time a conviction had been issued against a high ranking politician.

*Sources:* (Balkan Insight, 2012); (BIRN, 2013); (Balkan News Agency, 2014).

<sup>190</sup> (Procurement Review Body of Kosovo, 2012, p. 89).

<sup>191</sup> (SIGMA, 2013k, p. 58).

<sup>192</sup> Ibid.

<sup>193</sup> (SIGMA, 2013f, p. 49).

<sup>194</sup> (Center for Civil Communications, 2014, p. 6).

<sup>195</sup> (SIGMA, 2013f, p. 50).

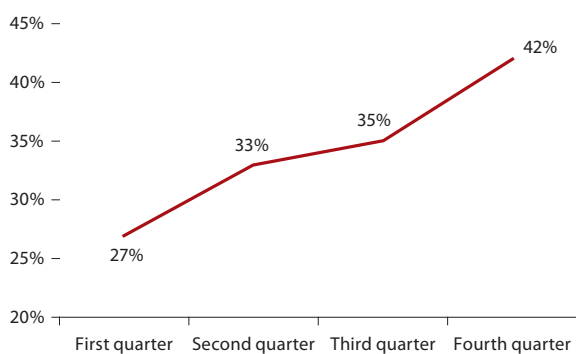
### Box 8. Sample criminal referrals on public procurement related charges by the Macedonian State Commission for Prevention of Corruption

- The directors of the Agency of Civil Aviation-Skopje for abusing their official duties, causing significant damage and creating an opportunity for obtaining for themselves and others significant property gain while conducting public procurement procedures.
- The director of the Public Enterprise "Geoengineering" – Tetovo, when representing and presenting the enterprise and when conducting the procedures for public procurement has not provided proper and legal use and protection of the means, the property of the municipality, by which a damage has been caused on a significant scale and the possibility for obtaining unlawful property gains.
- The directors of the Health Centre Bitola, by its managing, presenting and representing the institution and with the disposal of the funds of the Centre and conducting of the procedures for public procurement, have not provided legal and appropriate usage and protection of the funds of the institution, by which significant damage have been caused and have created the possibility for obtaining significant unlawful property gains.

Source: State Commission for Prevention of Corruption, Annual report for 2012.

the 2013 tender procedures monitored (total of 160) was 2.6 and more than one third of the tender procedures received only one bid (Figure 78).

Figure 78. Share of tender procedures in Macedonia with only one bid submitted, 2013<sup>196</sup>



Source: (Center for Civil Communications, 2014).

In the fourth quarter of 2013, a total of 388 contracts of total value of around €33 million were signed by means of negotiation procedures without previously announced calls for bids.<sup>197</sup>

Public procurement legislation in **Montenegro** is largely harmonised with the EU *acquis*. However, there are numerous examples of violations of basic provisions: poor control of contract implementation, separation of unique procurements into multiple smaller ones

<sup>196</sup> Among a sample of 40 public procurement procedures implemented by central level contracting authorities, whose public opening of bids took place in the period October – December 2013.

<sup>197</sup> (Center for Civil Communications, 2014, p. 14).

in order to avoid the use of transparent procedures, submission of incorrect information by the contracting authorities. In 2012, for example, government agencies signed 147 procurement contracts without using public tenders; the same year, the Commission for Monitoring Public Procurement Procedures examined 649 complaints, 49 of which involved tenders of more than €500,000. The Commission fully or partially cancelled 213 such tenders.<sup>198</sup>

Despite the fact that half of Montenegrin citizens believe public procurement procedures are not carried out in a fair manner,<sup>199</sup> the Public Procurement Administration receives on average one complaint annually for corruption.

Public procurement has been designated by the Ministry of Finance as one of the five high-risk areas for corruption. The remit of institutions, primarily the Administration for Inspection Affairs, which currently has only two employees – inspectors for public procurement, is limited to contract implementation control. The *Public Procurement Administration's Report* contains many statistics but not indicators for identifying corruption risks and for measuring real progress on combating this phenomenon.

The State Audit Institution stated in 2011 that certain government institutions – including the Ministry of

<sup>198</sup> (U.S. Department of State, 2013, p. 29).

<sup>199</sup> (Institut Alternativa, 2012, p. 13).

### Box 9. Procurement irregularities in Montenegro

In 2013, the State Commission for Control of Public Procurement Procedures issued a decision ordering the Health Insurance Fund to repeat the evaluation of bids for 4 out of 27 parties who had participated in the tender procedure, to the amount of €4,309,436. The Fund had to re-evaluate within 15 days the parties covered by the tender which was issued in December 2012. Due to problems with the tender, for nearly four months patients were not able to undergo medical procedures for thyroid problems, pregnancy and tumours in the Clinical Centre of Montenegro.<sup>200</sup>

Inspectors for combating economic crime by order of the Municipal Prosecutor in Podgorica have inspected procurement procedures of the Montefarm pharmacy for suspicious tenders.<sup>201</sup> Montefarm awarded procurement contracts to drug companies that have not been registered for this activity. According to published data, it planned €26.5 million for drugs procurement for 2013; in these procedures, by July 2013 about 100 cases had been controversial, worth €2.5 million.

Finance, Ministry of Economy, Ministry of Foreign Affairs and European Integration and Ministry of Health, as well as Protector of Property and Legal Interests and Agency for Protection of Personal Data – provided false information to the Public Procurement Administration. However, it is not clear whether responsible persons in these bodies have been penalised for the delivery of false reports. Although there have been many irregularities in the implementation of public procurement procedures, in the past ten years the police and the State Prosecutors Office brought a negligible number of criminal charges.

In **Serbia**, the number of public procurement contracts has dropped significantly over the years, while the total value has increased. The result is that the average value of the public contract has increased almost ten-fold in nominal terms over the past ten years (Figure 79).

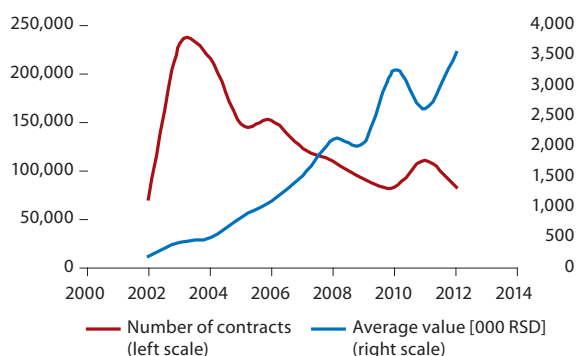
About 87% of all contracts are so called “large-value contracts” which have to be awarded in accordance with strictly specified procedures, while so called “low-value contracts”, where the procedure is simplified, accounted for 13% of the contracts in 2012.

From the anticorruption point of view, perhaps the most relevant data is related to the type of procedure which was used in the public procurement process. Data shows that the share of open procedures (as the most transparent procedure) has been rising in recent years, but it is still below 60%. Together with restricted procedures (which also require public announcement and invitation) the share is below 70% by value. It is worrying that negotiation procedures account for 34%, but even more worrying is that there has practically been no improvement over the past 5 years.<sup>202</sup>

The implementation of the non-transparent negotiation procedure has to be explicitly justified (Figure 80).

In almost half of the cases the grounds for direct negotiations were supposed “technical and artistic reasons”. In such cases, the law envisages that the procurer has to publish its decision to directly hire a certain company, but other companies have 8 days to appeal this decision by claiming that they can also supply the necessary goods or services. It seems that other bidders were not aware of this possibility. The next justification is “urgency” and in these cases procurers have to submit their decision to the Public Procurement Office together with the justification for

**Figure 79. In Serbia, fewer procurement contracts at an increasing value**



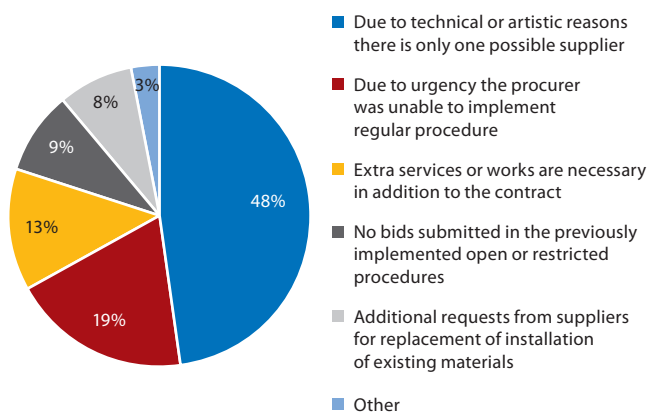
Source: Public Procurement Office annual reports.

<sup>200</sup> (Daily newspaper “Dan”, 2013).

<sup>201</sup> (Daily newspaper “Vijesti”, 2013).

<sup>202</sup> A comparison of Serbia with some other SELDI countries is provided in Figure 72.

**Figure 80. Justifications for the use of negotiations for public procurement in Serbia, 2012**



Source: Public Procurement Office annual report.

this procedure. The Public Procurement Office has found several typical problems with such justification:

- There was no legal ground as the problem of urgency was created by the procurers themselves (in 47% of the cases);
- No effective competition was ensured, but only one bidder was called (in 39% of the cases);
- Stalling of the procedure – in many “urgent” cases, the formal decision was made more than two weeks after the bids were opened.

In Turkey, “public procurement reforms were designed to make procurement more transparent and less susceptible to political interference, including through the establishment of an independent public procurement board with the power to void contracts.”<sup>203</sup> Still, tenders in energy, water, transportation and communication are not regulated by the public procurement law. Further, the Public Procurement Authority has the right to provide exemptions to public procurement tenders under TL 6.6 million in 2012 (€2.3 mln) upon requests from public institutions. In 2012, the Turkish State Railways and in 2013 the postal services were taken out of the provisions of the public procurement law.

During 2012, the volume of public procurement increased by 21% compared to the previous year, 6.2% above the consumer price inflation. In 2012, 83% of all public procurement in state economic enterprises was in transportation and communication and energy sectors, most of which were exempt from public procurement law,<sup>204</sup> thus creating a corruption risk.

<sup>203</sup> (U.S. Department of State, 2013t).

<sup>204</sup> (T.C. Sayıştay Başkanlığı, 2014, p. 88).

One of the most important general criticisms by the Turkish Court of Accounts is that internal financial control units are not established at all in some public institutions and not properly established in the rest,<sup>205</sup> thus violating the *Public Financial Management and Control Law* which aims at aligning public finance governance in Turkey with that of EU. Pre-financial control units do not exist. Lack of internal financial control units within public institutions make them more susceptible to misconduct in public procurement. Of the more specific findings of the Court of Accounts which came to the attention of the media and public were incidents involving procurement by the electricity company TEDAŞ,<sup>206</sup> writing-down of social security debt of a private company in return for assets,<sup>207</sup> procurement by Turkish Railway Enterprise,<sup>208</sup> and procurement by the Housing Development Administration of Turkey.<sup>209</sup> In addition, in a 2012 report on TEDAŞ<sup>210</sup> the Court of Accounts reports that during the privatisation of electricity distribution channels, a total of TL 171 million (€59.4 mln) which was in cash accounts was not taken into account during the valuations and eventually left to the new buyers.

In April 2014, the Turkish Treasury announced that it would guarantee projects costing more than TL 1 billion (€345.8 mln). Accordingly, the Turkish state would reimburse 85 percent of loans to companies involved in project tenders if the deal is cancelled due to company-related faults. The Treasury would reimburse the total amount of loans if the tender is annulled for any other reason. The Treasury emphasised that state-owned enterprises and local administrations would not be eligible for the program and the guarantee would be limited to €2.2 billion annually. This new legislation is likely to raise further questions about public finances and the anticorruption efforts of the government, if transparency issues regarding the implementation of the regulation are not resolved.

According to the 2012 report by the Turkish Court of Accounts, the Ministry of EU Affairs did not provide the necessary financial reports and tables for an inspection;<sup>211</sup> thus, there has been no 2012 control

<sup>205</sup> (T.C. Sayıştay Başkanlığı, 2013b, p. 10).

<sup>206</sup> (SAYDER, 2013a).

<sup>207</sup> (SAYDER, 2013b).

<sup>208</sup> (SAYDER, 2013c).

<sup>209</sup> (SAYDER, 2014).

<sup>210</sup> (T.C., 2013c, pp. 22-24).

<sup>211</sup> (T.C. Sayıştay Başkanlığı, 2013).

on the spending of the Ministry. Also, the European Commission has launched an investigation into allegations that a Turkish government agency misused EU funds.<sup>212</sup> The probe followed reports in Turkish media in January 2014 of tender-rigging and illegal recruitment at the Centre for EU Education and Youth Programmes in Ankara.

## 5.4. RECOMMENDATIONS

### *Business environment:*

- Streamline the environment for entrepreneurship, including through continued deregulation, decreasing and abolishing barriers to business.
- Reduce to a minimum and review annually state aid policies as they create considerable corruption risks. Introduce in advance strict enforcement of EU state aid rules, and develop the capacity of national independent state aid regulators to enforce the rules.
- Improve the enforcement of anti-monopoly legislation in order to promote free enterprise and competition. Apply special care and review regularly concentration in sectors which are heavily regulated and face licensing and other restrictions, thus creating a risk of collusion between larger competitors and politicians.

### *Budget process:*

- Countries that have not done so should establish institutional links between the management of assets and liabilities of all public finances, including state-owned companies, in order to mitigate financial risks and enhance the government's credibility in public finance management. State-owned enterprises should meet stringent corporate governance and reporting requirements (e.g. OECD rules), on par with publicly traded companies. These enterprises should publish online quarterly reports.
- Publish a mid-year report on the implementation of the budget. Detailed data on the budget should be published in online searchable format which allows big data analysis, including at ministry and executive agency level.

- Enhance the transparency in the selection of capital expenditure projects by introducing clear guidelines for planning and evaluating of public investment in this area.

### *Public procurement:*

- Adopt policies to reduce the share of public procurement tenders with only one bidder and enhance competition.
- Introduce liability and sanctions for contracting authorities who fail to submit reports on public procurement in continuity, reports on violations of anticorruption regulations or submit incorrect or incomplete data.
- Improve oversight of procurement by large public procurers (state-owned enterprises and utility companies in particular) to maximise the efficiency and reduce irregularities.
- Make available to the public all public procurement contracts and annexes, including direct agreements. Publish in online searchable format the complete documentation on public procurement pre-notices, notices, bids, contracts, and any addendum thereof.
- Define a legal and institutional framework for the management and control of contracts concluded by public-private partnerships.
- Require all compliance bodies to publish annual reports on their operations and the results of their inspections.
- EU candidate countries that do not have one should establish decentralised implementation systems for EU funds to provide the appropriate legal and administrative framework for the transfer of responsibilities for the implementation of the EU funded programmes. Oversight should remain centralised and independent of implementation bodies.
- Broaden the scope of e-government, specifically e-procurement and (in Croatia and Bulgaria) introduce electronic submission and reporting for all EU operational programmes.
- Provide training to judges on the technical knowledge of new types of fraud in the business sector, including with respect to public procurement where the technical specifications in open calls restrict free competition.
- Introduce the concept of value-for-money in the evaluation of public procurement contracts.

<sup>212</sup> (Hürriyet Daily News, 2014).







The integrity of public governance is predictably an issue that preoccupies some of the most active civil society organisations in the SELDI countries. While NGOs started off – and this is true both in the former communist countries in the area and in a country with a stable constitutional regime like Turkey – as largely outsiders in this field, the improvement of their expertise on the political process and public services and their increased activism have made them into a force to be reckoned with. Now, it is not uncommon “for think tanks to draft laws, for environmentalists to effectively challenge developers or for watchdogs to cause the introduction of new transparency regulations in state bureaucracies.”<sup>213</sup> In addition to promoting reforms to anticorruption policies and regulations, NGOs have addressed the wider context of the political culture in their countries by raising civic awareness and working at the grass roots level. Good governance is not a technical exercise but requires a national climate of trust and civic and political responsibility – precisely the issues where NGOs have most to contribute.

Their contribution depends in no small measure on being capable of **both serving as watchdogs and engaging government** in anticorruption reforms. However, “there is a **lack of effectively established formal mechanisms for engaging civil society** on the part of the national governments in the region, as well as lack of administrative capacity and clear vision and understanding of the potential of CSOs in the field of anti-corruption.”<sup>214</sup>

## 6.1. CIVIL SOCIETY IN THE SELDI AREA: HIGHLIGHTS FROM THE SECTOR

While being agents of change over the past two decades, non-governmental organisations have themselves sustained significant transformation. In **Bulgaria**, for example, watchdogs and mediators transformed

themselves and helped others emerge as **social entrepreneurs** balancing market inefficiencies and delivering services. Instead of continuing to see NGOs as gadflies and adversaries, governments, political parties and senior administrators have adopted a more cunning approach and now rather seek to subvert their civic nature by a silent takeover. Ironically, EU accession provided a lot of opportunities for politicians and senior administrators to capture the NGOs by channelling EU assistance only to clientele organisations. Foreign donors almost all left Bulgaria after 2007 with the exception of Switzerland and Norway. Most of the NGOs who emerged and sustained over the past years finance their activities through research and consultancy projects and/or volunteerism or provide paid services.

Bulgaria also exemplifies developments with respect to the legal status of NGOs registered in the public benefit (most SELDI countries’ legislation makes the distinction between public and mutual benefit NGOs). For example, there are many NGOs who should be registered in public benefit (i.e. parents-teachers associations at schools), but are not (less than 20% of all PTAs are registered with the Ministry of Justice), leaving a lot of room for corruption and conflicts of interest as the level of disclosure of information is low or non-existent. Others, like *chitalishte* (a kind of community learning centre), are subject to additional regulation which is weaker than the public benefit status (and again the majority of them are not registered with the Ministry of Justice).

Data suggests that about 10,000 non-profit entities report to the National Statistical Institute annually (with many empty declarations). This should be considered as an adequate upper limit of the number of NGOs; 75% of them hold public benefit status. Between a quarter and 30% of all “operating” NGOs (submitting reports to the national statistics) have reported income from a for-profit activity. Close to half of these with commercial activities actually have higher income from for-profit activities than from not-for-profit. This suggests an increasing risk of commercializing of the NGOs at low transparency level (especially for NGOs in private benefit).

**Croatia** is in the process of changing its non-profit legislation. In October 2013, the Croatian government

<sup>213</sup> (Center for the Study of Democracy, 2010a, p. 24).

<sup>214</sup> (SELDI, 2013, p. 10).

published a draft of the *Associations Act* which contains no national classification by which to track the structure of civic associations. In terms of anticorruption, on the Croatian NGO scene there are only several active associations (mostly founded in in the late nineties) whose primary goal is the fight against corruption. Otherwise, non-governmental organisations are sometimes used as “badges” of the government, meaning that they are included in public-private consultations bodies or joint working groups only if they are not too critical of the government or if it is not on an issue considered important by special interests. While legislation relating to gender issues or discrimination is influenced by NGOs, only key government stakeholders are allowed to influence anticorruption legislation.

NGOs appeared in **Kosovo** at the end of the 1980s and beginning of the 1990s, after the fall of communism in Central and Eastern Europe. Civil society developed as an important part of civil resistance against new forms of political oppression in Kosovo. “Humanitarian assistance, health care and human rights protection offered by various civil movements was strongly supported by society in general and informed the most important civil society activities.” Out of more than 7,000 registered NGOs in 2013, an estimated 10% are active or partially active.

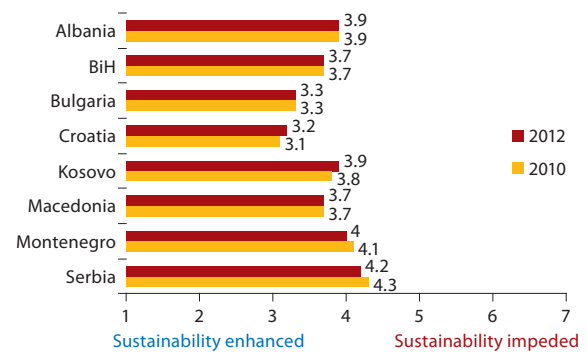
In **Macedonia**, with the stabilisation of the country in the post 2001 conflict period, the civil society sector focuses on democracy, rule of law, sustainable development, inter-ethnic relations and European integration. The sector – although still not sufficiently involved – is important in helping Macedonia towards EU membership, especially by upholding values such as social inclusion, equality, transparency and accountability.

In **Montenegro**, the recent adoption of two important regulations provided legal framework for NGO participation in the policymaking processes. The government decree on the procedures for cooperation between state bodies and NGOs and the decree on procedures for conducting public discussions were adopted in 2012. The former document for the first time regulates the forms of cooperation between the public and civic sectors, such as provision of information, consultation, and participation in working groups. The latter document is obligatory for each government ministry, and prescribes the procedures for involving civil society in the design of public policies.

<sup>215</sup> (Forum 2015, 2013, p. 15).

<sup>216</sup> (Forum 2015, 2013, p. 16).

**Figure 81. The sustainability index for NGOs in the SELDI countries**



Source: (USAID, 2013).

At the national level, there is a core of organisationally developed NGOs engaged mainly in advocacy, research, monitoring and capacity building in fields such strengthening of the rule of law, fight against organised crime and corruption, human rights and democratic standards and freedoms. This small number of professional organisations operates against the background of the majority of voluntary or semi-professional NGOs working at the local level mainly providing services to local communities.

About 30% of currently registered NGOs in **Serbia** were founded before 1989, about 18% were established during the 1990s, while the majority – 52% – were established after 2000.<sup>217</sup> Notable exception are organisations involved in social services, where as many as 50% of NGOs were founded before 1989. Most non-profits are also quite small both in terms of staff – nearly two-thirds have fewer than ten active personnel – and budget – 54% have an annual budget of less than €5,000, while only 10% have an annual budget in excess of €100,000. As far as funding sources are concerned, they are dominated by grants and financing through membership fees and service fees. Revenue structure is largely depended on the activity; for example, in professional associations almost 70% of revenue comes from membership fees.<sup>218</sup> “Roughly 18,000 civil society organizations operate in Serbia, but their impact on governance and other key areas is rather weak... Cooperation between civil society and government institutions is still relatively infrequent.”<sup>219</sup>

<sup>217</sup> (Građanske inicijative, 2011).

<sup>218</sup> (Građanske inicijative, 2011).

<sup>219</sup> (Freedom House, 2013).

## 6.2. SOME ANTICORRUPTION INITIATIVES

While in the early 2000s, NGOs in the SELDI area were “still in a process of defining their fields of interest and social role against a wide range of transition priorities and problems,”<sup>220</sup> today anticorruption is firmly among their key areas of engagement.

Civil society in **Albania** has focused on anticorruption by its own initiative and has, at the same time, been prompted towards these issues by interest from international and local donor organisations providing funding for projects in the field. Corruption issues, even when not being a primary focus, have still been incorporated into different project and initiatives; for example, many organisations have used the general framework of democratisation projects in order to deal more specifically with corruption. Anticorruption has also been an aspect of civil society work in areas such as public administration reform, education, judicial system, health sector, marginalised groups rights as well as more research oriented institutions. However, the civil society sector is “weakened by receding funds and the influence of politics on civil society organisations. Critics argue that civil society reflects the priorities of the donors leading to a discrepancy between public concerns and civil society projects.”<sup>221</sup>

In the past few years, the number of civil society organisations contributing to the fight against corruption in **Bosnia and Herzegovina** significantly increased. This process culminated in 2012 when ACCOUNT – a network of non-governmental organisations, institutions and individuals committed to

anticorruption – was established. ACCOUNT now has more than 120 members and its main goal is to speed up anticorruption reforms in Bosnia and Herzegovina through various actions and advocacy. In 2013, they held debates, discussions, public hearings and trainings involving over 1,000 participants, and provided free legal aid to citizens who have come under corruption pressure.

A notable anticorruption success of Bosnian civil society took place in 2013 when there was an attempt at changing the *Law on Free Access to Information* at the state level in order to limit public access to information. This proposal was fiercely criticised by civil society organisations, media and wider public. During public consultations on the draft amendments the Ministry of Justice of Bosnia and Herzegovina received 208 comments which now need to be considered and included in the proposal.

Civil society involvement in anticorruption activities in **Bulgaria** has a long and strong track record from late 1990s and mainly associated with a few dozens of NGOs involved in the CSD-led *Coalition 2000*.<sup>222</sup> Some of the most significant achievements include the introduction of the internationally acknowledged *Corruption Monitoring System*; the *Corruption Assessment Report* – a comprehensive evaluation of the state and dynamics of corruption, developed annually through a public-private partnership; monitoring and analysis of the hidden economy and trafficking; **institutional innovation** (introduction of new institutions as the Ombudsman, introduction of new instruments within existing institutions, such as the Organised Crime Threat Assessments, monitoring instruments for police stops and searches, etc.); **public-private partnerships** in addressing irregularities and violations (including

### Box 10. Best anticorruption practices by Bosnian NGOs

- Quarterly monitoring of the work of government bodies carried out by the Center for Civil Initiatives, which includes compiling reports on the legislation that has been proposed and adopted, on the number of times parliamentarians participated in discussions, their monthly or annual wages, etc.
- A survey conducted by the Association Vesta on corruption in higher education. Using the survey findings they have prepared a list of guidelines and recommendations for anticorruption measures.
- The online magazine *Žurnal*, maintained by the Center for Media Development and Analyses, which in 2013 published “Who and how much steals in public procurement” – a survey of corruption in public procurement among 300 procurers.

<sup>220</sup> (SELDI, 2002, p. 228).

<sup>221</sup> (Sadiku, Albania, 2010a, p. 4).

<sup>222</sup> <http://www.anticorruption.bg/>

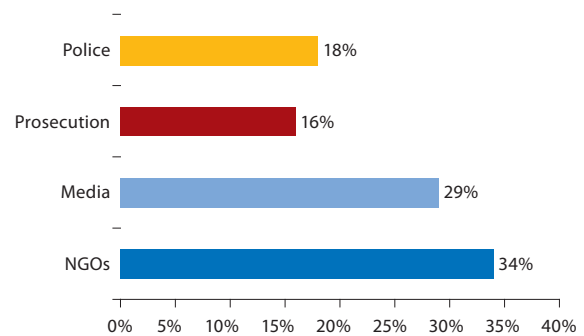
civil society observers of inspections, which prevents corruption).

The moment when civil society in **Macedonia** started to point to the level of corruption in Macedonia and to the need to cope with it, while at the same time indicating numerous deficiencies in the legal regulations and the institutional framework, was the foundation of the informal coalition Corruption-Free Macedonia in the early 2000s. It consisted of civil society organisations and prominent individuals and experts who called on the government to crack down on high-level corruption. Following advocacy by civil society and the international community the *Law on Corruption Prevention* was adopted; the same year the State Commission for Corruption Prevention was set up and its first president was the then president of the Transparency Macedonia. However, the civil society sector failed to continue to develop the debate on combating corruption and on the role and capacities of the civil society organisations in combating corruption with the expected intensity. During the years that followed only a small number of organisations continued to keep corruption on their agenda, including Transparency Macedonia, Transparency International Macedonia, the Center for Civil Communications, MOST, the Institute for Democracy Societas Civilis – Skopje, the Research Center for Civil Society, and the All for Fair Trials Coalition.

In **Montenegro**, NGOs have their representatives in working groups on the EU negotiations with respect to anticorruption, the most important are on judiciary and fundamental rights, justice, freedom, security and public procurement. The major challenge that NGOs face in these working groups and bodies is unequal treatment: NGO representatives lack access to documents and lack financial support for participating in some activities of the working groups. This disadvantage is all the more regrettable, given

the high estimate of the public of NGO contribution to anticorruption (Figure 82).

**Figure 82. NGOs in Montenegro are considered the most successful institutions in anticorruption<sup>223</sup>**



Source: (Selić, 2013).

Civil society participation in anticorruption raising awareness campaigns has been greatly reduced since these types of activities are assigned to and led by Directorate for Anti-Corruption Initiative. NGO awareness raising campaigns cover specific areas affected by corruption such as health, customs, police, and the election process.

**Turkish** NGOs have been active in researching the causes and effects of corruption. Surveys by the Turkish Economic and Social Studies Foundation (TESEV) and the Economic Policy Research Foundation of Turkey (TEPAV) conducted in the beginning and at the end of the 2000s, analysed the household perspective on corruption. The comparison between the studies has been instructive: for instance, in looking at the importance of corruption among other socioeconomic issues, the TESEV results showed that 14% of the respondents found corruption as the most important issue in 2000. On the other hand, TEPAV's survey results from 2009 show that this number decreased to 3%; the public gave more importance to other

### Box 11. Clean politics in Turkey: an initiative

Transparency International-Turkey has launched a campaign Clean Politics. Prior to the local elections in April 2014, TI-Turkey requested access to the asset declarations of politicians, senior public officers, media owners and editors-in-chief through the online petition website change.org. Creating a social media campaign, TI-Turkey has managed to get 29 mayor candidates to declare their wealth and also sources of election campaigning funds in order to establish and maintain a transparent, accountable legislation, public administration and local governance system.

<sup>223</sup> Share of the general public considering these institutions "successful in the fight against corruption."

social issues such as inflation, economic crisis and unemployment.<sup>224</sup>

### 6.3. GOVERNMENTS AND CIVIL SOCIETY: FOES OR FRIENDS?

The engagement of civil society organisation with governments in the SELDI countries has been one of the most controversial but also potentially most rewarding aspects of their anticorruption work. While public-private partnerships have brought about positive developments, they have also brought risks for NGOs. The key to making partnering successful has been the capacity to enter into various relations with state institutions, both complementary and confrontational. One way, for example, of reconciling cooperation with performing a watchdog function, has been to enhance the professionalism of NGO in monitoring of corruption and anticorruption policies.

Although NGOs in the SELDI area have managed to establish some international public-private partnerships, these were not always translated into domestic partnerships as well. For example, despite the fact that civil society is formally consulted when draft laws and strategies are presented, there is no substantial commitment to include civil society as a vital actor in the process.

A number of SELDI countries have joined the Open Government Partnership, an international collaboration of domestic reformers “committed to making their governments more open, accountable, and responsive to citizens”.<sup>225</sup> Among other things, the Partnership aims to bring together governments and civil society. As a result, NGOs in some SELDI countries have been involved in the development and implementation of national action plans for good governance but the experience has been uneven. In **Albania**, for example, “the level of cooperation and inclusiveness of civil society in within the [Partnership] processes [...], remains at basic and sporadic level”.<sup>226</sup> However, while many civil society organisations in the country have limited capacities and resources to deal with corruption

issues on a national scale they started to increasingly focus on local government and issues of accountability, corruption and budgeting. Thus, impactful projects were implemented in collaboration with local government units (mainly municipalities) where civil society organisations were providing training and long-term cooperation. Partners Albania – a member of Partners for Democratic Change International – has been very active in such local scale projects; many of their initiatives have even been taken forward from one region to the other, thus providing almost a national coverage of local governments.

In **Bosnia and Herzegovina**, the anticorruption network ACCOUNT has signed a memorandum on cooperation and mutual assistance with the Ministry of Security of Bosnia and Herzegovina and Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. In accordance with this memorandum they hold monthly meetings to exchange information and work out possible difficulties in their work. The cooperation has resulted in the contribution of ACCOUNT to the adoption of the whistleblower protection legislation and initiated the inclusion of anticorruption amendments to the draft *Law on Public Procurement*. Transparency International BiH also has memorandums of understanding with the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption and Ministry of Security, and is collaborating with the State Elections Commission in reporting of conflict of interest. The cooperation of the Center for Civil Initiatives with entity and cantonal ministries of health has resulted in the adoption of a rulebook on prevention of corruption in 45 healthcare facilities. Despite these best practices, general relations between government authorities and NGOs in Bosnia and Herzegovina “are burdened by numerous problems, from insufficient transparency of government institutions, which renders the watchdog activities of the civil society more difficult, to open hostility towards the media and civil society organisations, which considerably complicates their overall activities and impact”.<sup>227</sup>

In **Croatia**, there is a Council for Civil Society Development established as an advisory body to the government and overseeing the implementation of the National Strategy for Creating an Enabling Environment for Civil Society Development; the development of philanthropy, social capital, partnership relations and cross sector cooperation. In 2009, the Croatian government adopted a Code of Consultation with the

<sup>224</sup> (Adaman, Çarkoğlu, & Şenatalar, Hanehalkı Gözünden Kamu Hizmetleri ve Yolsuzluk, 2009).

<sup>225</sup> <http://www.opengovpartnership.org>

<sup>226</sup> (Institute for Democracy and Mediation, 2013, p. 6).

<sup>227</sup> (Transparency International BiH, 2012a, p. 3).

### Box 12. Kosovo's Government Strategy for Cooperation with Civil Society 2013 – 2017

The preamble of the Strategy points out:

“Government needs competent partners outside government who will help create effective public policies and the implementation of effective interventions for their citizens. [...] To begin the process of genuine cooperation, the two sectors should recognize joint values, to accept the responsibilities of certain common issues and share their financial resources and human resources in order to achieve common goals. This cooperation will cover the gaps of both sectors but without harming their point of strength.”

The Strategy outlines several strategic objectives:

- Ensure strong participation of civil society in drafting and implementation of policies and legislation;
- Build a system and define criteria to support financially the CSOs;
- Promote an integrated approach to the development of volunteering.

interested public in enacting laws and regulations. The ultimate aim of the Code is to facilitate interaction with citizens and representatives of the interested public in the democratic process, and to encourage the active participation of citizens in public life.

The **Serbian** government established the Office for Cooperation with Civil Society in 2010 in order to provide an institutional framework for cooperation with NGOs and a channel of communication between the state and civil society. One of the first tasks of the Office was writing the Strategy for the Development of Civil Society. In addition to this Office, some ministries have special units dealing with civil society, usually as part of larger units which deal with international cooperation and EU accession. Formally, the government is obliged to implement a public discussion on all its legislative proposals, so in theory there is a formal mechanism to include civil society in decision making process. However, in practice, this obligation is frequently circumvented by using the “urgent procedure” mechanism, or by just paying lip service – draft laws are published online and comments are requested, but it is never published what comments were made, what comments were adopted, rejected or why.

The *Law on Associations* and the *Law on Foundations and Endowments* in Serbia are the result of a good example of cooperation between civil society and government bodies. However, most of civil society (64%) characterises the total impact of the sector in the formulation of government policy as “inadequate,” and only 2.5% thought that the impact of the sector was “too large.” About 22% of organisations assess

the cooperation with the government as favourable, while 40% of organisations estimated that the state is not interested, and that the government (at various levels) underestimates the importance of the role of civil society in the development of society. However, a similar number of organisations believe that the state has a positive attitude towards NGOs, either through direct support (22%) or through recognition of NGOs as partners (19%).<sup>228</sup>

## 6.4. INTEGRITY OF NON-PROFIT GOVERNANCE

The effectiveness of NGOs in addressing the issues of good public governance depends to a great extent on their capacity to maintain their own governance in order. High integrity standards are essential for civil society organisations because of their role as the driving mechanism demanding further good governance reforms and in changing the beliefs, expectations and engrained behaviours of the public at large.

It would be naïve, however, to assume that non-governmental organisations are somehow immune to corruption pressures. In fact, the capturing of NGOs by special interests and corrupt public officials or elected politicians is “yet another reincarnation of the mechanism of subversion of public governance by private interests.”<sup>229</sup> The risk of such capture stems from

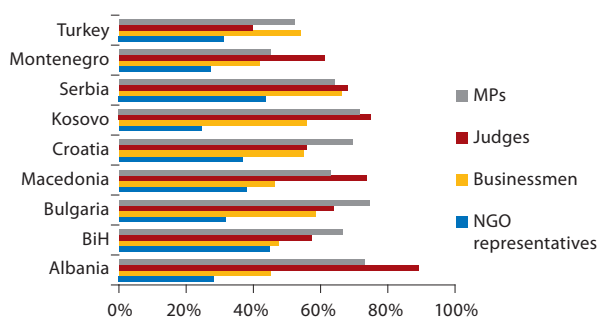
<sup>228</sup> Serbian Civil Society Baseline Study, Civic Initiatives, 2011.

<sup>229</sup> (Center for the Study of Democracy, 2010a, p. 27).

the opportunity to exploit a number of vulnerabilities of the non-profit sector in the SELDI countries:

- absence of mandatory procedures for transparency in the sector;
- ineffective control of compliance with financial regulations;
- lack of auditing culture;
- low level of self-regulation.

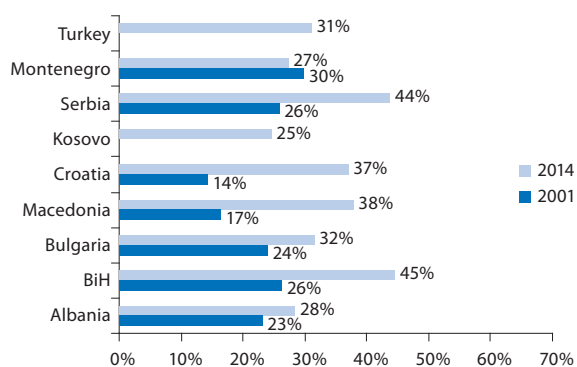
**Figure 83. Estimates by the public of corruption among the following groups<sup>230</sup>**



Source: SELDI/CSD Corruption Monitoring System, 2014.

While the public estimates of the proliferation of corruption among NGOs in the SELDI countries is much lower than among public officials and government institutions (Figure 83), the share of citizens doubtful of their integrity has risen tangibly over the decade (Figure 84). Admittedly, this is part of the overall trend of the rising numbers of those who detect more corruption in public life since the early 2000s; nevertheless, if NGOs are to be at the forefront of good governance reforms in their countries, they need to address their transparency and accountability as a priority.

**Figure 84. Change in public estimates of corruption among NGO representatives in the SELDI area**

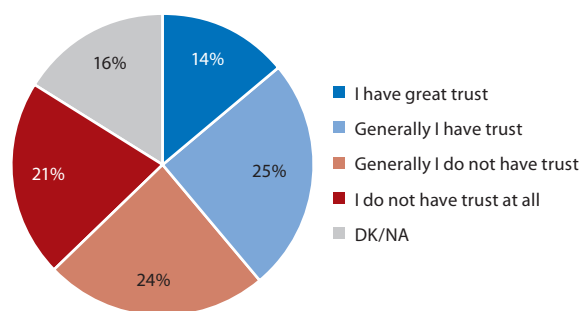


Source: SELDI/CSD Corruption Monitoring System, 2014.

<sup>230</sup> Share of answers “Almost everybody is involved” and “Most are involved”.

In **Albania**, there have been reports of nepotism and corruption among a group of NGOs where the public Agency for the Support of Civil Society was reported as involved.<sup>231</sup> Despite the fact that the allegations have not been investigated or proven, this affects public perceptions and trust in civil society organisations. Other allegations have been made in the Albanian media about the funds dedicated to the Roma community, especially those by the European Commission, claiming that these millions of euros have failed to improve the situation of the poor and vulnerable community of Roma in Albania.<sup>232</sup> Although unproven they have managed to affect public opinion that the organisations beneficial of these funds have been corrupt since they have not managed to bring about a real result for the target group they were intended to.

**Figure 85. Trust in NGOs in Albania**



Source: (Institute for Democracy and Mediation, 2013, p. 39).

There are also concerns related to the transparency and financial reporting of civil society organisations. Among NGOs, “69.5% declare that their financial information is publicly available”. While this indicator looks relatively positive at a first glance, “almost 42% of the surveyed CSOs choose not to answer the question about where such information can be found, while of those who answered the question less than half offer a valid available source.”<sup>233</sup>

In **Bosnia and Herzegovina**, the risk of NGO capture comes from the fact that “there is the interest-based cooperation between the [political] parties in power and civil society organisations that are used by the parties for propaganda purposes or allocation of budget funds through different funding programs for these organisations. Another specific issue in Bosnia and Herzegovina involves considerably high budget

<sup>231</sup> (Rusi & Likmeta, 2014).

<sup>232</sup> (Top Channel TV, 2013).

<sup>233</sup> (Institute for Democracy and Mediation, 2010, p. 20).



### Box 13. Government millions for private media in Republika Srpska

The government of Republika Srpska has provided BAM 3.9 million to five daily and weekly newspapers. More than half of this amount went to two newspapers owned by Željko Kopanja, friend and former business partner of the RS president Milorad Dodik. “Nezavisne Novine” received BAM 1.2 million, and “Glas Srpske” BAM 910,000. Soon after the government had allocated the bulk of the money, the campaign for the general elections of September 2010 in BiH began. According to investigations carried out by the Sarajevo-based Media Plan Institute, Nezavisne Novine and Glas Srpske openly sided with the ruling party of Dodik. They reported in detail from every election rally and presented Dodik as the guardian of Republika Srpska.

*Source:* (Center for Investigative Reporting, 2012a).

funds that are regularly allocated to organisations collaborating based on religious and ethnic basis, since the nationalistic and religious rhetoric is still a propaganda means.”<sup>234</sup>

In the period 2007 – 2011, governments at various levels in Bosnia and Herzegovina have allocated at least BAM 293.4 million (€15 mln) in grants to veterans, sport organisations, humanitarian, religious and other associations.<sup>235</sup> Entity and state auditors have stated that the allocation of public money has been conducted without any criteria and without adequate monitoring afterward. For example, the deputy chief auditor at the Audit Office of the BiH Institutions said that allocation of money has been discretionary and varied depending on who is giving, and pointed out that funds are available to the chairman of the Council of Ministers and his two deputies who have discretion to give them away without any criteria.<sup>236</sup>

In **Bulgaria**, a particularly sensitive issue is the receiving of funds by quasi-NGOs established and managed by high-ranking politicians and administrators and/or their relatives. Corruption can affect both or either the procurement and implementation stages. In the former case, for example, even though financing could have been obtained through crooked procurement procedures or involve some form of conflict of interest, the implementation is not necessarily affected by this and could be carried out according to the rules and procedures (although quality might be affected).

An analysis by the **Croatian** Government Office for Cooperation with NGOs of existing legislation finds weaknesses, respectively needs and ways of improving transparency in the work of civil society, oversight and transparency in spending, considering that civil society are awarded annually more than a billion kuna (€130 mln) by public authorities in the form of grants.<sup>237</sup>

### Box 14. The pitfalls of commercialising non-profits in Bulgaria

The parent-teacher association of a reputable high school in Varna decides to start a for-profit business which could support the school in the long run. They establish a fully owned subsidiary of the association, closely resembling the name of the school. The firm provides language courses to students formally outside the school, but later it turns out that they enrol as “private students” and earn an official diploma as well. After a few years of successful business and retaining profit within the firm (not distributing it to the association) the manager of the company buys it from the association for the value of the registered capital (only not distributed profit accounts to more than 50% of the price, not to mention the intangibles). The association directly loses money and public benefit, but also the firm uses public property and communications at below market prices.

*Source:* (Center for the Study of Democracy, 2013d).

<sup>234</sup> (Transparency International BiH, 2012a, p. 3).

<sup>235</sup> (Center for Investigative Reporting, 2012).

<sup>236</sup> (Center for Investigative Reporting, 2012).

<sup>237</sup> (Vlada Republike Hrvatske-Ured za udruge, 2012).

**Box 15. Allegations of corruption in the TI chapter Croatia**

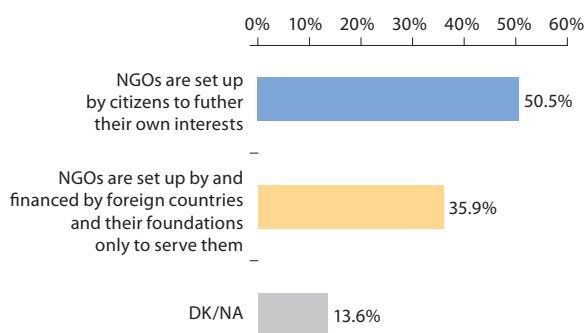
In the spring of 2014, several members of the general assembly of the chapter of Transparency International (TI) challenged the legality of the election of the chapter president. The president of the chapter was accused of falsifying records, conflicts of interest, and arbitrary expulsion of ten members who rebelled against a hiring of staff against the rules of the association. Following the challenge, the Ministry of Public Administration, which oversees the enforcement of the *Associations Act*, revoked the appointment of the chapter president.

Source: (Matijevic, 2014).

A major deficiency is that under current legislation there is no provision requiring NGOs to publicly disclose financial statements, although they are obliged to submit their financial reports to the authorised government body. The paradox is that the government publicly discloses all financial reports of legal persons in Croatia, except NGO reports.

Although trust in civil society organisations in **Macedonia** is not particularly high, recently there has been a positive trend of increase. Specifically, associations and foundations have the trust of 59.3% of the public, which indicates for the first time since 2006 (when it was 50.3%) trust by the majority of citizens.<sup>238</sup>

**Figure 86. Public opinion of the raison d'être of NGOs in Macedonia**



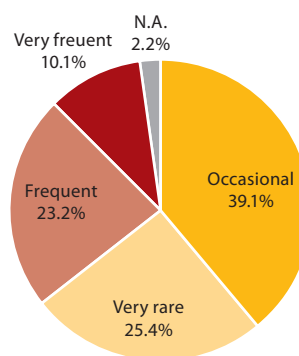
Source: (Нурединоска, Кржаловски, & Стојанова, 2013).

Research indicates that corruption in civil society is not widespread – the majority of surveyed civil society organisations consider it to be rare (Figure 87). The vast majority (90.6%) claim that their financial reports are publicly accessible, while 73.1% have publicly accessible code of conduct for their employees.<sup>239</sup>

<sup>238</sup> (Нурединоска, Кржаловски, & Стојанова, 2013, p. 9).

<sup>239</sup> (Macedonian Center for International Cooperation, 2011, p. 36).

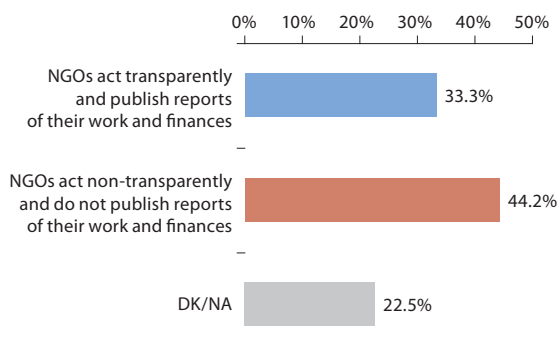
**Figure 87. NGOs in Macedonia report corruption in their own ranks to be:**



Source: (Macedonian Center for International Cooperation, 2011).<sup>240</sup>

This self-perception by civil society organisations should be taken with some reservation since their websites show that only a small number of them publish their financial data and reports. Moreover, few organisations commission financial audits of their financial operations. This gap between the perception

**Figure 88. Public attitudes towards the transparency of NGOs in Macedonia**



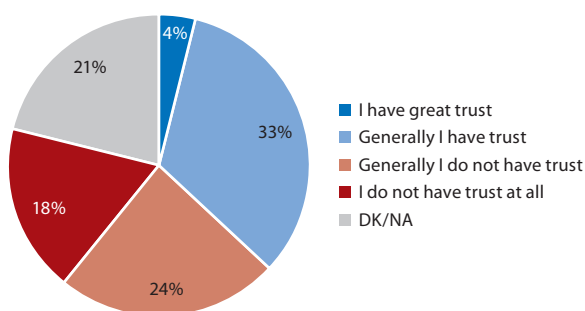
Source: (Нурединоска, Кржаловски, & Стојанова, 2013).

<sup>240</sup> "The researchers were however uncertain whether in answering this question the respondents were able to distinguish between corruption, abuse of funds and duty, or money laundering," Ibid, p. 39.

and practices of transparency is one of the most frequently debated issues in the civil society sector.

In 2007, the Civic Platform of Macedonia, one of the leading networks that had organisations from different sectors as its members, initiated a draft code of ethics for the sector that was never adopted. Larger NGOs – which have established oversight mechanisms for their operations – supported the adoption of this code of ethics, but this initiative was not supported by the other organisations.

Figure 89. Public trust in NGOs in Serbia



Source: (Center for Euro-Atlantic Studies, 2013).

In **Turkey**, civil society organisations are closely monitored by the government. The main body that monitors and records procedures on NGOs is the Department of Associations of the Ministry of Interior. The Department monitors, records and archives the establishment procedures of locally established organisations and international ones. It also ensures that NGO auditors inspect all administrative offices belonging to associations and unions, any sort of additional buildings as well as their accounts and operations when necessary. Every NGO is obligated to provide annual auditing report that is either prepared by an external auditing company or the internal auditors' board of the association. Also, the *Law on Associations* stipulates (art. 45) that "all administrative premises, buildings and annexes, all books, accounts and proceedings of associations are subject to inspection at any time by the Interior Ministry or the most senior local representative of government." In the case that the auditors find an unusual or unlawful activity, they are obligated to take the case file to the public prosecution office for investigation.

## 6.5. RECOMMENDATIONS

Non-governmental, non-profit organisations in South-east Europe need to enhance significantly their capacity to contribute to improved public governance. This applies primarily the ability to produce **reporting on anticorruption progress** in public governance, especially in the context of EU integration. This includes:

- **Collect and collate primary information** on the operation of government institutions, especially at the local level and where it is either not produced by government or not disclosed publicly.
- Enhance NGO skills for the **measurement** of the actual proliferation of corruption.
- Enhance NGO **skills in analysis** of data, institutional evaluation and report writing.
- The non-EU member countries of SEE would be well advised to **learn from the body of knowledge and expertise contained in the EU Anticorruption Report**. This would provide them with valuable insights with respect to the evaluation of the spread of corruption and the design of anticorruption policies.

### Funding and legal environment

- **Rules and regulations for public funding** – both by central and local governments – of non-profit organisations should be clear and transparent. Only NGOs registered in the public benefit should be allowed to receive public funding, and should respectively meet more stringent reporting and disclosure requirements.
- Where public funding is provided from the European Union and other multilateral institutions to national non-profit organisations, it **should not be disbursed through national governments**, especially where anticorruption progress has been minimal.
- The European Union and other donor agencies should consider a larger share of funding for good governance programmes implemented in **collaboration between civil society organisations and public institutions**. These programmes should have explicit requirements against the capture of NGOs by special interests. It should be noted that achieving impact requires longer-term (10 years and above) sustained commitment.

### Integrity

In order for their anticorruption work to have credibility NGOs in Southeast Europe need to provide

an example of **transparency and accountability**. This includes:

- **Conflict of interest legislation** should include non-profit institutions, especially where they are funded via government administered programmes, such as national budget, EU funds, etc.
- The civil society sector needs to provide for its own **self-regulation**. At the minimum, this involves adopting codes of conduct with aspirational standards. They should also find more and better ways of organising coalitions of interest.
- NGOs need better understanding of the need to be transparent and accountable. This includes undergoing **regular auditing, disclosure of financial statements**, explicit and transparent **corporate governance procedures**, and measures against capture by special interests.





Although manifested mostly locally, corruption has long become a global preoccupation. In Southeast Europe, in particular, international institutions and foreign partner countries have played an important role in the anticorruption developments; in fact, they have become an indispensable factor. Their input has ranged from overall monitoring and evaluation to institution building and civil society support.

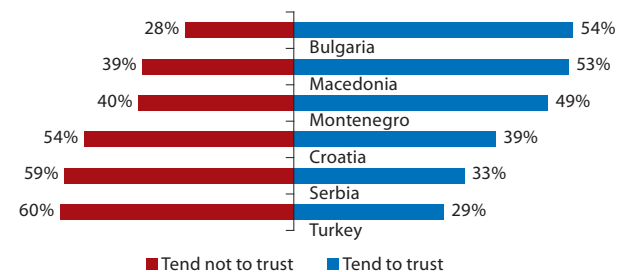
Given the extreme partisanship in domestic politics in the SEE countries, their international commitments facilitate the adoption of reform policies that might otherwise have been shunned by national politicians. This involvement, however, also brought with itself the risk of unrealistic expectations for quick fixes, which in turn could prompt the adoption of superficial and ad hoc measures. In addition, conditionality and most incentives affect primarily the executive government, while the judiciary, parliaments<sup>241</sup> and other concerned public and private institutions were not sufficiently involved. The sustainability of international engagement was bolstered by the broadening of the range of stakeholders to include civil society, media, professional associations, trade unions, etc. The SELDI format – a collation of non-governmental organisations reaching out to all concerned public and private bodies – is increasingly acknowledged as the only approach capable of ensuring that foreign involvement in domestic anticorruption reforms – which is well received by local stakeholders – is sustainable in the long term. From the point of view of governance reform, the SEE countries should not be seen and referred to by the international partners as unitary agents – “Montenegro aspires”, “Croatia is capable of”; rather, the delicate balance among various reformist, anti-reformist and generally inert constituencies needs to be appreciated and their politics need to be nudged towards adopting and effecting improved standards of public governance.

This broadening of the domestic interlocutors of international partners has had the effect of empowering isolated reformist politicians or political groups but also various non-government actors and – most significantly – encouraging public demand for reforms.

<sup>241</sup> “The judicial and anticorruption reforms promoted at high cost by the EU are often undermined by the Parliaments.” (Romanian Center for European Policies, 2011, p. 23)

Criticisms in the monitoring reports by the EU and other foreign institutions and government have been largely, although not universally, welcomed by the media and public opinion. Continuing and building on this engagement would be crucial to the leverage the EU has in the SEE countries.

**Figure 90. Trust and distrust of the European Union in some SELDI countries**



Source: (TNS Opinion & Social, Spring 2013).

Placing corruption high on the agenda of international cooperation has put the governments in the region – especially those aspiring to membership in the EU – in an awkward position. On the one hand, they are under pressure from most domestic constituencies (although this pressure differs from country to country) to accelerate the coming of accession with its expected immediate returns. What pro-European constituencies expect to gain from membership easily outweighs concerns about the state of preparedness as benefits are expected to be instant and universal, and in particular with respect to good governance. This creates an incentive for governments to “sell” the country better and to deal as quickly as possible with any perceived problems in the negotiations with the Union. On the other, the Commission and member states urge the SEE governments to address the difficult and painful issues of reform *before* they would consider membership.

A further consideration with respect to international involvement is that **anticorruption is about upsetting entrenched illicit interests**. Effective anticorruption policies need to target both the delivery of public services and the support and involvement of the public. For this to happen, a government-to-Brussels connection is not sufficient. The engagement by international partners of reformist politicians and parties needs to be supported and verified by civil society in a kind of

trilateral cooperation. “A **partnership triangulation** is possibly the shortest way to describe the formula for the success of reforms in transition. This includes reformist politicians, active civil society and political and financial support from international partners.”<sup>242</sup>

**Figure 91. The triangulation principle: ensuring the sustainability of anticorruption reforms**



## 7.1. COMPLIANCE WITH INTERNATIONAL ANTICORRUPTION STANDARDS

One of the key modes of engagement of international community has been monitoring of reforms; monitoring itself has evolved as the countries have. Initially seen as exclusively monitoring of compliance with international anticorruption standards, it is now widely acknowledged to include an evaluation of policy outcomes, as practiced by SELDI’s CMS. This complementarity is especially important given what few years ago became known “monitoring fatigue”: complaints by country bureaucrats of the transaction costs involved in servicing too many evaluation questionnaires and expert missions. The EC has also been involved in the rethinking of monitoring. From initial scepticism about the measurability of corruption – in the beginning of the 2000s it believed that: “whilst it is hard to know its extent, the persistent rumours about corrupt practices [...] contribute to tainting the political, economic and

<sup>242</sup> (Dr. Shentov, 2008, p. 17).

social environment”<sup>243</sup> – the Commission now sets specific governance targets the achievement of which needs to be measured. It is crucial that compliance monitoring – as, for example, currently practiced by GRECO, OECD and UNCAC – continues in parallel to measuring actual institutional change.

All SELDI countries (except for Kosovo – see below) have become parties to the latest international anticorruption instrument – the *United Nations Convention against Corruption* (UNCAC). Its implementation, however, remains a challenge. The assessment of the application of the Convention in **Albania** is carried out by the National Coordinator for Anti-corruption and Department for Anti-Corruption. With respect to the two Council of Europe conventions, GRECO recommendations have been taken into account by the Albanian government although their full compliance in due time has not been always successful. During the first round of recommendations 2000 – 2002, Albania complied with all of the 11 recommendations made by GRECO. In the second round, it fully complied with 11, partially complied with 1, and did not comply with 1, out of 13 recommendations that GRECO had made. As of June 2014 Albania had complied with 7 and partially complied with 5 recommendations in the third round.<sup>244</sup>

### EC progress reports on BiH

2012: *Bosnia and Herzegovina has made limited progress in addressing corruption, which continues to remain widespread in the public sector and the public-private interface. ... Corruption continues to affect all spheres of life, economic development and the rule of law.*

2013: *Complex connections between political actors, business and the media are putting democratic institutions and procedures at risk and making the detection of corrupt practices more difficult.*

As regards monitoring of compliance with EU good governance standards, in October 2013, the Commission recommended that Albania be granted candidate status with an understanding that Albania had to continue the fight against corruption and organised crime. Although supported by the European Commission,

<sup>243</sup> (European Commission, COM (2000) 701 final, p. 17).

<sup>244</sup> Regional Corruption Initiative. Retrieved June 2014 from: <http://www.rai-see.org/anti-corruption-monitoring/102-anti-corruption-monitoring/207-greco.html>

**Table 5. Transparency and CSO participation in the review process of UNCAC in Bulgaria**

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Positive indications

Source: (Transparency International Bulgaria, 2011).

5 member countries<sup>245</sup> voted against it claiming that Albania had still much to do with regard to corruption and the high levels of organised crime. In the June 2014 Progress Report the Commission confirmed its recommendation that Albania be granted candidate country status.

**Bulgaria's** monitoring by international institutions peaked at the time before accession to the EU when it had to prove compliance with the standards the Union had adopted. Legislative harmonisation, as in most of the other SELDI countries, has been generally straightforward.

Bulgaria is the only non-OECD member in the SELDI area to have signed and ratified the OECD anti-bribery convention. Although it has been in force in the country for fifteen years, there are still some outstanding issues in its implementation:

"Many of the recommendations have not been implemented because Bulgaria did not adopt draft legislation or didn't advance far enough in its legislation drafting process. [...] There continues to be no foreign bribery enforcement actions in Bulgaria; the Bulgarian authorities have not been aware of any allegations of foreign bribery committed by Bulgarian individuals or companies."<sup>246</sup>

Bulgaria's experience with having its governance integrity evaluated by the EU is instructive about the impact of accession on monitoring. Before 2007, there had been concerns in the EU that membership would diminish the impact of external assessment and would preclude the Commission from putting sufficient pressure on the authorities. The preceding

progress reports had had tangible effect on both the public opinion and in policy debates. The subsequent CVM evaluations, however, proved to be as strict – the January 2014 one calling developments in the country "a source of concern rather than reassurance" – and have been equally welcomed by media and civil society. With hindsight, it is evident that the loss of leverage that the EU had during the accession negotiations was made up by greater dependence on EU aid and the related linkage mechanisms – boosted trade, and greater integration of various professional groups through exchanges, cooperation, etc.

Continued frustration, however, with respect to the lack of progress in Bulgaria was also evident in the 2014 motion in the European Parliament for a call on the Commission (a motion eventually not adopted) to:

"adopt a resolute attitude towards Bulgaria and to seriously examine whether it is even possible for Union funds to be deployed in accordance with the rules in such an environment."<sup>247</sup>

It also prompted an MEP to refer to a "lack political culture"<sup>248</sup> in Bulgaria, an unprecedented qualification.

Although it has long been a member of the Council of Europe conventions and GRECO, Bulgaria has still not implemented some of the Group's recommendations both on incriminations and party funding. Some of the outstanding issues include:

- Ensuring that active bribery and trading in influence are construed in such a way as to unambiguously cover instances where the advantage is intended for a third party.

<sup>245</sup> Denmark, France, Germany, the Netherlands, and the United Kingdom.

<sup>246</sup> (OECD Working Group on Bribery, 2013).

<sup>247</sup> Amendment 16, Motion for resolution to (European Parliament, 2014).

<sup>248</sup> (Focus News Agency, 2014).



- Reconsidering the practically automatic exemption from punishment granted to perpetrators of active bribery in the public sector in cases of effective regret.
- Introducing clear criteria concerning the use of public facilities for party activity and election campaign purposes.
- Making external audit of accounts of political parties truly independent.
- On the sanctions for violations of the *Political Parties Act*:
  - Include natural persons, including persons in charge of party accounts;
  - Broaden the range of penalties and make them more proportionate and dissuasive;
  - Extend the statute of limitation for offences under the Act.

In **Croatia**, GRECO's second compliance report concluded that Croatia had implemented satisfactorily all of the eleven recommendations contained in the third round evaluation. As regards the implementation of the recommendations concerning incriminations assessed in this report, GRECO welcomed the entry into force, on 1 January 2013, of the new *Criminal Code*, which was further amended to take into account all of GRECO's recommendations, notably as regards the express reference to bribery offences in cases in which the advantage is intended for third parties.

Insofar as the transparency of political funding is concerned, GRECO recalls that the compliance report had already concluded that all recommendations had been complied with. Supervision over the annual financial reports of political parties, independent lists and candidates has been complemented with specific campaign finance monitoring, carried out by the State Audit Office and the State Elections Commission respectively, and the roles of both bodies have been clarified. These institutions now appear to have adequate authority, as well as financial and personnel resources to be able to carry out an effective monitoring of campaign finances.

**Kosovo** has not acceded to the international legal instruments in the field of anticorruption due to its status.

In its monitoring of **Macedonia's** progress towards accession, the EC finds that corruption continues to be a serious problem. One area that has been highlighted is the administrative capacity of the state anticorruption bodies which despite slight improvements remain low and insufficient. Key bodies, such as the Basic Public

Prosecution for Prosecution of Organized Crime and Corruption, the State Commission for the Prevention of Corruption and the Anti-Corruption Unit of the Ministry of Interior remain understaffed and underfunded, while the State Audit Office still does not have the adequate human and financial resources to efficiently perform its new functions of financial supervision of political parties and election campaigns. As regards the judiciary, concerns were raised about the impartiality of judiciary and law enforcement to deal with corruption cases, especially high-level ones. Public procurement was another fragile and corruption prone area which has been constantly monitored by the EC. The Commission has also referred to OSCE/ODIHR concerns over misuse of state resources during the 2013 local elections and the failure of the relevant institutions to counter them, and concluded that the implementation of the legal framework on political party funding remained deficient.

#### EC progress reports on Macedonia

2012: *Some progress was made in the area of anti-corruption policy... There is a lack of analysis of corruption and ways to tackle it... Overall, the legislative framework is in place and capacity has been strengthened slightly, but greater efforts are needed as regards implementation of existing laws.*

2013: *In the area of anti-corruption policy, the legislative framework is largely in place... A track-record of criminal investigations, prosecutions and convictions by law enforcement and courts is being developed... However, corruption remains prevalent in many areas and continues to be a serious problem, indicating that the implementation of existing legislation has yet to make a concrete impact and the effectiveness of existing measures has to be improved.*

In the fourth evaluation round on Macedonia, GRECO concluded that the legal framework on corruption prevention with respect to MPs, judges and prosecutors is well developed and sufficiently covers most of the areas of GRECO interest. However, just as in the EC progress reports, despite the adequate legal framework the effective implementation and enforcement of legislation remains an issue of concern. Moreover, it was noted that the current arrangements for monitoring the content of statements on incompatibilities need to be further improved. As to judges and prosecutors, GRECO notes that they both lack public confidence and

transparency. Finally, GRECO concludes the ability of the State Commission for Prevention of Corruption to oversee the work of MPs, judges and prosecutors, is hampered by budgetary and staff constraints and an evident lack of proactivity.

The status of implementation of UNCAC by **Montenegro** was reviewed in 2013. The review found some outstanding issues with respect to criminalisation and law enforcement:

- Construe the offence of active bribery in the public sector in a way that unambiguously covers instances where the advantage is intended for a third-party beneficiary;
- Amend, as appropriate, the legislative provision on obstruction of evidence/justice to expand the scope of witnesses, expert witnesses or other participants in criminal proceedings so as to include their family members and/or close relatives;
- Ensure that the domestic legislation provides for a longer statute of limitations period for minor

corruption offences carrying imprisonment falling within the jurisdiction of the Basic Court.<sup>249</sup>

As regards GRECO, Montenegro is currently in the third evaluation round. GRECO commended the country for the substantial reforms carried out with regard to both themes under evaluation. GRECO concluded that additional steps can be taken to strengthen internal discipline of political parties, to regulate the use of public facilities during election periods, and to enlarge the coverage of sanctioning provisions. More importantly, it is decisive to ensure that the oversight responsibilities conferred to the State Audit Institution and the State Elections Commission are properly performed in practice. Likewise, the “sanctioning regime remains to be tested to assert its proportionality, dissuasiveness and effectiveness.”<sup>250</sup>

The authorities in **Serbia** place, at least ostensibly, international standards and obligations in the centre of the fight against corruption. Given that the EU integration has been declared to be a priority, and

**Table 6. Compliance of legislation in Serbia with some international anticorruption instruments**

<i>Convention on the fight against corruption involving EU officials</i>	Serbian legislation is in partial compliance with the requirements of the Convention. There are some gaps in implementing of several articles related to active and passive corruption, foreign public officials, penalties, jurisdiction and international cooperation
<i>Convention on the protection of the European Communities' financial interests</i>	Serbian legislation in general is in compliance with the requirements of the Convention.
<i>UNCAC – General provisions</i>	Serbian legal system provides good basis for the implementation of the Convention.
<i>UNCAC – Asset recovery</i>	Serbian legislation is not in compliance with the asset recovery chapter of the UNCAC. There are shortcomings in implementation of the Chapter's articles addressing prevention and detection of transfers of proceeds of crime, measures for direct recovery of property, mechanisms for recovery of property through international cooperation in confiscation, international cooperation for purposes of confiscation, special cooperation and return and disposal of assets.
<i>UNCAC – Preventive measures</i>	The existing shortcomings related to improved coordination and cooperation of the relevant institutions at all levels and to training for the public positions considered especially vulnerable to corruption are already been addressed with the <i>National Anticorruption Strategy</i> .
<i>OECD Convention on Combating Bribery of foreign public officials</i>	Serbian legislation is in compliance with this Convention and fully covers its requirements regarding the liability of legal persons, sanctions, enforcement, statute of limitations, money laundering, accounting and confiscation. The only shortcomings are related to the offence of bribery of foreign public officials, jurisdiction and mutual legal assistance.

Source: (Esadze & Prof. Taseva, 2014).

<sup>249</sup> (Conference of the States Parties to the United Nations Convention against Corruption, 2013, pp. 7-8).

<sup>250</sup> (Council of Europe, SG/Inf (2014)5).

that EU has put anticorruption at the forefront of the accession agenda, corruption is also at the top of government's agenda. The European Union has – through the various stages of relations, firstly with the Federal Republic of Yugoslavia, than the State Union Serbia and Montenegro and finally with the Republic of Serbia – been pointing out the problem of corruption, mostly within the wider issues of the rule of law.

Serbia has signed and ratified a number of international anticorruption agreements. This process has been developing more slowly compared to the other countries in the region, primarily due to the non-functional State Union Serbia and Montenegro, formed in 2003, within whose competence was the ratification of international agreements.

In **Turkey**, two laws meet the UNCAC requirement for preventive anticorruption measures, such as the development and implementation of effective, coordinated anticorruption policies as well as establishing appropriate systems of procurement<sup>251</sup> – *Turkish State Tender Law No. 2886*, which generally applies to the sale and lease transactions of state assets; and *Public Tender Law No. 4734*, which applies to the procurement of goods and services by public entities. Turkey has also criminalised bribing foreign public officials with the ratification, in 2000, of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The adoption of the *Law 4782 Amending Certain Laws for the Prevention of Bribing Foreign Public Officials in International Commercial Transactions* and the enactment of the new *Criminal Code* came as a result.

**Table 7. Status of implementation of GRECO third round evaluation recommendations on Turkey**

<b>Theme I: Incriminations</b>	
Revise existing criminal law in order to (i) provide for comprehensive, consistent and clear definitions of bribery offences; and (ii) to capture unambiguously a) promises, offers and requests for a bribe, irrespective of whether or not the parties have agreed upon the bribe; and b) all acts/omissions in the exercise of the functions of a public official, irrespective of whether or not they constitute a breach of duty and whether or not they lie within the scope of the official's competence.	partly implemented
Ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries as well as instances where the advantage is not intended for the official him/herself but for a third party.	partly implemented
Ensure that active and passive bribery – within or outside of the context of international commercial activities – of all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts are criminalised unambiguously.	partly implemented
Ensure that active and passive bribery – within or outside of the context of international commercial activities – of foreign jurors and arbitrators are criminalised unambiguously.	partly implemented
Criminalise active and passive trading in influence – without the requirement of a deception by the influence peddler.	partly implemented
<b>Theme II: Transparency of Party Funding</b>	
Ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control.	not implemented
ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body.	not implemented

Source: (GRECO, 2012b).

<sup>251</sup> (Okuyucu-Ergün, 2007).

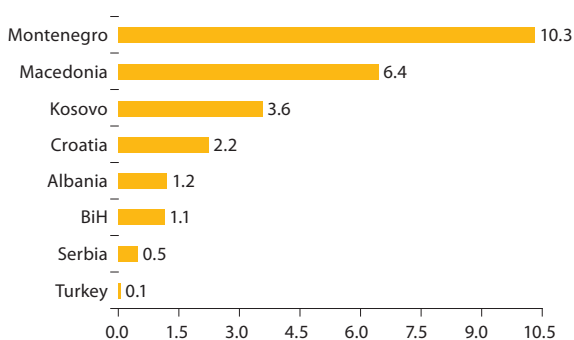
## 7.2. FOREIGN ASSISTANCE

In addition to providing encouraging, exerting pressure and evaluating progress, foreign partners and international organisations have also provided South-east Europe with considerable anticorruption assistance. The correspondence between their policy messages and the concrete financial and technical assistance they provide – a correspondence mostly but not universally achieved – is of key importance to the overall impact.

Multilateral institutions provide larger amounts of funding but aid approval and disbursement goes through much cumbersome procedures which creates a time lag between need and assistance. Bilaterals, although much more flexible, have smaller funds which require more precision in what they target.

With the EU, technical assistance to SEE countries has been delivered for objectives that are also conditions to be met before further integration. Thus, both policy implications and funding are conducive to the accomplishment of reforms. In this respect, multilateral institutions differ substantially from bilateral aid agencies.

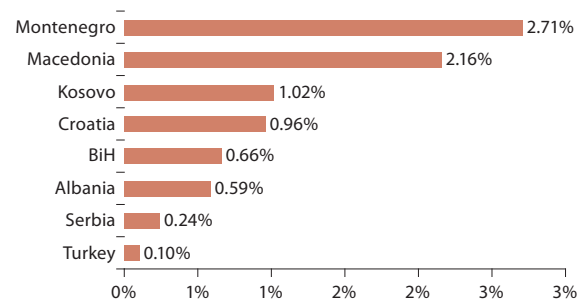
**Figure 92. EU funding for anticorruption per capita of the population (€), 2007 – 2012**



Source: Calculated from data from (European Parliament, 2013).

One of the major technical assistance programmes in **Albania** has been the EC funded Project Against Corruption in Albania implemented by the Council of Europe. It aimed to contribute to democracy and the rule of law through the prevention and control of corruption by enhancing the implementation of anticorruption policies and strategies in line with GRECO and MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) recommendations

**Figure 93. Share of anticorruption funding in total EU pre-accession assistance**

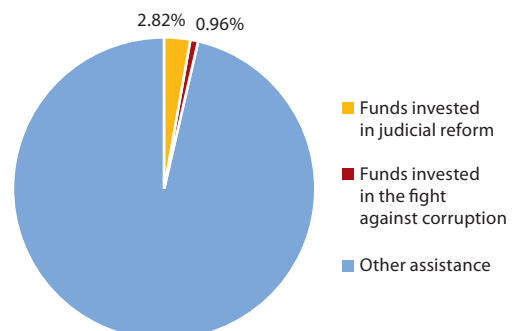


Source: (European Parliament, 2013).

and European Partnership commitments, and by contributing to the prevention of corruption in education by improving transparency, accountability and social participation. Largely following recommendations from the Project Against Corruption in Albania and EURALIUS (European Assistance Mission to the Albanian Justice System) in 2012 constitutional amendments were adopted on restricting the immunities of MPs, judges and other high level officials. Following these amendments a series of cases of corrupt judges, MPs and high level officials were sent for prosecution, and some of them have resulted in final convictions.

EURALIUS was an EU funded project which brought to Albania high-level expertise to provide legal advice and raise the capacities of the Albanian Ministry of Justice and judicial institutions. EURALIUS extended its assistance to the reform of the internal procedures of the High Council of Justice; the consolidation of the new chamber of private bailiffs; the reform of the internal structure of the Office of the Ombudsman; and the capacities of legal advisors of the Constitutional Court.

**Figure 94. Share of anticorruption and judicial reform assistance in overall EU assistance to Croatia**



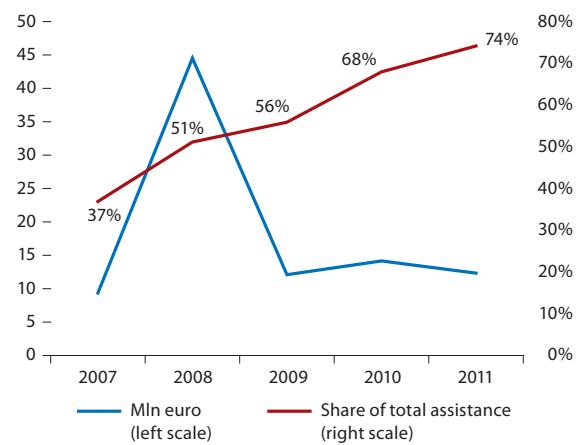
Source: (European Parliament, 2013).

The EU has invested significant resources in assisting **Croatia**, in its efforts to suppress corruption. Almost 1/3 of the overall contracted pre-accession funds to Croatia (approx. €110 million) in the period 2007 – 2011 were related to strengthening the administrative capacities in the country linked to the fight against corruption.

In **Kosovo**, two of the areas of EU assistance – rule of law and justice and home affairs – are related to anticorruption. In particular, EU's support to anticorruption institutions has contributed to the drafting of key legislation in the National Anticorruption Framework, including laws on the Anticorruption Agency, on declaration of assets, on conflict of interest, and on political party financing and amendments to the *Criminal Code*.

The EU has so far provided **Macedonia** with assistance in the field of anticorruption both as institutional

Figure 95. EU rule of law assistance to Kosovo<sup>252</sup>



Source: (European Court of Auditors, 2012).

strengthening and support to civil society. According to the Macedonian Central Donor Assistance Database,<sup>253</sup>

#### Box 16. CIPE: a global anticorruption leader

Since the early 1990s, the Washington-based Center for International Private Enterprise (CIPE) has been one of the most active supporters of economic and governance reforms in the former communist countries and in Southeast Europe in particular.

CIPE addresses both the demand side and the supply side of corruption through programmes that: mobilise the private sector to raise anti-corruption standards and advocate for reforms; streamline regulations and reduce implementation gaps to limit opportunities for corruption; improve corporate governance to strengthen firm-level integrity and equip small and medium-sized enterprises to resist bribery and meet requirements of global value chains. CIPE supports collective action by business and civil society stakeholders in order to address the institutional sources of corruption. A key goal of collective action is to reduce the incentives and opportunities for corruption. CIPE's value chain/anticorruption program seeks to incentivise mid-sized businesses to reduce corrupt practices as a means of joining global value chains.

One of the successful applications of this approach was in Bulgaria. In the mid-1990s, CIPE was among the pioneering supporters of the Bulgarian anticorruption initiative *Coalition 2000*, which later inspired the establishment of SELDI. Among other things, CIPE assisted the promotion of corporate governance standards, the engagement of private businesses in anticorruption efforts, and advocated for institutional reform in the privatisation process. CIPE later provided capacity building for this model to business leaders, policy makers, and anticorruption experts from the Balkans, the Caucasus, and Central Asia. The emphasis was put on identifying key lessons learned from combating corruption in Southeast Europe, and how they can most effectively be applied in the Caucasus and Central Asia.

CIPE was also among the key early supporters of SELDI in the early 2000s. The Center has provided guidance on mobilising businesses to back governance reform and has assisted SELDI in the advocacy of anticorruption policies.

<sup>252</sup> IPA 'wider rule of law' projects include, in addition to police and judicial projects, projects related to anticorruption, customs and public financial management reform.

<sup>253</sup> <http://cdad.sep.gov.mk>

the overall value of EU funded programmes in the field of good governance and anticorruption since 2008 has been €7,395,133. However, the largest part of this sum falls on the large regional project “Fight against Organized Crime and Corruption: Strengthening the Prosecutor's Network”, worth €5,263,158 which was implemented on a regional level (Western Balkans) by a wider international consortium. Therefore, only part of the funding was aimed directly for capacity building of Macedonian Public Prosecutors Office. The overall project objective was to contribute to improved cross-border and international judicial cooperation to investigate and prosecute cross-border crime, with focus on organised crime and corruption in particular.

Only recently the EU has provided direct support for civil society organisations working on anticorruption in Macedonia. One of the priority areas in the 2012 IPA-I call for Support to Enhancement, Sustainability and Development of an Active Civil Society was the fight against corruption and organised crime. This shows that the EU has started to consider the role of the civil society in this policy area previously reserved for the government.

Anticorruption assistance by foreign partners intensified after **Montenegro** independence. In 2007, UNDP started its anticorruption project focusing on aligning the national legal framework with UNCAC, support to the CSO initiatives and specialised governmental anticorruption agencies, as well as with anticorruption research in the areas of judiciary, local self-governance and the healthcare sector.

USAID funded Good Governance Activity (2010–2013) has had a pivotal role in advancing the CSO monitoring capacity with respect to the judiciary and to strengthen the role of civil society and the private sector as counterparts to institutions of government in Montenegro. US State Department's Bureau of International Narcotics and Law Enforcement Affairs has provided capacity building for judges, prosecutors and police officers; this was done in parallel to their Criminal Justice Civil Society Programme, which has been supporting the CSO monitoring initiatives in criminal justice sector.

### 7.3. RECOMMENDATIONS

Given the significant role international assistance plays in the anticorruption efforts in Southeast Europe, it is imperative that its effectiveness is enhanced. To this end, it is needed:

- Foreign assistance programmes need to better reflect the findings of international and independent domestic evaluations. For this to be achieved, assistance programmes need to be made more responsive and flexible, including a shorter time lag between design and delivery.
- International anticorruption assistance to national governments should envisage a stronger role for civil society. This includes the involvement of NGOs as implementation partners, monitors and resource organisations, especially in the evaluation of the impact of assistance projects.
- The effectiveness of assistance needs to be periodically evaluated through impact assessment methods. In addition to providing a value-for-money measure – especially when there has been public funding involved – this would allow successful programmes to be sustained while unsuccessful to be discontinued. It is imperative that this assessment be independent and that it utilises the expertise of civil society organisations.
- Assistance needs to encourage cross-country programmes on common issues – such as, trans-border crime. The Bulgarian experience in public-private cooperation in the analysis of the linkages of organised crime and corruption should be utilised across the region.
- The role and efforts of the Regional Anti-Corruption Initiative to develop and implement measures under the Governance Pillar of the SEE2020 Strategy in cooperation with national and regional civil society groups should be strengthened. The Initiative provides an important bridge between national governments and other stakeholders in the region, which should further be expanded.
- European Commission regular reports' preparation and findings should be better embedded in local policy-making by drawing more heavily upon local civil society and business community.



# METHODOLOGICAL APPENDIX: CORRUPTION MONITORING SYSTEM



The Corruption Monitoring System (CMS) was designed and developed by CSD in 1998.<sup>254</sup> Introduced at a time when corruption measurement was confined to public perceptions, the CMS launched a measure of the corruption victimisation of individuals by public officials accounting for their direct experience with various corruption patterns. Based on CMS diagnostics, assessments could be made about the dynamics of the prevalence of corruption patterns in a society.

The CMS methodology allows comparability of data across countries and registers the actual level and trends of direct involvement in administrative corruption, as well as the public attitudes, assessments and expectations relating to corruption. CMS diagnostics have been applied in Bulgaria since 1998,<sup>255</sup> in Southeast Europe in 2001, 2002 and 2014,<sup>256</sup> and occasionally in Georgia and Moldova. Some CMS concepts have also been modified and included in the Eurobarometer surveys on corruption; this makes CMS data comparable to Eurobarometer data.<sup>257</sup>

## THEORETICAL BACKGROUND

Most academic and policy analyses on corruption usually start with the assertion that corruption is a multifaceted phenomenon that is difficult or impossible to measure.<sup>258</sup> The measurement problem of multi-facet phenomena as corruption boils down to definition and operationalisation of the underlying concept. Defining what is being measured scopes the interpretations of data and the types of conclusions that could be made.

The CMS is one of the possible measurement approaches to corruption. Its main objective is to provide statis-

tical estimates of the prevalence of the most common incidents of corruption and has diagnostic and descriptive functions.

In the CMS context, corruption is conceptualised as a specific type of social behaviour which includes specific forms of interaction between actors, attitudes associated with these interactions and a set of perceptions which relate to the interactions (serving both as reflections of the interaction and prerequisites which define the behaviour strategy of the actors). Corruption refers to a specific group of interactions: the public is provided with services by government institutions, in the process of which it deals with officials who are employed by these institutions. Corruption is described through the “principal-agent model”: members of the public (clients) interact with government institutions (principal) through officials (agents); agents act on behalf of the principal who defines their rights and obligations and entrusts them with certain discretionary power. Corruption is an interaction in which officials in government institutions (agents) abuse the discretionary power they have been entrusted with by these institutions (principal) in their interaction with the public (clients).

This definition has two key elements which need to be further operationalised: “abuse” and “benefit”. Both should be present for certain behaviour to be categorised as corruption. The relation between these concepts could be defined as a “form-content” relationship. The “benefit” is the form of the transaction, while the “abuse” refers to the content of the transaction – the type of resource that is being offered in exchange for a benefit. Varieties of corruption behaviour arise because of the variation in both form and content: of the benefits that are being supplied by clients to agents and of the types of abuse of public power are the content of the exchange. The most common word used to label the forms of corruption is “bribe.” Regarding content, variations in corruption behaviour could be numerous but they depend on what is being done, how it is done and who is the perpetrator. In more concrete terms the above variation in corruption behaviour could be summarised in four sub-concepts:

- **Form.** Bribe is the common label of the private benefit that is being exchanged. The most common forms

<sup>254</sup> (Center for the Study of Democracy, 1998, pp. 64-91)

<sup>255</sup> All Corruption Assessment Reports since 1998 are available at the “Anti-corruption” section of CSD’s webpage <http://www.csd.bg>

<sup>256</sup> (SELDI, 2002).

<sup>257</sup> (TNS Political & Social, March 2014) and (TNS Opinion & Social, February 2014).

<sup>258</sup> Summaries of discussions in this area can be found in: (Disch, Vigeland, Sundet, Hussmann, & O’Neil, 2009); (Jain, 2001); (Johnson & Mason, July 2013); (Reinikka & Svensson, J., 2003).



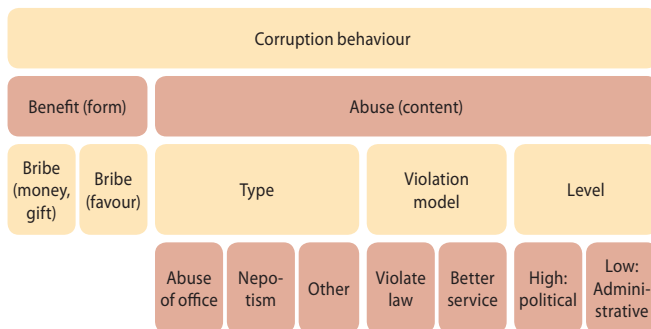
of bribes include money, gifts or favours. The latter could be linked to types of corruption behaviour. It is important to note that bribes are the empirical manifestation of corrupt behaviour but receive their corruption load only in conjunction with the other aspects of corruption.

- **Type.** Entrusted discretionary power can be abused in many different ways (trading in influence, nepotism, clientelism, etc.).
- **Level.** Agents at different levels could abuse discretionary power and this might not always be directly linked to specific clients (level).
- **Violation model** refers to the model of abuse of discretionary power and could be split into two broad categories: 1) violation of existing laws and/or institutional norms; 2) provision of a better service. In some societies and cultures, additional benefits provided to agents could be regarded (by custom, law, tradition, etc.) as normal behaviour when/if provided services are normal or better; in such cases additional benefits take the form of a tip and not the form of a bribe.

While the above abstract summary model of corruption behaviour could be further specified in order to list most possible variations of form and content, it is important to note that form and content could easily be used as proxies of each other. If there is a bribe, there is most probably some kind of abuse; on the other hand, if there is an abuse, there probably is some material gain. Therefore, in order to measure the prevalence of corruption behaviour, an attempt should be made to either measure the number of bribe incidents, or the number of abuses of different types. In empirical terms, the easier way to “access” corrupt behaviour is through identification of instances of bribery. Types, violation models and levels are more difficult to observe and account for. Even when the latter is the case, there is always a possibility that a violation has occurred without any personal benefit for the offender (the official).

The specific objective of the CMS is to address the most common forms of abuse. In terms of the above classification this would be **low level (administrative) corruption of all types and violation models**. The reason for choosing such a criterion is expected prevalence that could be registered with random sample techniques: low level (administrative) corruption of all types and violation models. The proxy of these abuses is the occurrence of bribery which is defined as benefit received informally by the agent (the public official) in the form of money, gift or favour. It is an addition

**Corruption behaviour elements**



Source: Center for the Study of Democracy/Vitosha Research.

to the public services clients are entitled to, given the organisation of the public service of a country.

**CMS INDICATORS AND INDEXES**

The main indicators of the CMS describe corruption (as a social phenomenon) using three groups of concepts: experience, attitudes, and perceptions.

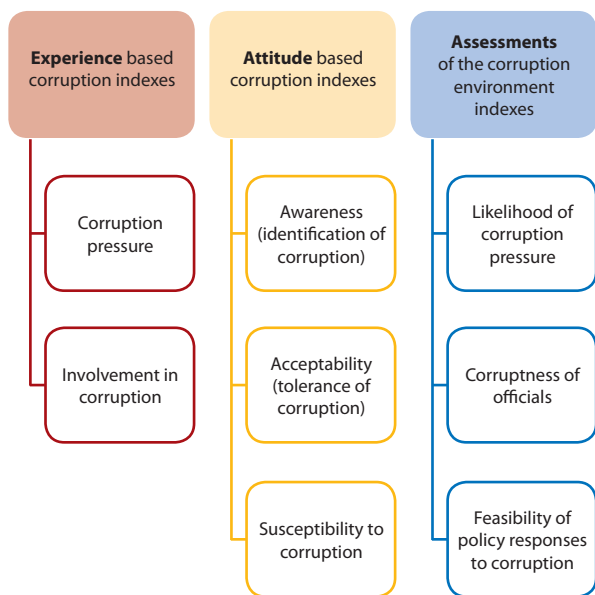
Information on CMS indicators is collected through a survey questionnaire. Indicators are first broken down into survey questions and at the analysis stage the information is aggregated to form the CMS indexes. This allows for a more robust interpretation of findings and has been a way to keep findings aligned to the theoretical background of the study.

Over the years, two methods of aggregation have been used by SELDI. In the 2001 – 2002 round of SELDI diagnostics, as well as in the SELDI Action Agenda,<sup>259</sup> a quasi-normalisation procedure was used, which calculates individual respondent scores for each respondent and “places” scores on a scale ranging from 0 (“best value” in terms of corruption) to 10 (“worst value” in terms of corruption). In the 2013 – 2014 diagnostics, the results of which are presented in this report, a direct allocation of respondents into specific (for each indicator) categories was used. Essentially, both procedures render similar results, but have some important differences.

The advantages of the normalisation method are that all indexes use the same scale and are in this way

<sup>259</sup> (SELDI, 2013).

Structure of the Corruption Monitoring System Indexes



Source: Center for the Study of Democracy/Vitoshka Research.

comparable in terms of values. The disadvantage of the index calculated in this way is that it is not directly interpretable. The conclusions that can be made would be based on time series and evaluation of dynamics over time. However, an index of 0.5 or 5.6 does not directly relate to the content of questions and the specific aspects of the concept it represents. Another disadvantage is that possibilities for statistical analysis of data are largely limited.

The main advantages of the direct allocation method (conditional recoding of variables that compose each indicator) are two. First, results are directly interpretable in terms of content. In this way the index is more or less “self-explanatory” and needs little input explanations as to what is measured and presented. Second, the index variables provide all possibilities for statistical analyses and tests. A limitation in this respect is that index variables are measured on weak scales (nominal).

A comparison of results between quasi-normalisation and conditional recoding calculation methodologies is presented below for one of the most important and widely commented indexes: involvement in corruption transactions.

## EXPERIENCE-BASED CORRUPTION INDEXES

### Involvement in corruption

“Involvement in corruption” captures the instances when individuals make informal payments to public officials. The questions used to gather information about this indicator are victimisation questions and reflect experience during the preceding year. The indicator summarises citizens’ reports and divides them into two categories: people without corruption experience (have not given bribes) and people with corruption experience (have given bribes at least once during the preceding year).

Research questions:

A13. Whenever you have contacted officials in the public sector, how often in the last year you have had to:

**One answer on each line.**

- 1 In all cases
- 2 In most of the cases
- 3 In isolated cases
- 4 In no cases
- 9 Don't know/No answer

A13A	Give cash to an official	1	2	3	4	9
A13B	Give gift to an official	1	2	3	4	9
A13C	Do an official a favor	1	2	3	4	9

### Recoding procedure (new index)

Conditional recoding divides respondents into two categories:

- (a) Those who have not paid bribes – includes respondents who have simultaneously answered with code 4 to all questions.
- (b) Those who have paid bribes – includes respondents who have answered with codes 1, 2 or 3 to any of the three questions.

Additional categories:

- (c) No contact – people who have not contacted the administration (based on previous filter question).
- (d) No answer – people who have chosen DK/NA option to at least one of the three questions.

Final variable: aggregates (for every respondent) the

values of all questions based on the above conditional recoding scheme.

SPSS SYNTAX

```
compute NNaa13a=a13a.
compute NNaa13b=a13b.
compute NNaa13c=a13c.
recode NNaa13a NNaa13b NNaa13c(1 thru 2=3)
(sysmis=20).
count Iict= NNaa13a NNaa13b NNaa13c(3).
recode Iict (2 thru 3=1).
if (NNaa13a=9) Iict=9.
if (NNaa13b=9) Iict=9.
if (NNaa13c=9) Iict=9.
if (NNaa13a=20) Iict=20.
if (NNaa13b=20) Iict=20.
if (NNaa13c=20) Iict=20.
val lab Iict 0 'Did not give bribe' 1 'Gave bribe' 20 'No
contact with admin' 9 'DK/NA'.
var lab Iict 'Involvement in corruption'.
```

Recoding procedure (old index)

The index reflects the self-assessed involvement of the respondents in various forms of corrupt behavior.

This index is a function of questions (a13a, a13b, a13c), where the value codes are recoded as follows:

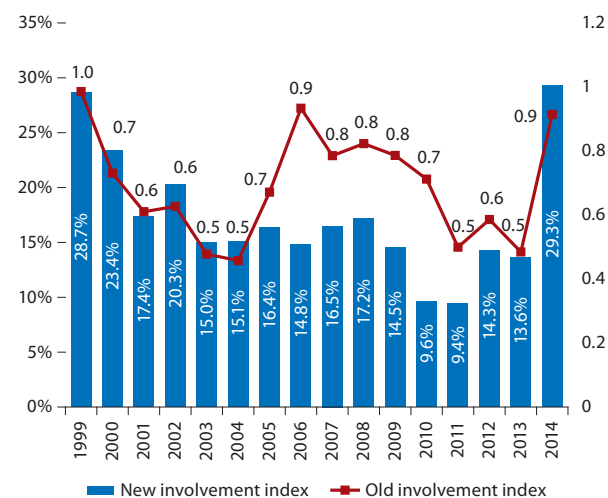
Original value	Label	Recoded (final) value (a13ar, a13br, a13cr)
1	In all cases	10
2	In most of the cases	6.6666666
3	In isolated cases	3.3333333
4	In no cases	0
(not asked if)	No contact in the last year	System missing
9	Don't know/No answer	System missing

An average of the recoded values for all questions is computed, thus the final index ranges from the lowest 0 (no corruption transactions) to the highest possible 10 (all contacts involve corruption transactions).

$$i4 \text{ (Involvement in corrupt practices)} = (a13ar + a13br + a13cr)/3$$

Results:

New and old involvement indexes for Bulgaria (1999 – 2014)



Source: Center for the Study of Democracy/Vitoshka Research.

Corruption pressure

“Corruption pressure” reflects instances of initiation of bribe seeking by public officials: either by directly requesting an informal payment or by indirectly indicating that an informal payment would lead to a positive (for the citizen) outcome. CMS results have shown that pressure has been a decisive factor for involvement. Most corruption transactions occur after the active solicitation of payments by officials.

Research question:

A12. Whenever you have contacted officials in the public sector, how often in the last year they have:

**One answer on each line.**

- 1 In all cases
- 2 In most of the cases
- 3 In isolated cases
- 4 In no cases
- 8 No contact in the last year
- 9 Don't know/No answer

A12A	Directly demanded cash, gift or favor	1	2	3	4	8	9
A12B	Not demanded directly, but showed that they expected cash, gift or favor	1	2	3	4	8	9

**IF A12 = 8 (no contact in the last year) go to A15. Otherwise continue with A13**

Recoding procedure (new index)

Based on variables A12a and a12b.

Logic: corruption pressure has been exercised, if respondent answers with categories 1, 2 and 3 to any of the two variables. Respondents who answered with category 4 to both questions have not experienced corruption pressure.

SPSS SYNTAX

compute NNaa12a=a12a.

compute NNaa12b=a12b.

recode NNaa12a NNaa12b (1 thru 2=3).

count IPress= NNaa12a NNaa12b (3).

fre IPress.

recode IPress (2=1).

fre IPress.

if (NNaa12a=8) IPress=8.

if (NNaa12b=8) IPress=8.

if (NNaa12a=9) IPress=9.

if (NNaa12b=9) IPress=9.

fre IPress.

val lab IPress 0 'No corruption pressure' 1 'Experienced corruption pressure' 8 'No contact with administration' 9 'DK/NA'.

VARIABLE LABELS IPress 'Experience with corruption pressure'.

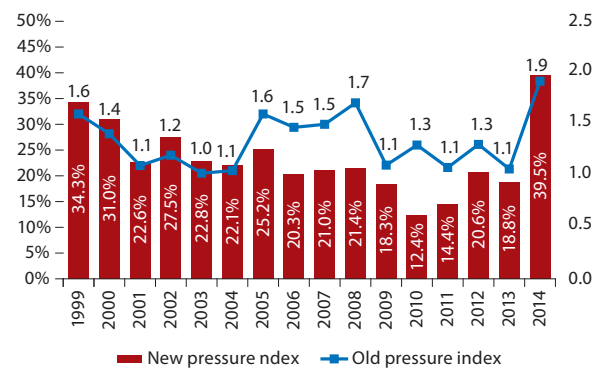
Recoding procedure (old index)

This index is a function of questions (a12a, a12b), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a12ar, a12br)
1	In all cases	10
2	In most of the cases	6.666666
3	In isolated cases	3.333333
4	In no cases	0
8	No contact in the last year	System missing
9	Don't know/ No answer	System missing

An average of the recoded values for the two questions is computed, thus the final index ranges from the lowest 0 (no cases of corruption pressure) to the highest possible 10 (corruption pressure in all cases of contact).  $i3$  (Corruption pressure) =  $(a12ar + a12br)/2$

New and old corruption pressure indexes for Bulgaria (1999 – 2014)



Source: Center for the Study of Democracy/Vitoshka Research.

## ATTITUDES-BASED CORRUPTION INDEXES

Direct involvement in corruption transactions is accompanied by the prevalence of specific attitudes towards corruption and corruption behaviour and by perception of the spread of corruption in society. Ideally, low levels of involvement in corruption would be paired with negative attitudes towards corrupt behaviour and perceptions that corruption is rare and unlikely. This does not mean that perceptions and attitudes directly determine corruption behaviour of citizens. Rather they could influence behaviour to a certain degree but essentially express the general social and political atmosphere in society related to corruption.

### Awareness (identification) of corruption

“Awareness (identification) of corruption” is an index accounting for the level of understanding of citizens as to what constitutes corruption behaviour. The index differentiates between three categories of awareness: high (citizens who identify all or most of the common corruption behaviour patterns as corruption), moderate (many of the common corruption practices are identified but some forms of corruption are classified as “normal behaviour”), low (few corruption patterns are identified as corruption).

### Recoding procedure (new index)

Based on questions A1B-A1K.

Counts identified corruption practices. Maximum score 11 = all practices identifies as corruption. Minimum score 0 = no behavior identified as corruption.

Research question:

A1B. In your opinion, which of the following actions are examples of “corruption”?				
<i>One answer on each line</i>				
		Yes	No	DK/NA
A	Giving a gift to a doctor so that he/she takes special care of you	1	2	9
B	Giving money/doing a favour to an administration official in order to win a competition, concession or public procurement tender	1	2	9
C	Using “connections” to receive a particular public service that your are entitled to (by law)	1	2	9
D	Lobbying a public official to hire a relative (family, friend) of yours	1	2	9
E	Contacting a municipal councilor personally, in order to receive a permission for construction	1	2	9
F	Giving money to a police officer so that your driver’s license is not suspended	1	2	9
G	Using someone’s official position for doing private business	1	2	9
H	Providing confidential information acquired in public office to acquaintances of yours for personal gain	1	2	9
I	Administration officials accepting money for allowing tax evasion or tax reduction	1	2	9
J	Pre-election donations to political parties	1	2	9
K	Paying additional remuneration to a lawyer who assists a defendant to stop a lawsuit against him/her	1	2	9

Recoding:

1 = (values 0 thru 3) = low level of awareness of corruption behavior

2 = (values 4 thru 7) = moderate level of awareness

3 = (values 8 thru 11) = high level of awareness

SPSS SYNTAX

COUNT

ICor = a1ba a1bb a1bc a1bd a1be a1bf a1bg a1bh a1bi a1bj a1bk (1) .

VARIABLE LABELS ICor 'Identification of corruption' .

RECODE

ICor

(SYSMIS=SYSMIS) (0 thru 3=1) (4 thru 7=2) (8 thru 11=3)

INTO ICor2 .

VARIABLE LABELS ICor2 'Identification of corruption (categories)' .

EXECUTE .

Recoding procedure (old index)

No such index has been calculated.

*Acceptability (tolerance) of corrupt behaviour*

While awareness captures the knowledge component, acceptability of corruption captures tolerance (or lack of tolerance) towards corruption. It summarises whether it is acceptable to the public for members of the

parliament or the government, as well as civil servants at central and local government level, to receive gifts, money, favours or a free lunch (“get a treat”) in return to solving someone’s problems.

Research question:

A9.	According to you, are the following activities acceptable, if performed by members of the parliament or the government?
<i>One answer on each line.</i>	

- 1 Acceptable
- 2 Rather acceptable
- 3 Rather unacceptable
- 4 Unacceptable
- 9 Don't know/No answer

A9A	To accept an invitation for a free lunch/dinner to solve personal problems	1	2	3	4	9
A9B	To resolve a personal problem and accept a favor in exchange	1	2	3	4	9

A9C	To accept gifts for the solution of personal problems	1	2	3	4	9
A9D	To accept cash for the solution of personal problems	1	2	3	4	9

A10. According to you, are the following activities acceptable, if performed by officials at ministries, municipalities and mayoralities?  
*One answer on each line.*

- 1 Acceptable
- 2 Rather acceptable
- 3 Rather unacceptable
- 4 Unacceptable
- 9 Don't know/No answer

A10A	To accept an invitation for a free lunch/dinner to solve personal problems	1	2	3	4	9
A10B	To resolve a personal problem and accept a favor in exchange	1	2	3	4	9
A10C	To accept gifts for the solution of personal problems	1	2	3	4	9
A10D	To accept cash for the solution of personal problems	1	2	3	4	9

Recoding procedure (new index)

Based on variables a9 and a10.

Logic: respondents who consider any of the list of practices acceptable (values 1 and 2 on a9 and a10) are coded as "accepting", while the others (values 3, 4 and 9) are coded as "unaccepting" these practices.

SPSS SYNTAX

COUNT

Ix1 = A9A A9B A9C A9D A10A A10B A10C A10D (1)  
 A9A A9B A9C A9D A10A A10B A10C A10D (2) .

VARIABLE LABELS Ix1 'Tolerance of corruption practices (Acceptability)'.  
 EXECUTE .

fre Ix1.

recode Ix1 (1 thru 8 = 2) (0=1) INTO Ix2.

VARIABLE LABELS Ix2'Tolerance of corruption practices (Acceptability)'.  
 EXECUTE .

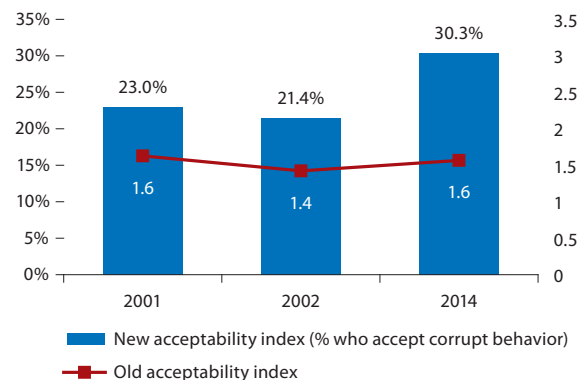
Recoding procedure (old index)

This index is a function of questions (a9a, a9b, a9c, a9d, a10a, a10b, a10c, a10d), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a9ar...)
1	Acceptable	10
2	Rather acceptable	6.6666666
3	Rather unacceptable	3.3333333
4	Unacceptable	0
9	Don't know/No answer	System missing

An average of the recoded values for all 8 questions is computed, thus the final index ranges from the lowest 0 (unacceptable) to the highest possible 10 (acceptable).  
 (Acceptability) = (a9ar + a9br + a9cr + a9dr + a10ar + a10br + a10cr + a10dr)/8

New and old acceptability indexes for Bulgaria (2001, 2002 and 2014)



Source: Center for the Study of Democracy/Vitoshka Research.

Susceptibility to corruption

"Susceptibility to corruption" reflects the tendency of respondents to react to two hypothetical situations – one involves being in the role of an underpaid public official and accepting or denying a bribe that is offered, the other asks about giving a bribe to a corrupt public official, if one had a major problem to solve and was asked explicitly for a bribe (cash). Declaring the denying of a bribe in both situations is interpreted as the respondent being not susceptible to corruption, accepting/giving a bribe in both is interpreted as susceptibility, while giving/taking a bribe in one of the situations and not in the other is defined as "mixed behaviour".

Research question:

A8. Imagine yourself in an official low-paid position and you are approached by someone offering cash, gift or favor to solve his/her problem. What would you do:

*One answer only.*

- 1 I would accept – everyone does that.
- 2 I would accept, if I can solve his problem
- 3 I would not accept, if the solution to the problem is related with law evasion
- 4 I would not accept, I do not approve of such acts
- 9 *Don't know/No answer*

A15. If you had a major problem and an official directly demanded cash to solve it, what would you have done?

*One answer only.*

- 1 I would pay by all means
- 2 I would pay if I can afford
- 3 I would not pay if I had another way to solve the problem
- 4 I would not pay by any means
- 9 *Don't know/No answer*

Recoding procedure (new index)

Based on questions a8 and a15.

Categories of both collapsed to 2 options: susceptible to corruption (1,2 and 3) and not susceptible (4). Based on that three types of respondents are formed:

- 1: susceptible to corruption (would give and accept bribes)
- 2: not susceptible to corruption (would not give or accept bribes)
- 3: mixed behavior (would give, but not accept or the opposite)

SPSS SYNTAX

```
compute aa8=a8.
compute aa15=a15.
recode aa8 aa15 (1 thru 2=3).
compute skl=0.
if (aa8=3 and aa15=3) skl=1.
if (aa8=4 and aa15=4) skl=2.
if (aa8=3 and aa15=4) skl=3.
if (aa8=4 and aa15=3) skl=3.
```

val lab skl 1 'Susceptible to corruption' 2 'Not susceptible to corruption' 3 'Mixed behavior'.  
 recode skl (0=sysmis).

Recoding procedure (old index)

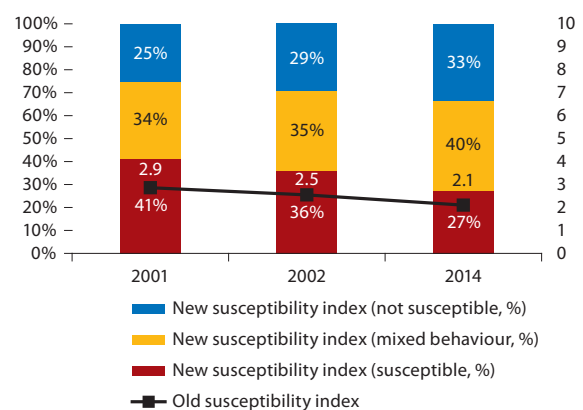
This index is a function of questions (a8, a15), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a8r, a15r)
1	I would accept/pay	10
2	I would accept/pay, if...	6.6666666
3	I would not accept/pay, if...	3.3333333
4	I would not accept/pay	0
9	<i>Don't know/No answer</i>	System missing

An average of the recoded values for the two questions is computed, thus the final index ranges from the lowest 0 (I would not accept/pay) to the highest possible 10 (I would accept/pay).

$$(\text{Susceptibility to corruption}) = (a8r + a15r)/2$$

**New and old susceptibility indexes for Bulgaria (2001, 2002 and 2014)**



Source: Center for the Study of Democracy/Vitoshka Research.

## ASSESSMENTS OF THE CORRUPTION ENVIRONMENT INDEXES

The experience with corruption and the attitudes towards corruption, as well as the general current sentiment and level of trust towards public institutions

in society determine the public’s assessment of the corruptness of the environment. These perceptions are summarised in the following indexes:

*Likelihood of corruption pressure*

“Likelihood of corruption pressure” is an index measuring expectations of the public for the likelihood to face corruption pressure in interaction with public officials. Overall this is an index gauging perceptions of the corruptness of the environment. In principle, corruption theory considers that people would be more likely to resort to corruption patterns if they assess the environment is intrinsically corrupt.

Research question:

A3. In order to successfully solve one’s problem is it likely or is it not likely he/she to have to:  
*One answer on each line.*

- 1 Very likely
- 2 Rather likely
- 3 Rather unlikely
- 4 Not likely at all
- 9 Don’t know/No answer

A3A	Give cash to an official	1	2	3	4	9
A3B	Give a gift to an official	1	2	3	4	9
A3C	Do a favor to an official	1	2	3	4	9

Recoding procedure (new index)

If the respondent answered 1 (very likely) or 2 (rather likely) to at least one of the three questions (A3A, A3B or A3C), then the likelihood of pressure is considered to be high, in all other cases the likelihood of pressure is considered to be low.

compute likely = 2.  
 if (a3a =1 or a3a =2 or a3b=1 or a3b = 2 or a3c = 1 or a3c = 2) likely =1.

Recoding procedure (classical index)

This index was also known as “Practical efficiency of corruption.”

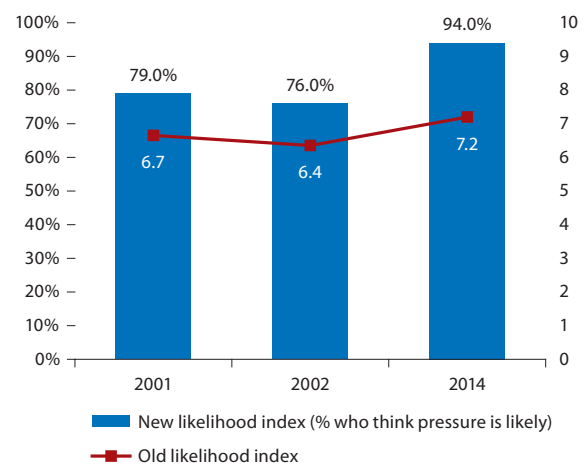
This index is a function of questions (a3a, a3b, a3c), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a3ar, a3br, a3cr)
1	Very likely	10
2	Rather likely	6.6666666
3	Rather unlikely	3.3333333
4	Not likely at all	0
9	Don’t know/No answer	System missing

An average of the recoded values for all three questions is computed, thus the final index ranges from the lowest 0 (not likely at all) to the highest possible 10 (very likely).

$$(\text{Likelihood of corruption pressure}) = (a3ar + a3br + a3cr)/3$$

**New and old likelihood indexes for Bulgaria (2001, 2002 and 2014)**



Source: Center for the Study of Democracy/Vitoshka Research.

*Corruptness of officials*

Corruptness of officials is an index reflecting perceptions of the integrity reputation of various groups of public officials; it thus constitutes an estimate by the public of the corruptness of the various public services. The interpretation of this index is specific, as it is an assessment of attitudes of citizens towards public officials rather than a measure of the prevalence of corruption in the respective government departments. The added value of this index is that it helps identify top ranking sectors affected by corruption or being least trusted by the public.



Research question:

A2.	As you see it, how far is corruption proliferated among the officials in the public sector?
<i>One answer only.</i>	

- 1 Almost all officials are involved
- 2 Most officials are involved
- 3 Few officials are involved
- 4 Scarcely anyone of the officials is involved
- 9 *Don't know/No answer*

Recoding procedure (new index)

This question is presented directly, as a mean value on an inverted scale (1 becomes 4, 2 becomes 3, 3 becomes 2, 4 becomes 1, 9 is excluded from mean computations as “user missing”). However, rather than presenting data for the officials in the public sector as a whole, more concrete perceptions (question A4) for the different kinds of public officials (e.g. officials at ministries, judges, public prosecutors, etc.) are presented.

A4.	According to you, how far is corruption proliferated among the following groups:
<i>One answer on each line.</i>	

- 1 Almost everybody is involved
- 2 Most are involved
- 3 Few are involved
- 4 Scarcely anyone is involved
- 9 *Don't know/No answer*

A4A	Journalists	1	2	3	4	9
A4B	Teachers	1	2	3	4	9
A4C	University officials or professors	1	2	3	4	9
A4D	Officials at ministries	1	2	3	4	9
A4E	Municipal officials	1	2	3	4	9
A4F	Administration officials in the judicial system	1	2	3	4	9
A4G	Judges	1	2	3	4	9
A4H	Public prosecutors	1	2	3	4	9
A4I	Investigating officers	1	2	3	4	9
A4J	Lawyers	1	2	3	4	9
A4K	Police officers	1	2	3	4	9
A4L	Customs officers	1	2	3	4	9
A4M	Tax officials	1	2	3	4	9

A4N	Members of parliament	1	2	3	4	9
A4O	Ministers	1	2	3	4	9

Recoding procedure (old index)

This index is a function of question (a2), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a2r)
1	Almost all officials are involved	10
2	Most officials are involved	6.6666666
3	Few officials are involved	3.3333333
4	Scarcely anyone of the officials is involved	0
9	<i>Don't know/No answer</i>	System missing

The final index ranges from the lowest 0 (nobody is involved) to the highest possible 10 (almost everybody is involved).

(Corruptness of officials) = a2r

*Feasibility of policy responses*

“Feasibility of policy responses to corruption” is an indicator capturing the “public thinking” about policy responses to corruption. More specifically it evaluates potential public trust in the government’s willingness and/or capacity to tackle corruption, as well as potential support for anticorruption policies.

Research question:

A19.	In view of corruption in (country), which of following opinions is closer to your own?
<i>One answer only.</i>	

- 1 The wide spread of corruption cannot be reduced
- 2 Corruption will always exist in (country), yet it can be limited to a degree
- 3 Corruption in (country) can be substantially reduced
- 4 Corruption in (country) can be eradicated
- 9 *Don't know/No answer*

Recoding procedure (new index)

Answers 1 and 2 are recoded as “1” – Corruption can be substantially reduced or eradicated, 3 and 4 are recoded as “2” Corruption cannot be substantially reduced, 9 remains “don’t know”.

Recoding procedure (old index)

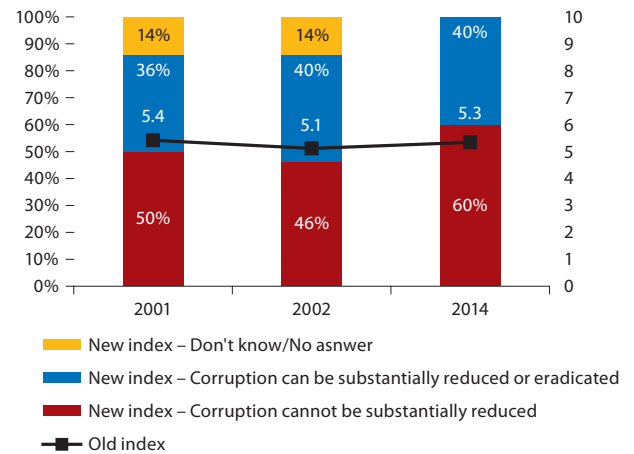
This index is a function of question (a19), where the value codes are recoded as follows:

Original value	Label	Recoded (final) value (a19r)
1	The wide spread of corruption cannot be reduced	10
2	Corruption will always exist in (country), yet it can be limited to a degree	6.6666666
3	Corruption in (country) can be substantially reduced	3.3333333
4	Corruption in (country) can be eradicated	0
9	Don't know/No answer	System missing

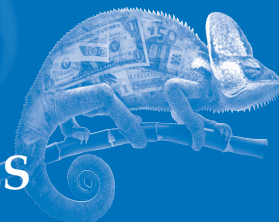
The final index ranges from the lowest 0 (corruption can be eradicated) to the highest possible 10 (corruption cannot be reduced).

(Feasibility of policy responses) = a19r

New and old feasibility of policy responses indexes for Bulgaria (2001, 2002 and 2014)







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## ALBANIA

### PËRMBLEDHJE EKZEKUTIVE

Korrupsioni në Evropën Juglindore ka qenë në fokusin e lajmeve, debatit publik dhe axhendës së politikës së institucioneve vendore dhe ndërkombëtare aq shpesh dhe aq gjatë sa që vështirë të mos justifikohet një studim mbi të. Pikërisht natyra problematike e kësaj dukurie justifikon përdorimin e përqsasjeve inovative për ta kuptuar dhe më pas për ta reduktuar këtë dukuri. Perspektivat për anëtarësim në Bashkimin Evropian për vendet e rajonit, edhe pse të largëta, ofrojnë një strukturë të përshtatshme për veprim. Megjithatë janë aktorët vendorë dhe veçanërisht shoqëria civile ata që mund të sjellin progres të qëndrueshëm në antikorrupsion. Lideri për Evropën Juglindore për Zhvillim dhe Integritet (SELDI) ka vendosur si një nga prioritetet e tij kryesore, analizimin dhe të kuptuarit në thellësi të dukurisë së korrupsionit dhe mangësive në qeverisje në rajon, si kushte të domosdoshme për **advokimin e politikave kundër korrupsionit**. Ky raport është pjesë e zhvillimit dhe zbatimit të politikave dhe strukturave rajonale kundër korrupsionit të paraqitura në shtyllën mbi qeverisjen në strategjinë SEE2020, drejtuar nga Iniciativa Rajonale Kundër Korrupsionit.

Duke qenë rezultat i bashkëpunimit brenda anëtarëve të SELDI, ky raport përdor një përqsasje inovative në metodikë dhe shkrim. Raporti është rezultat i zbatimit të një sistemi të hartuar nga SELDI në fillim të viteve 2000 për vlerësimin e **korrupsionit dhe antikorrupsionit** në mjedisin social dhe institucional të Evropës Juglindore.<sup>1</sup> Anketa mbi viktimizimin e qytetarëve që përdoret në këtë raport bazohet në metodikën e përdorur nga *Sistemi i Monitorimit të Korrupsionit* i cili lejon për një vlerësim të veçantë bazuar në të dhëna mbi progresin e anti-korrupsionit në rajon që nga vitin 2001. Vlerësimet e 2013-2014, gjetjet e të cilave janë përmbledhur në këtë raport, janë një rast i rrallë në praktikën ndërkombëtare monitoruese ku **të njëjtat çështje dhe i njëjti rajon rishqyrtohen pas pak më shumë se një dekadë**. Raporti ka krahasuar legjislacionin kombëtar dhe praktikën institucionale në një numër fushash kritike të përpjekjeve antikorrupsion: kuadrin rregullator dhe ligjor, kushtet institucionale, korrupsionin në ekonomi dhe rolin e shoqërisë civile dhe bashkëpunimin

ndërkombëtar. Raporti paraqet **pikëpamjet e shoqërisë civile dhe bën një vlerësim të politikave**, ndërsa gjetjet dhe rekomandimet e tij janë konsultuar me institucionet publike kombëtare dhe rajonale.

Vlerësimet e aspekteve kombëtare institucionale dhe ligjore që lënë shteg për korrupsion në rajon, nuk kanë për qëllim të jenë një grumbullim rregullash dhe praktikash nga të gjithë vendet, por fokusohen në disa çështje prioritare, në shërbim të përpjekjeve për të identifikuar burime të përbashkëta të korrupsionit në Evropën Juglindore. Raporti ofron një **model për raportimin mbi progresin në luftën kundër korrupsionit** të shoqërisë civile në Evropën Juglindore.

### GJETJET KRYESORE

#### Vlerësimi i përgjithshëm

Pavarësisht disa arritjeve të rëndësishme- kryesisht në lidhje me stabilizimin e institucioneve demokratike, miratimin e ligjeve në fushat kryesore antikorrupsion, reduktimin e ryshfeteve dhe rritjen e intolerancës publike ndaj dukurisë së korrupsionit- reformat në anti-korrupsion dhe mirëqeverisje nuk janë ende të konsoliduara: korrupsioni i politikanëve dhe gjyqtarëve duket të jetë në rritje dhe zbatimi i legjislacionit kundër korrupsionit nuk bëhet në mënyrë konsistente. Politikën kundër korrupsionit dhe institucionet e antikorrupsionit në rajon, do të përfitonin së tepërmi nga miratimi i një sondazhi të rregullt të vikitimizimit prej korrupsionit për të matur korrupsionin dhe progresin në mirëqeverisje, të ngjashëm me Eurobarometrin mbi antikorrupsionin, monitorimin e korrupsionit dhe krimin të organizuar në Evropën Juglindore nga Zyra e Kombeve të Bashkuara për Drogat dhe Krimin (UNODC), apo dhe me *Sistemi i Monitorimit të Korrupsionit* të përdorur në këtë raport.

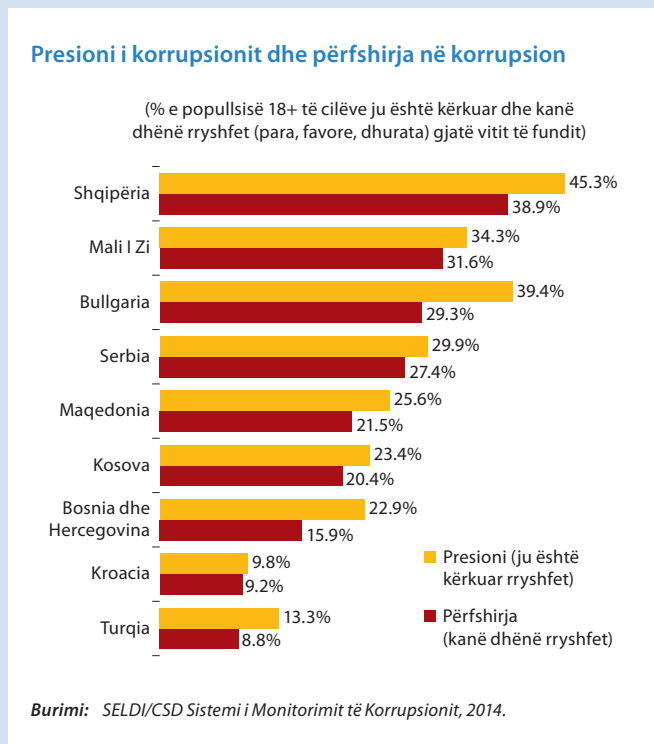
#### Përhapja e korrupsionit në Evropën Juglindore

Përvoja me korrupsionin, ose me fjalë të tjera, përfshirja e publikut në transaksionet korruptive është shumë e lartë në Evropën Juglindore. Edhe në Turqi dhe Kroaci, ku nivelet e korrupsionit administrativ janë më të ulëtat në rajon, rreth 8-9% e popullsisë raporton të kenë dhënë ryshfet gjatë vitit të fundit. Nivele të tilla

<sup>1</sup> (SELDI, 2002).

përvoje me korrupsionin janë përtej niveleve mesatare të regjistruara nga sondazhet e Eurobarometrit në Bashkimin Evropian.<sup>2</sup> Kjo tregon se korrupsioni administrativ është një **fenomen masiv** dhe nuk mund të kufizohet vetëm në raste të veçanta të zyrtarëve të korrumpuar.

Diferencat thelbësore midis vendeve me një formim të përbashkët historik, tregojnë se rrugët e ndryshme të zhvillimit shoqëror, ekonomik dhe institucional prodhojnë rezultate të ndryshme. Në përgjithësi, me përjashtim të Bullgarisë, ndryshimet për të gjitha vendet kanë qenë pozitive në krahasim me raundet e mëparshme të SELDI (2001 dhe 2002) ku është përdorur po i njëjti *Sistem i Monitorimit të Korrupsionit*. Në përgjithësi ka patur progres, megjithëse ai ka qenë i ngadalshëm dhe i pabarabartë për shtete të ndryshme.

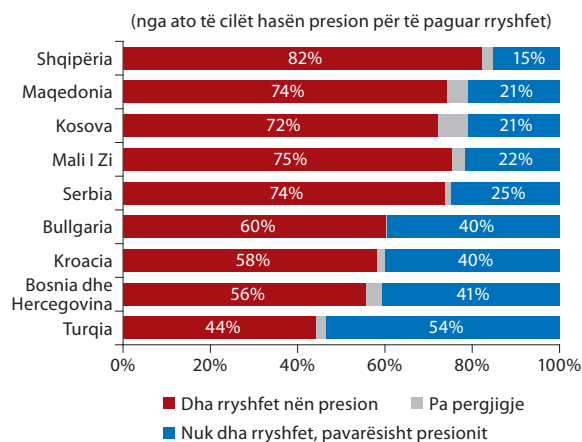


Presioni i korrupsionit nga zyrtarët, është faktori kryesor që ndikon statistikisht në nivelin e përfshirjes në korrupsion. Pjesa më e madhe e vendeve me nivele të larta përfshirjeje dhe presioni, karakterizohen edhe nga një **rezistencë** e ulët ndaj presionit të korrupsionit (pjesa më e madhe e të anketuarve të cilëve ju është kërkuar rryshfet, e kanë dhënë një të tillë). Edhe pse

<sup>2</sup> Treguesit mbi përvojën me korrupsionin të përdorura në anketat e Eurobarometer kanë përmbajtje pak më të ndryshme pasi ato i referohen përvojës dhe rasteve të drejtpërdrejta kur të anketuarit kanë qenë dëshmitarë të rasteve të mitmarrjes. Për më shumë detaje, ju lutem referojuni (TNS Opinion & Social, Shkurt 2014).

rezistenca ndaj korrupsionit nuk mund të konsiderohet si faktori kryesor në reduktimin e dukurisë së korrupsionit, ai reflekton qëndrimet ekzistuese sociale për integritetin dhe është kryesisht rezultat i përpjekjeve të shoqërisë civile dhe autoriteteve publike për rritjen e ndërgjegjësimit për luftën kundër korrupsionit. Në këtë drejtim, roli i shoqërisë civile është i rëndësishëm pasi ajo është në gjendje të vlerësojë rezultatet dhe të përfaqësojë presionin e publikut për ndryshim.

### Rezistenca ndaj presionit të korrupsionit



### Politikat dhe legjislacioni kundër korrupsionit

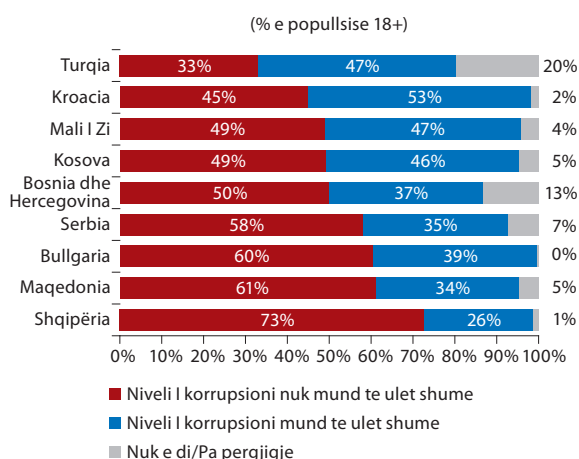
Në përgjithësi, vendet anëtare të SELDI kanë huazuar në legjislacionet e tyre kombëtare pjesën më të mirë të standardeve ndërkombëtare kundër korrupsionit, dhe më e rëndësishmja, logjikën dhe qasjen e tyre. Megjithatë, cilësia ligjore mbetet problem. Ndryshimet e shpeshta dhe të paqëndrueshme, kanë rezultuar në kompleksitete procedurale dhe ligjore dhe interpretime kontradiktore nga ana e gjykatave.

Të gjitha vendet kanë miratuar një lloj dokumenti strategjik që përmban qëndrimin e tyre të përgjithshëm për luftën ndaj korrupsionit. Edhe pse ka disa dallime mes vendeve, zbatimi i këtyre dokumenteve është penguar në përgjithësi nga burimet dhe angazhimi i pamjaftueshëm në nivel të lartë qeverie. Një problem tjetër në gjithë rajonin ka qenë hartimi i strategjive për të adresuar të gjitha aspektet e mundshme të korrupsionit. Në vend që të priorizojnë, këto dokumente u bënë shumë gjithëpërfshirës: në lidhje me antikorrupsionin, fjala “strategjike” ka marrë kuptimin e gjithëpërfshirjes.

Përsa i përket prioriteteve të politikave, ka patur dy ndryshime të rëndësishme në qasjen ndaj luftës kundër korrupsionit: një zhvendosje të vëmendjes nga korrupsioni i vogël (i policisë rrugore apo mjekëve në sektorin publik) në atë të madh (atë të anëtarëve të parlamentit apo ministrave) dhe kriminalizimin e një game më të gjerë abuzimesh me funksionet publike. Arritja e një impakti pozitiv në ndëshkimin e korrupsionit të madh, mbetet e limituar në rastin më të mirë. Sfidat kryesore për politikën kundër korrupsionit në rajon janë mbyllja e hendekut në zbatimin e këtyre politikave dhe vazhdimi i luftës kundër korrupsionit pavarësisht ndryshimeve në manifestimet dhe format e korrupsionit, duke ruajtur në të njëjtën kohë stabilitetin rregullator dhe duke shmangur ndryshimet e shpeshta në gjyqësor.

Gjetjet e monitorimit të SELDI theksojnë **rëndësinë e mbështetjes publike për suksesin e politikave kundër korrupsionit**. Besimi i publikut tek qeveria dhe efektiviteti i politikave kundër korrupsion janë të lidhura në një lloj rrethi virtuoze: përqindjet më të larta të njerëzve që janë optimist për mundësinë e suksesit të luftës kundër korrupsionit janë të lidhura me nivele më të ulëta të korrupsionit. Anasjelltas, një përhapje më e madhe e korrupsionit shkon dorë për dorë me rritjen e pesimizmit rreth perspektivave të luftës kundër korrupsionit.

#### Fizibiliteti i politikave të korrupsionit: Si i vlerëson publiku



Burimi: SELDI/CSD Sistemi i Monitorimit të Korrupsionit, 2014.

## Praktika institucionale dhe zbatimi i ligjit

Në Evropën Juglindore theksi që u vu në harmonizimin e legjislacionit kombëtar me standardet ndërkombëtare në luftën kundër korrupsionit, gradualisht po i lëshon rrugë fokusit në zbatimin e këtij legjislacioni nën presionin në rritje të BE dhe shoqërisë civile vendase.

Një e metë që është e përbashkët për të gjitha vendet anëtare të SELDI është kompromentimi i autonomisë së organeve të ndryshme mbikëqyrëse dhe ligjzbatuese. Një farë ndërhyrjeje në çështjet e shërbimit civil nga politikanë të zgjedhur, anëtarë të parlamentit apo ministrat e qeverisë, është e zakonshme. Gjithashtu, asnjë nga vendet e SELDI nuk ka një mekanizëm të menaxhimit të ankesave në administratën publike që funksionon siç duhet. Shumica kanë krijuar një organ kundër korrupsion që pritet të pranojë ankesa nga publiku. Një tjetër mangësi që është e përbashkët, është mungesa e të dhënave të besueshme dhe me qasje publike për punën e institucioneve qeveritare, veçanërisht në lidhje me luftën kundër korrupsionit. Informacioni dhe statistikën ose nuk janë mbledhur, ose nuk janë në dispozicion për publikun, ose mbledhen në mënyrë aq rastësore sa nuk lejojnë monitorim dhe analizë.

Një nga çështjet kyçe që ka të bëjë me krijimin e institucioneve të specializuara kombëtare kundër korrupsionit në rajon, është se **si të kombinohen funksionet parandaluese dhe represive**. Vendet anëtare të SELDI janë përpjekur që **institucionet e tyre antikorrupsion** t'i bëjnë të dyja, edhe pse funksioni represiv zë pjesën më të vogël të punës së tyre. Shumica e detyrave të këtyre organeve përfshin funksione të mbikëqyrjes dhe kontrollit, zakonisht të strategjive kombëtare kundër korrupsionit dhe nuk duket se ata kanë pasur ndonjë ndikim të rëndësishëm në axhendën legjislative të qeverisë. Ngritja dhe funksionimi i institucioneve të tilla është dëmtuar nga një sërë vështirësish:

- Megjithatë korrupsioni mund të ketë qenë në krye të axhendave të qeverive, nuk ishte e mundur të krijoheshin institucione me kompetenca të jashtëzakonshme që do të mund të ndikonin disi në ekuilibrat e pushteteve. Kompromisi tipik është që këto agjenci t'i bashkëngjiten degës ekzekutive dhe tu jepen kompetenca mbikëqyrëse të cilat zakonisht kufizohen vetëm në të kërkuarit agjencive të tjera qeveritare të raportojnë mbi zbatimin e detyrave të caktuara për to në kuadër të luftës kundër korrupsionit.

- Agjenci të tilla duhej të jenë të kujdesshme për të mos duplikuar funksione që u janë dhënë organeve të tjera mbikëqyrëse (p.sh. institucionet kombëtare të auditimit apo agjencitë ligjzbatuese).
- Shumica e këtyre organeve janë të pajisura me kapacitete të kufizuara institucionale, si buxheti dhe personeli, pavarësisht qëllimeve të deklaruara për të kundërtën.

Përsa i përket **legjislaturës**, parlamentet në rajon nuk renditen lartë në besimin e publikut dhe kjo pozitë e palakmueshme nuk është pa arsye. Kodet e sjelljes etike janë të rralla dhe nuk zbatohen; rregulloret për lobimet janë edhe më të rralla; procedurat për heqjen e imunitetit nga ndjekja penale kanë filluar të prezantohen vetëm kohët e fundit dhe në rastet kur ka një trup antikorrupsion në parlament, detyra kryesore e tij është më tepër të mbikëqyrë ndonjë agjenci të ekzekutivit se sa të merret me korrupsionin midis anëtarëve.

Një shqetësim i rëndësishëm në vendet e SELDI është financimi i partive politike dhe fushatave zgjedhore. Shumica e vendeve kanë zbatuar rekomandimet e GRECO-s për financimin e partive, por një numër problemesh të tilla si donacionet anonime, blerjet e votave (ose ryshfetet ndaj votuesve), kapacitetet e pamjaftueshme për të audituar financat e partisë dhe kompetenca të kufizuara për të zbatuar sanksionet, etj, vazhdojnë të mbeten akoma.

Gjendja aktuale e **shërbimit civil** korrespondon me natyrën tranzicionale të vendeve të Europës Juglindore, mungesën e traditave të përshtatshme ligjore dhe institucionale, si dhe fondeve vazhdimisht të pamjaftueshme. Pavarësisht disa dallimeve mes vendeve, nevoja për të lehtësuar zhvillimin menaxherial dhe organizativ brenda shërbimit civil është e përbashkët për shumicën. Kultura e “kontrollit” të administratës, në vend të menaxhimit të punës së saj nëpërmjet motivimit, pengon zhvillimin e profesionalizmit dhe reduktimin e korrupsionit. Një nga gjetjet kryesore të raportit është **përforcimi reciprok midis kompetencës dhe integritetit**. Zakonisht, kur kredencialet mbi antikorrupsionin në një departament të caktuar të qeverisë vihen në pikëpyetje, edhe kapacitetet institucionale janë të mangëta. Anasjelltas, çdo përmirësim në profesionalizëm ka çuar edhe në përmirësimin e integritetit. Pra, sfida në rajon është se si të bëjmë transparencën dhe llogaridhënien karakteristikat thelbësore të shërbimit civil duke rritur gjithashtu profesionalizmin e tij. Shumë shpesh, menaxhimi i

dobët, kriteret e paqarta, ndarja jo e përshtatshme e përgjegjësisë dhe detyrave janë ato që pengojnë reformën dhe dëmtojnë autoritetin qeveritar.

Roli antikorrupsion i **agjencive ligjzbatuese** në rajon duhet të kuptohet në kuadër të zgjerimit të vazhdueshëm të gamës së praktikave të inkriminuara si korrupsion, gjë që mund të çojë në kanalizimin e një numri disproporcional të këtyre rasteve tek organet ligjzbatuese dhe prokuroria. Roli antikorrupsion i agjencive ligjzbatuese në Evropën Juglindore kompromentohet më tej nga cënueshmëria e lartë e tyre nga korrupsioni dhe sidomos nga krimi i organizuar. Forcat e policisë në shumicën e vendeve të SELDI kanë njësi të specializuara në luftën kundër operacioneve të krimit të organizuar. Këto njësi pritet gjithashtu të punojnë edhe në fushën e antikorrupsionit. Përshtatja e këtyre dy funksioneve në një njësi justifikohet kryesisht nga korrupsioni i ushtruar nga krimi i organizuar, por edhe nga nevoja për metodat speciale të hetimit në zbulimin e skemave të sofistikuar të korrupsionit, ekspertizë që gjendet zakonisht në departamentet e luftës kundër krimit të organizuar. Këto njësi zakonisht janë të vendosura në zyrat qendrore të policisë apo të ministrive të brendshme, gjë e cila pengon autonominë institucionale të tyre, të nevojshme për një institucion të specializuar antikorrupsion.

## Gjyqësori në antikorrupsion

Në Evropën Juglindore, fokusi i fortë në sigurimin e pavarësisë së gjyqësorit nuk është balancuar në mënyrë të barabartë nga kërkesa po aq të forta për llogaridhënie nga ana e tij. Mungesa e kontrolleve dhe balancave të përshtatshme ka sjellë që vetë-qeverisja në gjyqësor të dalë jashtë kontrollit dhe të kthehet në korporatizëm, bashkë me të gjitha rreziqet për korrupsionin që lidhen me të. Theksi i tepruar në pavarësinë formale zgjedhore u bë një shembull tipik i ilaçit të kthyer në sëmundje; -në vend që të sigurohej një ekuilibër i pushtetit ekzekutiv, vetë-qeverisja solli marrëdhënie të tipit klientelist midis magjistratëve dhe interesave të veçanta. Sot gjyqësori në Evropën Juglindore është kapur nga korrupsioni ashtu si degët e tjera të pushtetit. Dikur të kërkuar nga publiku dhe faktorët politikë që sollën zhvillime të tilla, kontrollet mbi mitmarrjet e magjistratëve janë tanimë të pakta.

Nuk është surprizë që opinionin publik mbi gjyqësorin nuk është në nivele të larta. Nga *Sistemi i Monitorimit të Korrupsionit* të SELDI del se gjyqtarët janë konsideruar nga zyrtarët publikë më të korruptuar në rajon.



Mungesa e transparencës dhe llogaridhënies është padyshim një faktor i rëndësishëm në vlerësime të tilla. Në të gjitha vendet e SELDI ka pasur një **përkeqësim të qartë në vlerësimin e përhapjes së korrupsionit tek magjistratët** që nga viti 2001.

Kapaciteti i gjyqësorit në rajon për të zbatuar legjislacionin kundër korrupsionit, sidomos për sa i përket korrupsionit politik, është dëmtuar nga një numër problemesh që kanë ushtruar ndikimin e tyre në mënyrë kumulative:

- Çështjet kushtetuese, që lidhen kryesisht me rivendosjen e bilancit midis pavarësisë dhe llogaridhënies së gjyqësorit;
- Komplexiteti i ndjekjes penale për ato që kryejnë vepra penale të korrupsionit, veçanërisht në nivel politik;
- Kapaciteti i përgjithshëm i pamjaftueshëm dhe çështje të tjera që lidhen me nivelet e ulta të profesionalizmit, ngarkesën e tepruar të punës që çon në grumbullimin e shumë rasteve, menaxhimi i këtyre rasteve, ambientet etj.

Një gjetje e rëndësishme e këtij raundi të monitorimit të korrupsionit të SELDI-t që ka lidhje me rolin e gjyqësorit në luftën kundër korrupsionit, është **mungesa e mekanizmave të feedback-ut** që bëjnë të mundur që publiku dhe politikëbërësit të vlerësojnë si integritetin e gjyqësorit, ashtu dhe efektivitetin e tij në zbatimin e ligjeve kundër korrupsionit. Në asnjë nga vendet e Europës Juglindore nuk ka një mekanizëm të besueshëm, sistematik dhe gjithëpërfshirës për mbledhjen, përpunimin dhe nxjerrjen e statistikave për punën e gjykatave dhe të prokurorisë, në mënyrë të veçantë për rastet e korrupsionit, në dispozicion të publikut.

## Korrupsioni dhe ekonomia

Në Evropën Juglindore, përfshirja e konsiderueshme e qeverive në ekonomi gjeneron disa pika konflikti të mundshëm midis institucioneve publike dhe biznesit, gjë që paraqet risk për korrupsion. Rreziku është veçanërisht i lartë në fushën e privatizimit, të prokurimit publik dhe koncesioneve të industrive të rënda, si energjia dhe kujdesi shëndetësor. Për më tepër, rregullat e tepërta për biznesin, kryesisht në lidhje me regjistrimin, licencimin dhe marrjet e lejeve, vazhdojnë të gjenerojnë barriera të ndryshme për hyrje në treg dhe rrisin kostot e të bërit biznes, edhe pse disa vende në rajon kanë bërë përparime të dukshme në trajtimin

e pengesave të biznesit. Megjithatë, administratat mbikëqyrëse dhe kontrolluese vazhdojnë të deformojnë tregjet duke u fokusuar shumë në kontrollin dhe dhënien e gjobave pa një vlerësim të përshtatshëm të riskut dhe kosto-përfitimeve. Kjo është veçanërisht e vërtetë për administratat doganore në të gjithë rajonin, të cilat shihen ende si mjete efektive për presion mbi biznesin. Një gjë e tillë, ose drejton sipërmarrësit në sektorin joformal ose i detyron ata që të përdorin ryshfetet. Kjo, si për ti përkeqësuar gjërat më tej, i hap rrugën rregulloreve të mëtejshme dhe pengesave administrative.

Shumëllojshmëria e rrethanave që mundësojnë korrupsionin në bashkëveprimet e biznesit dhe zyrtarëve publikë, përbën vështirësinë më të madhe që politikëbërësit kundër korrupsionit hasin, kjo sepse është e nevojshme të merren në shqyrtim një sërë faktorësh. Kur ndërmerren nga biznesi, praktikëbërësit mund të ndahen në dy kategori kryesore: shmangja e shpenzimeve shtesë dhe përfitimi i një avantazhi të padrejtë. Korrupsioni i grupit të parë vjen për shkak të rregulloreve të dobëta apo të tepruara, paaftësive individuale apo institucionale, etj.; ndërsa korrupsioni në kategorinë e dytë përfshin lloje të ndryshme të mashtrimit – evazioni fiskal, mashtrimi me TVSH, kontrabanda, jo-pajtueshmëri me standardet shëndetësore dhe ato të sigurisë, etj.

Në Evropën Juglindore, prokurimi qeveritar është një nga kanalet kryesore përmes të cilave korrupsioni ndikon në ekonomi. Rreziku korrupsionit në këtë fushë është i lidhur me një numër mangësish: procedurat jo-mjaftueshëm transparente, një pjesë e madhe procedurash anti-konkurrese, mbikëqyrje e dobët dhe shqyrtim gjyqësor jo-efektiv (duke marrë si të mirëqenë korrupsionin në gjyqësor), etj. Edhe pse më shumë se një dekadë më parë një studim i SELDI, ka gjetur se vendet në rajon kishin bërë përparime kohët e fundit në forcimin e kuadrit ligjor dhe harmonizimin me atë të BE, prokurimi publik vazhdon të jetë ndër aspektet më të dobëta të qeverisjes publike. Realiteti nuk ka ndryshuar shumë duke qenë se rregulloret e mira janë anashkaluar nga politikanët të korruptuar dhe biznese me lidhje. Fragmentimi institucional nuk lejon zbatimin efektiv të rregulloreve të prokurimit publik.

## Shoqëria civile në luftën kundër korrupsionit

Organizatat jo-qeveritare në Evropën Juglindore janë ndër forcat më të rëndësishme shtytëse në luftën kundër korrupsionit. Ato, janë ende larg përkthimit të

kërkesave të publikut në advokim efektiv për politika dhe në të përballurit me dukurinë e korrupsionit për shkak të një sërë arsyesh. Kontributi i tyre varet në masë jo të vogël në aftësinë e tyre **për të shërbyer si vëzhgues dhe në të njëjtën kohë për të angazhuar qeverinë** në reformat antikorrupsion. Megjithatë, ka një mungesë të mekanizmave formale për angazhimin e shoqërisë civile nga qeveritë kombëtare në rajon, të kapaciteteve administrative, të një vizioni të qartë dhe të kuptuarit të potencialit të OJQ-ve në fushën e antikorrupsionit. Mbështetja e tepërt tek ndërkombëtarët, përfshirë këtu financimet evropiane dhe mungesën e politikave kombëtare për të krijuar kushte për sektorin jo-qeveritar në Evropën Juglindore, kompromentojnë impaktin e qëndrueshëm të kampionëve vendorë në antikorrupsion.

Edhe pse OJQ-të në rajonin e SELDI-t kanë arritur të krijojnë disa partneritete publike-private ndërkombëtare, këto të fundit nuk u transformuan në partneritete efektive me institucionet kombëtare qeveritare. Suksesi i partneriteteve të tilla ka të bëjë me aftësinë për të ruajtur marrëdhënie të ndryshme me institucionet shtetërore, si bashkëpunuese ashtu edhe konfrontuese. Një mënyrë për të qenë bashkëpunues dhe për të luajtur rolin e vëzhguesit në të njëjtën kohë do të ishte rritja e profesionalizmit të OJQ-ve në monitorimin e politikave të korrupsionit dhe kundër korrupsionit.

Efektiviteti i OJQ-ve në adresimin e çështjeve që lidhen me mirëqeverisjen publike në vendet anëtare të SELDI varet në një masë të madhe nga aftësia e OJQ-ve për të ruajtur mirëqeverisjen e vetë tyre. Rreziku i kapjes së OJQ-ve nga interesa të veçanta dhe zyrtarë të korrumpuar apo politikanëve të zgjedhur, buron nga mundësia për të shfrytëzuar një numër të dobësive të sektorit jo-fitimprurës në rajon:

- Mungesa e procedurave të detyrueshme për transparencë;
- Kontrolli jo-efektiv i zbatimit të rregulloreve financiare;
- Mungesa e kulturës së auditimit;
- Niveli i ulët i vetë-rregullimit dhe koordinimit të përpjekjeve.

Lufta kundër kapjes së shoqërisë civile nga korrupsioni duhet të jetë në krye të axhendës së reformave në rajonin e Evropës Juglindore, si pjesë e përpjekjeve kombëtare në luftën kundër korrupsionit.

## Bashkëpunimi ndërkombëtar

Institucionet ndërkombëtare dhe vendet partnere të huaja, kanë luajtur një rol të rëndësishëm në zhvillimet e luftës kundër korrupsionit në Evropën Juglindore. Duke pasur parasysh ekstremizmin partiak në politikën e brendshme, angazhimet ndërkombëtare lehtësojnë miratimin e reformave që ndryshe, mund të ishin shmangur nga politikanët kombëtarë. Progres Raportet e Komisionit Evropian, financimi i reformave dhe marrëveshjeve të binjakëzimit nga BE, janë ndikime të rëndësishme ndërkombëtare mbi axhendat kombëtare të antikorrupsionit në shumicën e vendeve të Evropës Juglindore. Edhe pse antikorrupsioni është një nga elementet kryesore të raporteve të KE, këto raporte priten në mënyra të ndryshme në nivel lokal: vendet me perspektivë të qartë për anëtarësim në BE, i kushtojnë shumë më tepër vëmendje gjetjeve të raporteve, ndërsa në Turqi, për shembull, raportet në përgjithësi marrin më pak vëmendje.

Nga ana tjetër, përfshirja ndërkombëtare, ka sjellë gjithashtu me vete rrezikun e pritjeve jo-realiste për t'i rregulluar gjërat shpejt, gjë e cila mund të çojë në miratimin e masave sipërfaqësore dhe ad-hoc. Vënia e kushteve dhe shumica e stimujve prekin kryesisht organet ekzekutive, ndërsa gjyqësori, parlamentet dhe institucionet të tjera publike dhe private nuk kanë qenë mjaft të përfshirë. Qëndrueshmëria e angazhimit ndërkombëtar, u përforcua me zgjerimin e gamës së aktorëve vendorë të përfshirë siç janë shoqëria civile, mediat, shoqatat profesionale, sindikatat, etj. Ky zgjerim i bashkëbisedimit të brendshëm të partnerëve ndërkombëtarë, ka fuqizuar politikanë reformistë dhe grupe politike të izoluar, si dhe aktorë të ndryshëm jo-qeveritarë, duke inkurajuar kërkesën publike për reforma. Vazhdimi me këtë angazhim do të jetë vendimtar për impaktin që BE-ja do ketë në rajon. Që kjo të ndodhë, një lidhje qeveri-Bruksel nuk është e mjaftueshme. Angazhimi nga partnerët ndërkombëtarë të politikanëve reformiste, duhet mbështetur dhe verifikuar nga shoqëria civile në një lloj bashkëpunimi trepalësh.

## REKOMANDIMET KRYESORE

Përvoja e vendeve të SELDI, në trajtimin e korrupsionit që nga viti 2001 tregon se zgjidhja me sfidën e korrupsionit në rajon, do të kërkojë përpjekje të qëndrueshme në shumë fronte si dhe përfshirjen

e të gjithë aktorëve vendorë dhe ndërkombëtarë për një kohë të gjatë. Ky raport ofron një numër rekomandimesh për të arritur progres të mëtijshëm në kufizimin e dukurisë së korrupsionit. Ndër këto, tre fushat kryesore duhet të jetë prioritet nga vendet në rajon dhe në nivel evropian, në mënyrë që të arrihet përparim në periudhë afatmesme:

**Ndjekja penale efektive e politikanëve të korruptuar të nivelit të lartë dhe nëpunësve të lartë civilë** është e vetmja mënyrë për të dërguar një mesazh të fortë dhe të menjëhershëm se korrupsioni nuk do të tolerohet. Sjellja e politikanëve të inkrimnuar para drejtësisë ka provuar shumë efektive në forcimin e masave antikorrupsion në Kroaci dhe Slloveni, për shembull. Suksesi në këtë drejtim do të kërkojë edhe mbështetje ndërkombëtare, duke përfshirë edhe përfshirjen e shteteve anëtare ligjzbatuese të BE.

Një **mekanizëm i pavarur i monitorimit të korrupsionit dhe antikorrupsionit** duhet të prezantohet në nivel kombëtar dhe rajonal për të siguruar të dhëna dhe analiza të qëndrueshme si dhe të integrojë **diagnostifikimin e korrupsionit dhe vlerësimin e politikave antikorrupsion**. Mekanizmi duhet të zbatohet përmes organizatave kombëtare dhe /ose rajonale të shoqërisë dhe rrjeteve civile dhe nuk duhet të financohet drejtpërdrejtë nga qeveria. Ai duhet të shërbejë si një mjet për hapjen e të dhënave administrative dhe rritjen e aksesit të publikut në informacion. Të dhënat që lejojnë gjurmimin e prokurimit publik, koncesioneve, zbatimin e legjislacionit të konfliktit të interesit, ndihmën shtetërore, transfertat buxhetore, raporteve të performancës vjetore të mbikëqyrjes dhe të agjencive kontrolluese etj, duhet të bëhen publike në një format bazash të dhënash, duke lejuar kështu analizën e të dhënave dhe përdorimin e mjeteve monitoruese.

Sektorët kritike me nivele të larta korrupsioni dhe risku të kapjes së shtetit, si sektori energjetik, duhet të trajtohen me prioritet. Masat e tjera prioritare përfshijnë:

- rritjen e konkurrencës në prokurimin publik;
- përmirësimin e qeverisjes së ndërmarrjeve shtetërore;
- menaxhim transparent i projekteve të investimeve të mëdha;
- rritjen e përgjegjshmërisë dhe pavarësisë së autoriteteve rregullatore të energjisë.

**Partnerët ndërkombëtarë, dhe në radhë të parë Komisioni Evropian, duhet të angazhojnë drejtpërdrejt organizatat e shoqërisë civile në rajon.**

Kjo është esenciale për disa arsye: a) që reformat e mbështetura ndërkombëtarisht të bëhen të qëndrueshme, ato duhet të tërheqin një pranim më të gjerë publik dhe OJQ-të janë të domosdoshme në këtë proces; b) përfshirja e OJQ-ve është një mënyrë për të garantuar që llogaridhënia e qeverive tek donatorët dhe organizatat ndërkombëtare nuk anashkalohej për shkak të llogaridhënies tek zona elektorale vendore; c) efektiviteti i ndihmës ndërkombëtare do të rritet në qoftë se ajo përdor monitorimin, aftësitë analitike dhe aftësitë advokuese të OJQ-ve; d) një angazhim i drejtpërdrejtë do të parandalonte shoqërinë civile të përfshihej në rrjete klienteliste të administratave publike të pa-reformuara dhe shpesh të korruptuara.

## REKOMANDIME SPECIFIKE

### Politikat dhe Legjislacioni

- Të përcaktohen përpjekjet kombëtare kundër korrupsionit në kuadër të politikave që paraqesin qëllime dhe synime të matshme, jo vetëm masa apo legjislacion. Kjo do të kërkojë vendosjen e objektivave specifike që duhen arritur dhe përzgjedhjen e metodave të përshtatshme të ndërhyrjes. Këto objektiva duhet të matshme sa më shumë të jetë e mundur.
- Të bëhet priorizimi i sektorëve të caktuar, llojeve të korrupsionit dhe metodave të ndërhyrjes dhe qasjeve të ndryshme, para se të paraqiten masa të plota dhe të përfunduara. Korrupsioni është një koncept i gjerë, i lidhur dhe me lloje të ndryshme të mashtrimit të cilat nuk mund të trajtohen në të njëjtën kohë në mënyrë efektive.
- Politikat duhet të jenë të informuara. Ndërkohë që disa përpjekje kanë qenë bërë në strategjitë kombëtare kundër korrupsionit për të vlerësuar rezultatet e mëparshme, asnjë nga vendet e SELDI nuk kanë mekanizëm të qëndrueshëm të vlerësimit të politikave antikorrupsion. Minimalisht, kjo kërkon: a) statistika të besueshme dhe të rregullta rreth përpjekjeve kundër korrupsionit (hetimeve, ndjekjeve penale, masat administrative, etj); b) Monitorim dhe analiza të rregullta të përhapjes dhe formave të korrupsionit në sektorë të ndryshëm publikë. Monitorimi duhet të jetë i pavarur dhe/ose nga jashtë vendit, të përfshijë shoqërinë civile dhe komponentët themelore të sistemeve jo-administrative të monitorimit

të korrupsionit, të tilla si *Sistemi i Monitorimit të Korrupsionit* i SELDI.

### Institucionet antikorrupsion dhe zbatimi i ligjit

- Të futet një mekanizëm feedback-u për zbatimin e politikave kundër korrupsion. Mekanizmi mund të bazohet në instrumente të reja të vëna në dispozicion në vitet e fundit, të tilla si *Toolkit i Integruar i Monitorimit të Zbatimit të Antikorrupsionit* i hartuar nga Qendra për Studimin e Demokracisë (CSD) dhe Universiteti i Trentos. Kjo i lejon politikëbërësit të vlerësojnë rreziqet e korrupsionit në një institucion qeveritar, efektin e politikës përkatëse antikorrupsion dhe identifikimin e zgjidhjeve me ndikim më të lartë.
- Të rritet kapaciteti institucional i organeve qeveritare përkatëse, në veçanti i agjencive të specializuara në antikorrupsion dhe agjencive mbikëqyrëse të tilla si institucionet kombëtare të auditimit, duke përfshirë buxhetet e tyre, objektet dhe personeli duhet të jenë në linjë me përgjegjësitë ligjore që iu është dhënë këtyre institucioneve. Përndryshe, ata duhet të hartojnë programe më të shpeshta vjetore apo afatmesme, të cilat vendosin për prioritetin e ndërhyrjeve.
- Tu jepet fuqi më e madhe institucioneve kombëtare të auditimit, duke përfshirë kompetencat për të vendosur sanksione më të ashpra. Të audituarit dhe parlamenti duhet të detyrohen të veprojnë sipas raporteve të këtyre institucioneve. Institucionet kombëtare të auditimit duhet të mandatohen për auditimin e menaxhimit të fondeve të BE-së kur këto të fundit janë të administruara nga autoritetet kombëtare. Meqenëse puna për auditimin e performancës është në një fazë shumë të hershme, ata duhet të zhvillojnë kapacitetin e tyre për të kryer më shumë auditime të tilla.
- Të paraqiten masa të mëtejshme që rekrutimi në shërbimin civil të bazohet në meritë dhe jo në përkatësi politike.
- Të ndahet puna në luftën kundër korrupsionit në mënyrë të barabartë mes organeve të pushtetit. Zgjerimi i gamës së inkriminimit ligjor të korrupsionit duhet të ndiqet nga përmirësimi i kapaciteteve në të gjitha organet publike, në mënyrë që korrupsioni në rradhët e këtyre institucioneve të adresohet nëpërmjet mjeteve administrative dhe kalimit të përgjegjësisë tek policia apo prokuroria. Organet e përgjithshme të administratës publike duhet të veprojnë si rojet e sistemit të drejtësisë penale, duke trajtuar aq raste korrupsioni sa kompetencat e tyre administrative ja lejojnë. Minimalisht, kjo përfshin

krijimin e mekanizmave efektive të menaxhimit të ankesave.

- Konfiskimi i aseteve të fituara në mënyrë të paligjshme nëpërmjet korrupsionit, është një mënyrë për të luftuar korrupsionin dhe zbatimi i saj duhet të zgjerohet. Kujdes të veçantë i duhet kushtuar balancimit të të drejtave të të akuzuarit me të mirën e përgjithshme. Në një mjedis, shpesh të korruptuar të administratës publike, konfiskimi i pasurisë që vjen pas dënimeve penale është një rrugë e rëndësishme parandalimi, akoma e pashfrytëzuar mirë në Evropën Juglindore.

### Gjyqësori

- Të miratohen reforma që rrisin fuqinë e votës të organeve vetëqeverisëse gjyqësore në vendet ku shumica e organeve vetëqeverisëse gjyqësore nuk zgjidhen nga magjistratët. Vendet që nuk e kanë bërë një gjë të tillë, duhet të miratojnë parimin “një gjyqtar- një votë”.
- Të sigurohet që kuota gjyqësore të jetë sa më përfaqësuese duke përfshirë edhe gjyqtarët nga gjykatat e shkallës së parë. Të shqyrtohet me kujdes, dhe nëse është e nevojshme të rishqyrtohet pajtueshmëria e pozitës së kryetarit të gjykatës me anëtarësimin e tij në organet vetëqeverisëse gjyqësore.
- Të krijohen dy kolegje, një për prokurorët dhe një për gjyqtarët në vendet ku prokuroria dhe gjykatat janë të qeverisura nga i njëjti trup. Prokurorët dhe gjyqtarët respektivisht, do të zgjidhen vetëm nga këto kolegje.
- Të hidhen poshtë ose të reduktohet në minimum roli i ministrave të qeverisë (zakonisht të drejtësisë) në organet vetëqeverisëse gjyqësore, veçanërisht për sa i përket vendimeve për procedurat disiplinore.
- Magjistrata të ketë prioritet në mekanizmin për verifikimin e deklaratave të pasurisë.
- Të forcohet pavarësia dhe kapaciteti i inspektorateve gjyqësore në mënyrë që ti lejojë këta të fundit të rrisin numrin e inspektimeve.
- Të futen mekanizma të feedback-ut për zbatimin e politikave kundër korrupsion në lidhje me magjistratën. Këto mekanizma janë të mangët ose praktikisht mungojnë në të gjitha vendet e SELDI. Mungesa e tyre dëmton aspektin represiv të politikave antikorrupsion dhe i bën të padobishëm inkriminimin e mëtejshëm të korrupsionit. Një praktikë e mire që mund të replikohej, edhe pse është ende e pazhvilluar, është Platforma e Statistikave të Antikorrupsionit në Kosovë, projektuar nga një OJQ. Një mekanizëm i tillë duhet të përfshijë informacion të rregullt për: masat disiplinore, administrative dhe penale në shërbimin

publik dhe në atë gjyqësor; aspektet e ndryshme të ndjekjes penale duke përfshirë paditë dhe dënimet/lirimet nga akuzat, dënimet sipas llojeve të ndryshme të krimeve të korrupsionit.

### Korrupsioni dhe ekonomia

- Të ulet në minimum si dhe të rishikohet çdo vit politikat e ndihmës së shtetit për shkak se kjo krijon rreziqe të konsiderueshme për korrupsion. Duhet paraqitur paraprakisht rregullat e forta të zbatimit të ndihmës shtetërore në BE dhe të zhvillohen kapacitetet rregullatore kombëtarë të pavarur ndihmëse shtetërore për të zbatuar këto rregulla.
- Të përmirësohet zbatimi i legjislacionit anti-monopol në mënyrë që të promovohet ndërmarrja e lirë dhe konkurrenca. Duhet patur kujdes i veçantë që të shqyrtohet rregullisht përqendrimi i bizneseve në sektorë të rregulluar së tepërmi që hasin kufizime licencash dhe kufizime të tjera, duke bërë të mundur riskun e marrëveshjeve të fshehta midis rivalëve të mëdhenj dhe politikanëve.
- Të krijohen lidhje institucionale ndërmjet menaxhimit të aseteve dhe detyrimeve të të gjitha financave publike, duke përfshirë edhe kompanitë shtetërore, në mënyrë që të ulen rreziqet financiare dhe të rritet besueshmëria e qeverisë në menaxhimin e financave publike, në vendet që nuk e kanë ende një sistem të tillë. Ndërmarrjet shtetërore duhet të plotësojnë kushtet e rrepta të qeverisjes së korporatave dhe kërkesave të raportimit (p.sh. rregullat e OECD-së), në të njëjtin nivel si kompanitë publike tregtare. Këto ndërmarrje duhet të publikojë raporte tremujore në internet.
- Të përhapet koncepti i detyrimeve dhe sanksioneve për autoritetet kontraktuese të cilët nuk arrijnë të dorëzojnë raportet mbi prokurimin publik në mënyrë të vazhdueshme, raportet për shkelje të rregullave antikorrupsion, ose paraqesin të dhëna të pasakta ose jo të plota.
- Të përcaktohet një kuadër ligjor dhe institucional për menaxhimin dhe kontrollin e kontratave të lidhura nga partneritetet publikë-privatë.
- Të përmirësohet mbikëqyrja e prokurimit nga prokuroja të mëdha publike (ndërmarrje shtetërore dhe kompani shërbimesh) për të maksimizuar efikasitetin dhe për të ulur parregullsitë.
- Të miratohen politika për reduktimin e tenderave të prokurimit publik me vetëm një ofrues dhe për rritjen e konkurrencës. Duhet publikuar në internet në formatin e bazës së të dhënave, ku përdoruesi mund të kërkojë, dokumentacionin e plotë mbi

prokurimin publik, para-njoftimet, njoftimet, ofertat, kontratat, dhe çdo shtojcë tjetër të tij.

- Vendet kandidatë të BE duhet të krijojnë sisteme të decentralizuara zbatimi për fondet e BE, në mënyrë që të paraqesin kornizën e duhur ligjore dhe administrative për transferimin e përgjegjësive për zbatimin e programeve të financuara nga BE. Mbikëqyrja duhet të mbetet e centralizuar dhe e pavarur nga organet zbatuese.
- Duhet futur koncepti i vlerës-për-para në vlerësimin e kontratave të prokurimit publik.

### Shoqëria civile

- Të rriten kapacitetet e organizatave të shoqërisë civile për të monitoruar dhe raportuar mbi korrupsionin dhe antikorrupsionin, duke përfshirë aftësinë për të mbledhur informacion primar për funksionimin e institucioneve qeveritare, aftësitë për matjen e përhapjes së korrupsionit, në analizën e të dhënave, vlerësimet institucionale dhe shkrimet e raporteve.
- Legjislacioni i konfliktit të interesit, të përfshijë institucionet jo-fitimprurëse, sidomos kur ato janë të financuara nëpërmjet programeve të administruara nga qeveria të tilla si buxheti kombëtar, fondet e BE, etj.
- Rregullat dhe rregulloret për fondet publike, të qeverisë qendrore dhe vendore, për organizatat jo-fitimprurëse të jenë të qarta dhe transparente. Vetëm OJQ-të e regjistruara për të mirën publike duhet të lejohen të marrin fonde publike, dhe duhet gjithashtu të kenë kërkesa më të rrepta për raportim dhe transparencë.
- Bashkimi Evropian dhe agjencitë e tjera donatore, duhet t'i kushtojnë një pjesë më të madhe të fondeve të tyre, financimit të programeve të mirë-qeverisjes, të vëna në zbatim midis organizatave të shoqërisë civile dhe institucioneve publike. Këto programe duhet të kenë kërkesa të qarta kundër kapjes së OJQ-ve nga ana e interesave të veçanta. Duhet të theksohet se arritja e një impakti kërkon një angazhim të qëndrueshëm më afatgjatë (10 vjet e lart).
- Sektori i shoqërisë civile ka nevojë të sigurojë vetë-rregullimin e tij. Minimalisht kjo përfshin miratimin e kodeve të sjelljes me standardet që aspirohen. Gjithashtu shoqëria civile duhet të gjejë më shumë mënyra dhe mënyra më të mira të organizimit të koalicioneve të interesit.
- OJQ-të kanë nevojë për kuptim më të mirë të nevojës për të qenë transparentë dhe të përgjegjshëm. Kjo përfshin nënshkrimin ndaj auditimit të rregullt,

shpalosjen e pasqyrave financiare dhe procedurave të qarta dhe transparente të qeverisjes dhe masat kundër kapjes nga interesa të veçanta.

- Vendet e Evropës Juglindore që nuk janë anëtare të BE janë të këshilluar të mësojnë nga njohuritë dhe ekspertiza në Raportin e Antikorrupsionit të BE. Kjo do t'u sigurojë atyre njohuri të vlefshme në lidhje me vlerësimin e përhapjes së korrupsionit dhe hartimin e politikave antikorrupsion.

### **Bashkëpunimi ndërkombëtar**

- Programet e asistencës të jashtme të reflektojnë më mirë rezultatet e vlerësimeve të brendshme dhe ndërkombëtare të pavarura. Që kjo të arrihet, programet e ndihmës duhet të reagojnë më shpejt dhe të jenë më fleksibël dhe të kenë një vonesë më të shkurtër midis hartimit dhe ofrimit.
- Të parashikohet një rol më i fuqishëm për shoqërinë civile nga asistencat ndërkombëtare në antikorrupsion për qeveritë kombëtare. Kjo përfshin përfshirjen e OJQ-ve si partnerë të implementimit, monitorues dhe organizata burimore, sidomos në vlerësimin e ndikimit të projekteve të asistencës.
- Të vlerësohet efektiviteti i asistencës së dhënë në mënyrë periodike nëpërmjet metodave të vlerësimit të impaktit. Kjo do të ishte një matës për vlerën-për-paratë, sidomos në rastet kur kanë qenë të përfshira fonde publike, dhe do të lejonte që programet e suksesshme të vazhdoreshin ndërkohë që të pasuksesshmet të ndërpriteshin. Është e domosdoshme që ky vlerësim të jetë i pavarur dhe të shfrytëzohet ekspertizën e organizatave të shoqërisë civile.
- Të inkurajohen programet midis vendeve për çështje të përbashkëta si p.sh krimi ndërkufitar nga asistencat ndërkombëtare. Përvoja bullgare në bashkëpunimin publik-privat për analizën e lidhjeve të krimit të organizuar dhe korrupsionit, duhet të shfrytëzohet në të gjithë rajonin.
- Gjetjet e raporteve të Komisionit Evropian duhet të përfshihen më mirë në hartimin e politikave vendore duke përfshirë më shumë shoqërinë civile dhe komunitetin e biznesit.

## BOSNIA AND HERZEGOVINA

### IZVRŠNI SAŽETAK

Korupcija u Jugoistočnoj Evropi je toliko često i toliko dugo u vijestima, fokusu političkih debata, na dnevnom redu politika državnih i međunarodnih institucija da teško da je potrebno tražiti opravdanje za njeno pomno ispitivanje. Upravo zato što je dokazano da je to toliko nerješivo pitanje potrebni su inovativni pristupi njenom razumijevanju, a stoga i njenom smanjenju. Izgledi zemalja u regiji za pridruživanje EU – iako se čini daleko – daju osnažujući okvir za djelovanje, ali lokalni sudionici, posebno civilno društvo, su ti koji mogu dovesti do održivog napretka u borbi protiv korupcije. Jedan od glavnih prioriteta Vodstva za razvoj i integritet Jugoistočne Evrope (SELDI) je dubinsko dijagnosticiranje i razumijevanje korupcije i propusta u upravljanju u regiji, kao potrebnog uslova za zagovaranje **antikorupcionih politika potaknutih znanjem**. Ovaj izvještaj SELDI-a uklapa se u okvir razvoja i provođenja novonastajućih regionalnih antikoruptionih politika i infrastrukture kao što je primjer stupa upravljanja u Strategiji Jugoistočne Evrope do 2020. godine koju vodi Regionalna antikoruptiona inicijativa.

Ovaj izvještaj, kao rezultat saradnje unutar SELDI-a, je po svojoj metodi i svom procesu inovativan. Rezultat je primjene sistema koji je početkom 2000-ih SELDI izradio za procjenu **korupcije i borbe protiv korupcije**, a koji je prilagođen društvenom i institucionalnom okruženju Jugoistočne Evrope.<sup>1</sup> Pristup viktimizaciji koji se zasniva na istraživanju koje primjenjuje *Sistem praćenja korupcije* i koji je korišten u izvještaju nudi jedinstvenu procjenu napretka u borbi protiv korupcije na osnovu podataka u regiji od 2001. godine. Ciklus procjene u periodu 2013 – 2014, čiji su zaključci sažeti u ovom izvještaju, rijedak je primjer praćenja u međunarodnoj praksi kojim se **ponovo vraća na ista pitanja i istu regiju nakon nešto više od decenije**. Tokom procjene vršeno je poređenje državnog zakonodavstva i prakse institucija u određenom broju oblasti koje su od kritičnog značaja za napore u borbi protiv korupcije: regulatornom i pravnom okviru, institucionalnim preduslovima, korupciji u

ekonomiji, ulozi civilnog društva i međunarodnoj korupciji. Ovaj izvještaj daje **viđenje civilnog društva i procjenu politika** dok se sa državnim i regionalnim javnim institucijama savjetovalo o zaključcima i preporukama.

Svrha procjene državnih institucionalnih i pravnih aspekata koji omogućavaju korupciju u regiji nije da bude sveobuhvatni popis propisa i praksi u svim zemljama nego da naglasi neka prioritetna pitanja koja su značajna za potencijalne napore u spriječavanju zajedničkih izvora korupcije u Jugoistočnoj Evropi (SEE). Ovaj izvještaj nudi **model za izvještavanje o napretku u borbi protiv korupcije** za civilno društvo u Jugoistočnoj Evropi.

### GLAVNI ZAKLJUČCI

#### Opšta procjena

I pored nekih važnih postignuća – koja se uglavnom odnose na stabilizaciju demokratskih institucija, usvajanje zakona u ključnim oblastima borbe protiv korupcije, smanjenju sitnog podmičivanja i sve veće netolerancije javnosti prema korupciji – reforme u borbi protiv korupcije i dobro upravljanje nisu objedinjeni, čini se da korupcija među izabranim političarima i sudijama raste, a provođenje antikoruptionog zakonodavstva je prepušteno slučaju. Politike za borbu protiv korupcije i institucije u regiji će imati ogromnu korist od usvajanja redovnog i tačnog alata zasnovanog na istraživanju viktimizacije za mjerenje korupcije i stope napretka u dobrom upravljanju, koji liči na poseban Eurobarometar za borbu protiv korupcije, UNODC-ovog praćenja korupcije i organizovanog kriminala u Jugoistočnoj Evropi i *Sistema praćenja korupcije* koji je korišten u ovom izvještaju.

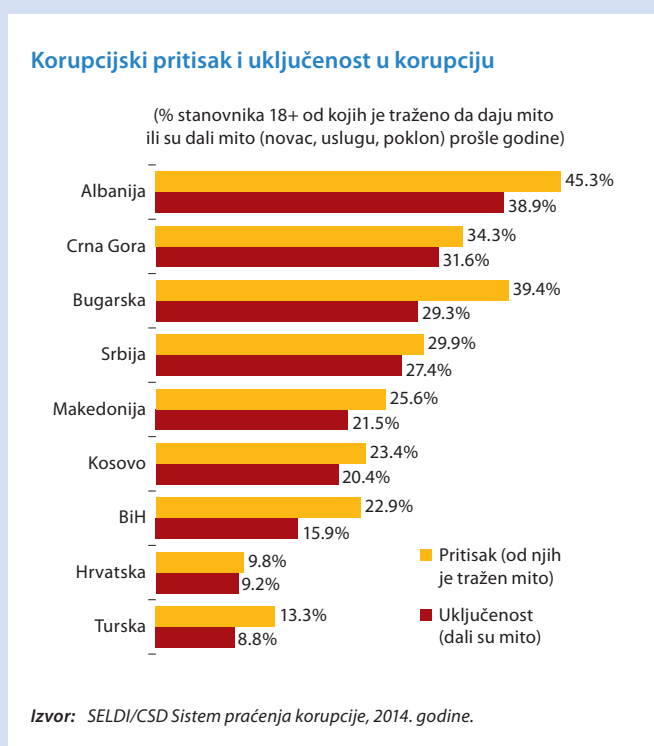
#### Raširenost korupcije u Jugoistočnoj Evropi

Iskustvo sa korupcijom – drugim riječima, uključenost članova javnosti u korupcijske transakcije – u Jugoistočnoj Evropi je na visokom nivou. Čak i u Turskoj i Hrvatskoj, gdje je nivo administrativne korupcije najniži u regionu, oko 8-9% stanovnika je reklo da su dali mito prošle godine. Ovako visok nivo iskustva sa korupcijom je daleko iznad prosječnih nivoa registrovanih tokom istraživanja Eurobarometar

<sup>1</sup> (SELDI, 2002).

u EU.<sup>2</sup> Ovo pokazuje da je administrativna korupcija **masovna pojava** i da se ne može ograničiti na pojedinačne slučajeve korumpiranih zvaničnika.

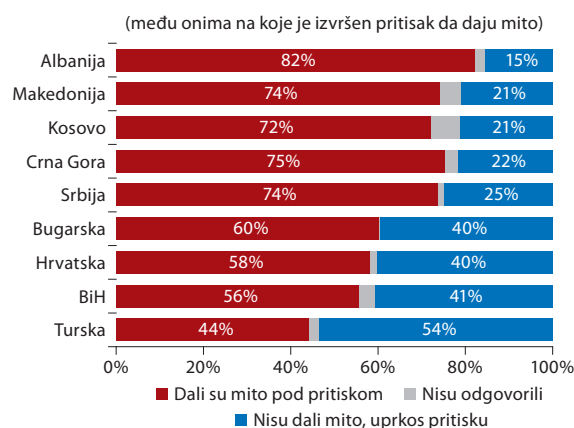
Značajne razlike između zemalja sa zajedničkom historijom pokazuju da različiti putevi društvenog, ekonomskog i institucionalnog razvoja daju različite rezultate. Uglavnom, osim Bugarske, promjene u odnosu na prethodne cikluse SELDI-jevog dijagnosticiranja Sistemom praćenja korupcije (2001. i 2002. godine) za sve zemlje su pozitivne; međutim, napredak je spor i nejednak.



Korupcijski pritisak zvaničnika je glavni faktor koji statistički utiče na nivo uključenosti. Većinu zemalja u kojima su uključenost i pritisak veliki karakteriše niska **otpornost** na korupcijski pritisak (većina ispitanika od kojih je tražen mito su ga i dali). Iako se otpornost ne može smatrati glavnim faktorom za smanjenje korupcije ona odražava prevladavajuće društvene stavove o integritetu i uglavnom je posljedica napora civilnog društva i organa vlasti na povećanju svijesti o borbi protiv korupcije. U tom pogledu, uloga civilnog društva je od ključne važnosti jer je civilno društvo u poziciji da ocjenjuje rezultate i stvara javni pritisak za promjene.

<sup>2</sup> Pokazatelji iskustva sa korupcijom koji su korišteni u istraživanjima Eurobarometar su nešto drugačijeg sadržaja jer se odnose na direktno iskustvo i slučajeve kada su ispitanici bili svjedoci slučajeva podmićivanja. Za više pojedinosti molimo da pogledate (TNS Opinion & Social, February 2014).

### Otpornost na korupcijski pritisak



### Antikorupcione politike i zakonodavstvo

Uglavnom, SELDI zemlje su usvojile bolji dio međunarodnih standarda za borbu protiv korupcije – a što je još važnije i logiku i pristup – u svom državnom zakonodavstvu. Međutim, kvalitet zakona i dalje ostaje problem. Česte i nedosljedne izmjene zakona su dovele do proceduralne i zakonske kompleksnosti i kontradiktornog tumačenja od strane sudova.

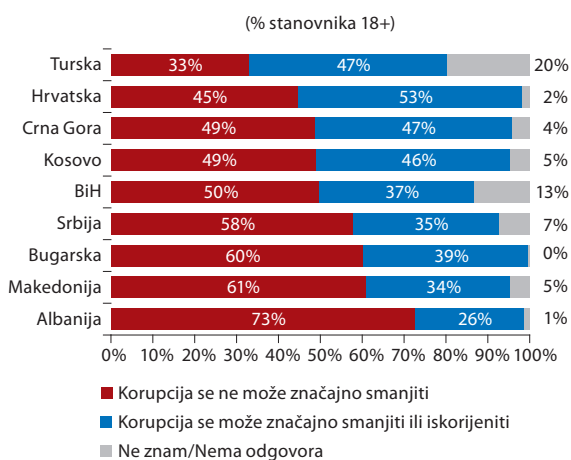
Sve zemlje su usvojile neku vrstu strateškog dokumenta koji sadrži njihov opšti pristup za hvatanje u koštac sa korupcijom. Iako postoje neke razlike između zemalja, provođenje ovih dokumenata je uglavnom onemogućeno zbog nedovoljnih resursa i riješenosti viših nivoa vlasti. Dalji problem u cijeloj regiji je izrada strategija na takav način da se obuhvataju svi mogući aspekti korupcije. Umjesto određivanja prioriteta, ovi dokumenti postali su sveobuhvatajući; kad je u pitanju borba protiv korupcije, strateški je počelo jednostavno da znači iscrpno.

Što se tiče prioriteta politika, došlo je do dvije glavne promjene u pristupu prema borbi protiv korupcije – promjene u skretanju pažnje sa sitne korupcije (saobraćajne policije i ljekara u javnom sektoru) na veliku (članove parlamenta ili ministre) i inkriminacije šireg niza zloupotreba javnog položaja. Ostvarivanje učinka u kažnjavanju velike korupcije ipak i dalje ostaje ograničeno, u najboljem slučaju. Ključni izazov za politike za borbu protiv korupcije u regiji je da se popuni rupa u provođenju i da se nastavi sa mijenjanjem manifestacija i oblika korupcije, a da se pri tome održava regulatorna stabilnost i izbjegava opterećivanje pravosuđa sa čestim izmjenama.



Zaključci SELDI-jevog praćenja naglašavaju **značaj javne podrške za uspjeh antikorupcionih politika**. Povjerenje javnosti u vlast i djelotvornost politika udruženi su u nekoj vrsti bespriječnog ciklusa: veći broj optimista po pitanju ostvarivosti uspjeha u borbi protiv korupcije je u korelaciji sa nižim nivoima korupcije. I obratno, raširenija korupcija ide ruku pod ruku sa većim pesimizmom po pitanju perspektive u borbi protiv korupcije.

### Izvedivost odgovora politika na korupciju: prema procjeni javnosti



Izvor: SELDI/CSD Sistem praćenja korupcije, 2014. godine.

## Institucionalna praksa i provođenje zakona

U Jugoistočnoj Evropi, raniji naglasak na usklađivanju državnog zakonodavstva sa međunarodnim standardima u borbi protiv korupcije postepeno ustupa mjesto fokusiranju na provođenje, pod sve većim pritiskom EU i lokalnog civilnog društva.

Nedostatak koji je zajednički za sve zemlje SELDI-a je ugrožena autonomija različitih nadzornih organa i organa za provođenje zakona. Tipično je da postoji određen stepen miješanja izabranih političara – članova parlamenta ili ministara u vladi – u rad državne službe. Nadalje, nijedna SELDI zemlja nema odgovarajuće funkcionisanje mehanizma za upravljanje pritužbama u javnoj upravi. Većina ih je uspostavila organ za borbu protiv korupcije za koji se očekuje da će primati pritužbe javnosti. Još jedan nedostatak koji je zajednički za sve zemlje je nedostatak pouzdanih i javnosti dostupnih podataka o radu institucija vlasti, posebno po pitanju borbe protiv korupcije. Informacije i statistika ili se ne prikupljaju, ili nisu

dostupni javnosti, ili se prikupljaju tako nasumično da ne omogućavaju praćenje i analizu.

Jedno od ključnih pitanja vezanih za stvaranje posebnih državnih institucija za borbu protiv korupcije u regiji je **kako kombinovati preventivne i represivne funkcije**. Karakteristično, u SELDI zemljama se pokušalo da **antikorupcione institucije** vrše obje funkcije, iako je represija daleko manji aspekt njihovog posla. Većina zadataka ovih organa odnosi se na neki oblik nadzora i kontrole, obično državnih strategija za borbu protiv korupcije, i postoji malo dokaza da su ostvarile bilo kakav značajan uticaj na zakonodavni program rada vlasti. Brojne teškoće ometaju osnivanje i rad ovih institucija:

- Koliko god da je korupcija visoko na dnevnom redu vlasti, nije bilo izvedivo stvoriti institucije sa vanrednim nadležnostima koje bi na neki način uticale na uspostavljeni odnos ovlaštenja. Tipičan kompromis za ove agencije je da se pripoje izvršnoj vlasti i da im se daju nadzorna ovlaštenja koja su, međutim, obično ograničena tako što se od drugih vladinih agencija traži da izvještavaju o provođenju zadataka u borbi protiv korupcije koji su im dodijeljeni.
- Takve agencije morale su biti oprezne da ne udvostručavaju ovlaštenja koja su već prenesena na druga nadzorna tijela (na primjer, državne revizorske institucije ili agencije za provođenje zakona).
- Većina ih je dobila ograničene institucionalne kapacitete – budžet, osoblje – bez obzira na uvjeravanja u suprotno.

Što se tiče **zakonodavstva**, parlamenti u regiji ne kotiraju visoko kad je u pitanju povjerenje javnosti i ovaj nezavidni položaj nije bez razloga. Kodeksi etičkog ponašanja su rijetki i ne provode se; regulacija lobiranja je još rjeđa; tek nedavno su se počele uvoditi procedure za ukidanje imuniteta od krivičnog gonjenja, premda bojažljivo; gdje god postoji neko tijelo u parlamentu za borbu protiv korupcije uglavnom postoji da bi nadgledalo neku izvršnu agenciju, a ne da bi se bavilo korupcijom među članovima. Pitanje koje je značajno u SELDI zemljama je pitanje finansiranja političkih stranaka i izbornih kampanja. Većina zemalja je provela GRECO-ove preporuke o finansiranju stranaka, ali određeni broj problema i dalje ostaje – poput anonimnih donacija, kupovanja glasova birača (ili podmićivanja birača), nedovoljnih kapaciteta za reviziju finansija stranaka i ograničena ovlaštenja za provođenje sankcija, itd.

Sadašnje stanje u **državnoj službi** odgovara prirodni zemalja Jugoistočne Evrope koje su u tranziciji i nedostatku odgovarajuće zakonske i institucionalne tradicije kao i hroničnom nedostatku sredstava. I pored izvjesnih razlika među zemaljama, potreba da se olakša upravljački i organizacioni razvoj državne službe je zajednički za većinu. Kultura „kontrola“ uprave umjesto upravljanje radom uprave putem motivacije je ono što spriječava poboljšanje profesionalnosti i smanjenje korupcije. Jedan od glavnih zaključaka u ovom izvještaju je **uzajamno jačanje kompetentnosti i integriteta**. Obično kada se dovodi u pitanje osposobljenost određene državne službe za borbu protiv korupcije, uvijek se utvrdi da je bez institucionalnih kapaciteta. I obratno, svako jačanje profesionalnosti dovodi i do poboljšanja integriteta. Stoga, izazov u regiji je učiniti transparentnost i odgovornost osnovnim obilježjima državne službe, a istovremeno ojačati i njenu profesionalnost. Vrlo često, loše upravljanje, nejasni kriteriji i neodgovarajuća podjela ovlaštenja i odgovornosti spriječavaju reforme i potkopavaju autoritet vlasti.

Uloga **agencija za provođenje zakona** u borbi protiv korupcije u regiji treba razumjeti u kontekstu raspona inkriminiranih praksi koje su vezane za korupciju, a koji se neprestano širi, što dovodi do rizika upućivanja nesrazmjernog broja slučajeva policiji i tužilaštvu. Uloga agencija za provođenje zakona u Jugoistočnoj Evropi u borbi protiv korupcije dodatno je ugrožena njihovom visokom izloženosti korupciji pogotovo od strane organizovanog kriminala. Policijske snage u većini SELDI zemalja imaju specijalne jedinice za borbu protiv organizovanog kriminala; od ovih jedinica se očekuje da rade i na suzbijanju korupcije. Smještanje ove dvije funkcije u jedan organ se uglavnom opravdava time da se organizovani kriminal koristi i korupcijom, ali i zbog potrebe za posebnim istražnim metodama u razotkrivanju sofisticiranih obrazaca korupcije – stručnost koja je obično u nadležnosti službi za borbu protiv organizovanog kriminala. Međutim, ove jedinice su uglavnom dio većih policijskih snaga ili ministarstva unutrašnjih poslova koje im oduzimaju institucionalnu autonomiju koja je potrebna jednoj instituciji specijalizovanoj za borbu protiv korupcije.

## Pravosuđe u borbi protiv korupcije

U Jugoistočnoj Evropi, snažan fokus na osiguranju nezavisnosti pravosuđa nije bio u ravnoteži sa jednako jakim uslovima za odgovornost pravosuđa.

Bez odgovarajućih provjera i ravnoteže sudsko samoupravljanje je izmaklo kontroli, te se pretvorilo u korporativizam sa svim pripadajućim rizicima korupcije. Pretjerani naglasak na formalnoj izbornoj nezavisnosti postala je tipičan primjer lijeka koji se pretvara u bolest – umjesto da osigura ravnotežu prema izvršnoj vlasti, samoupravljanje je produžilo odnos poput klijentela između sudaca i posebnih interesa. Danas, pravosuđe u Jugoistočnoj Evropi je onoliko uspješno zahvaćeno koliko i ostale grane vlasti. Nakon što su oslobođeni pomnog ispitivanja od javnosti i političkih faktora koji su napravili ovakav aranžman, danas postoji nekoliko provjera rentijerstva od strane sudaca.

Otuda ne iznenađuje to što javnost nema posebno visoko mišljenje o pravosuđu. SELDI-jev sistem praćenja korupcije pokazuje da se sudije smatraju jednim od najkorumpiranijih javnih službenika u regiji; izostanak transparentnosti i odgovornosti je nesumnjivo značajan faktor u takvim procjenama. U svim zemljama SELDI-a, došlo je do stvarnog **pogoršanja procjene širenja korupcije među sudijama** od 2001.godine.

Kapaciteti pravosuđa u regiji da provedu antikorupciono zakonodavstvo, pogotovo kad je u pitanju politička korupcija, su dovedeni u pitanje usljed brojnih problema koji su kumulativno vršili svoj uticaj:

- Ustavna pitanja, koja se prvenstveno odnose na ponovno uspostavljanje ravnoteže između nezavisnosti i odgovornosti pravosuđa;
- Složenost krivičnog gonjenja počilaca krivičnih djela korupcije, posebno na političkom nivou;
- Opšti nedovoljni kapacitet i pitanja vezana za nisku profesionalnost, pretjeranu količinu posla koja ima za posledicu zaostale predmete, vođenje predmeta, objekti, itd.

Važan zaključak ovog SELDI-jevog ciklusa praćenja korupcije koji je relevantan za ulogu pravosuđa u borbi protiv korupcije je **nedostatak mehanizama povratnih informacija** koji omogućavaju javnosti i kreatorima politika da ocjenjuju integritet pravosuđa i njegovu djelotvornost u provođenju antikorupcionih krivičnih zakona. Nijedna zemlja u Jugoistočnoj Evropi nema pouzdan, sistemski i sveobuhvatan mehanizam za prikupljanje, obradu i stvaranje javno dostupnih statističkih podataka o radu sudova i tužilaštava, posebno o slučajevima korupcije.

## Korupcija i ekonomija

U Jugoistočnoj Evropi, značajna uključenost vlasti u ekonomiju stvara određeni broj mjesta za potencijalne sukobe između javnih ustanova i preduzeća; s druge strane, to stvara rizik od korupcije. Rizik je posebno veliki u oblasti privatizacije i javnih nabavki i koncesija teške industrije poput energetike i zdravstvene zaštite. Nadalje, pretjerani propisi u poslovanju – koji se uglavnom odnose na registraciju, licenciranje i izdavanja dozvola – i dalje stvaraju različite prepreke za nove učesnike na tržištu i veće troškove poslovanja, iako su neke zemlje u regiji ostvarile značajan napredak u rješavanju poslovnih prepreka. Ipak, uprave za nadzor i usklađenost i dalje narušavaju tržišta stavljajući pretjerani fokus na kontrolu i kazne, bez odgovarajuće procjene rizika i troškova i koristi. To se posebno odnosi na carinske uprave u cijeloj regiji, na koje se još uvijek gleda kao na djelotvorno sredstvo za stavljanje pritiska na poduzetnike. Ovo tjera poduzetnike u neslužbeni sektor ili ih prisiljava da pribjegavaju podmićivanju. U opadajućoj spirali ovo onda opravdava dodatno regulisanje i administrativne barijere.

Razne okolnosti koje uzrokuju korupciju u interakciji poslovnih i javnih službenika ilustruju sa kojim se poteškoćama suočavaju antikorpucione politike s obzirom da je potrebno uzeti mnoštvo faktora u obzir. Kada ih pokreće poslovanje, prakse korupcije se mogu podijeliti u dvije glavne kategorije – izbjegavanje dodatnih troškova i sticanje nepoštene prednosti. U prvoj skupini je mito koji uzrokuje slaba ili prekomjerna regulativa, individualna ili institucionalna nekompetentnost, itd.; u drugoj kategoriji su razne vrste prevara – utaja poreza, utaja PDV-a, krijumčarenje, nepoštivanje zdravstvenih i sigurnosnih standarda, itd.

Javne nabavke su jedan od glavnih kanala putem kojih korupcija utiče na ekonomiju. Rizik od korupcije u ovoj oblasti je povezan sa nizom nedostataka: nedovoljno transparentne procedure, veliki udio nekonkurentnih procedura, slab nadzor i nedjelotvorna sudska revizija (s obzirom na korupciju pravosuđa), itd. Iako je prije više od deset godina SELDI istraživanje pokazalo da su zemlje u ovom području napravile u skorije vrijeme napredak u jačanju pravnog okvira procesa i njegovog usklađivanja sa pravnom stečevinom EU, javne nabavke su i dalje među najslabijim aspektima javnog upravljanja. Stvarno stanje se nije puno promijenilo s obzirom da korumpirani političari i dobro povezani poslovi zaobilaze dobro zamišljene propise. Institucionalna iscjepkanost ne omogućava djelotvorno provođenje propisa o javnim nabavkama.

## Civilno društvo u borbi protiv korupcije

Nevladine organizacije u Jugoistočnoj Evropi su među najvažnijim pokretačima u borbi protiv korupcije. Međutim, one su još uvijek daleko od prevođenja javnih potreba u djelotvorno zagovaranje politika, i od suprostavljanja korupciji, zbog niza nedostataka. Njihov doprinos zavisi u velikoj mjeri od sposobnosti da **služe i kao nadzorni organi i da uključe vlast** u reforme borbe protiv korupcije. Ipak, u regiji postoji nedostatak službenih mehanizama za državne vlasti za uključivanje civilnog društva, kao i nedostatak administrativne sposobnosti i jasne vizije i razumijevanja potencijala organizacija civilnog društva u oblasti borbe protiv korupcije. Pretjerano oslanjanje na međunarodno, uključujući i evropsko finansiranje, i nedostatak državnih politika za poticanje energičnog civilnog sektora u Jugoistočnoj Evropi ugrožava održiv uticaj lokalnih pobornika u borbi protiv korupcije.

Iako su nevladine organizacije u području SELDI-a uspjele uspostaviti neka međunarodna javno-privatna partnerstva ona se nisu pretvorila u djelotvorna partnerstva sa državnim institucijama. Ključ za stvaranje uspješnih partnerstava je sposobnost da se uđe u razne odnose, i komplementarne i suprotstavljene, sa državnim institucijama. Na primjer, jedan od načina da se uskladi saradnja sa obavljanjem funkcije nadzornog organa je poboljšanje profesionalnosti u praćenju korupcije i antikorpucione politika od strane nevladinih organizacija.

Djelotvornost nevladinih organizacija u rješavanju pitanja dobrog javnog upravljanja u SELDI zemljama zavisi u velikoj mjeri od njihove sposobnosti da zadrže svoje vlastito upravljanje sređenim. Rizik od hvatanja nevladinih organizacija posebnim interesima i korumpiranim javnim zvaničnicima ili izabranim političarima proizlazi iz mogućnosti iskorištavanja niza slabosti u neprofitnom sektoru u regiji:

- nepostojanje obaveznih postupaka za transparentnost;
- nedjelotvorna kontrola poštivanja finansijskih propisa;
- nedostatak revizorske kulture;
- nizak nivo samoregulacije i koordinacije u naporima.

Suprostavljanje zahvatanju civilnog društva kao dijela državnih napora u borbi protiv korupcije u Jugoistočnoj Evropi treba biti na vrhu dnevnog reda reforme u regiji.

## Međunarodna saradnja

Međunarodne institucije i strane zemlje partneri su odigrali važnu ulogu u razvoju događaja u borbi protiv korupcije u Jugoistočnoj Europi. S obzirom na krajnju pristrasnost u unutrašnjoj politici, međunarodne preuzete obaveze potpomažu usvajanje donošenje politika reformi koje bi inače bile odbačene od strane domaćih političara. Izvještaji o napretku Evropske komisije, reforme i projekti bratimljenja koje finansira EU predstavljaju ključne međunarodne uticaje na državne planove rada u borbi protiv korupcije u većini zemalja Jugoistočne Evrope. Iako je borba protiv korupcije jedan od glavnih elemenata izvještaja o napretku EK, na njih se reaguje na različite načine na lokalnom nivou – zemlje s jasnijim izgledima za pristup puno više i detaljno obraćaju pažnju na zaključke u izvještajima, dok u Turskoj, na primjer, izvještaji uglavnom dobijaju mnogo manju pažnju.

Međutim, međunarodna uključenost sa sobom nosi rizik od nerealnih očekivanja za brze ispravke što sa druge strane može potaći usvajanje površnih i ad hoc mjera. Uslovljenost i većina poticaja utiču prvenstveno na izvršne agencije, dok pravosuđe, parlamenati i druge zainteresovane javne i privatne institucije nisu bile dovoljno uključene. Održivost međunarodne uključenosti podržana je širenjem opsega uključenih lokalnih učesnika kako bi se uključili civilno društvo, mediji, profesionalna udruženja, sindikati, itd. Širenje opsega domaćih sagovornika sa međunarodnim partnerima utiče na osnaživanje pojedinačnih reformističkih političara ili političkih grupa, ali i raznih nevladinih učesnika i poticanje javnih potreba za reformama. Nastavljanje i nadograđivanje ove uključenosti bilo bi od ključnog značaja za uticaj koji EU ima u regiji. Da bi se to dogodilo, nije dovoljno da postoji veza između vlasti i Brisela. Civilno društvo u svojevrsnoj trostranoj saradnji treba da podrži – i potvrdi – uključenost međunarodnih partnera reformističkih političara i stranaka.

## KLJUČNE PREPORUKE

Iskustvo SELDI zemalja u borbi protiv korupcije od 2001. godine pokazuje da će rješavanje izazova korupcije u regiji zahtijevati stalne napore na mnogim frontovima i uključivanje svih domaćih i međunarodnih učesnika na duži period. Trenutni izvještaj daje niz preporuka za postizanje dodatnog

napretka u ograničavanju korupcije. Među njima su tri ključna područja koja trebaju biti prioritet zemalja u regiji i na evropskom nivou kako bi se postigao srednjoročni napredak:

**Uspješno procesuiranje visoko pozicioniranih korumpiranih političara i viših državnih službenika** je jedini način da se pošalje snažna i neposredna poruka da se korupcija neće tolerisati. Dovođenje korumpiranih političara pred lice pravde je dokazano kao vrlo djelotvorno u jačanju antikorupcionih mjera u Hrvatskoj i Sloveniji, na primjer. Uspjeh u tom pravcu bi zahtijevao i međunarodnu podršku, uključujući i učešće policija država članica EU.

Na državnom i regionalnom nivou treba uvesti **nezavisan mehanizam praćenja korupcije i anti-korupcije** kako bi se obezbijedili čvrsti podaci i analiza i integrisali **dijagnostika korupcije i evaluacija anti-korupcionih politika**. Mehanizam bi trebale provoditi državne, odnosno regionalne organizacije i mreže civilnog društva, te bi trebao biti nezavisan od direktnog finansiranja od strane države. Trebao bi poslužiti kao sredstvo za otvaranje administrativnih podataka i poboljšanje pristupa javnosti informacijama. Podaci koji omogućavaju praćenje javnih nabavki, koncesija, provođenje zakonodavstva o sukobu interesa, državne pomoći, prenosa budžetskih sredstava, godišnjih izvještaja o rezultatima rada agencija za nadzor i usklađenost, itd., trebaju biti dostupni javnosti u vidu baze podataka, omogućujući tako velike analize podataka i korištenje alata za praćenje.

**Kritični sektori sa visokom korupcijom i rizicima od zahvatanja države, kao što su energetska sektor, treba rješavati kao prioritet.** Ostale prioritetne mjere uključuju:

- povećanje konkurentnosti u javnim nabavkama;
- poboljšanje korporativnog upravljanja u preduzećima u državnom vlasništvu;
- transparentno upravljanje velikim investicionim projektima;
- jačanje odgovornosti i nezavisnosti energetske regulatornih nadležnih organa.

**Međunarodni partneri, a prije svega Evropska komisija, trebaju direktno uključiti organizacije civilnog društva u regiji.** To je bitno iz nekoliko razloga: a) da bi reforme koje su međunarodno podržane postale održive, potrebno je da budu prihvaćene od šire javnosti, a organizacije civilnog društva su neophodne da bi se to dogodilo; b) uključivanje organizacija civilnog društva

je način da se garantuje da odgovornost vlasti prema donatorima i međunarodnim organizacijama nema prednost nad odgovornosti prema domaćim biračima; c) djelotvornost međunarodne pomoći bi se povećala ako bi se koristili praćenje i analitičke vještine i sposobnosti zagovaranja organizacija civilnog društva; d) direktna uključenost bi imala dodatnu korist u spriječavanju da građansko društvo zahvate klijentilističke mreže nereformisanih i često korumpiranih javnih uprava.

## KONKRETNE PREPORUKE

### Politike i zakonodavstvo

- Definirati državne napore u borbi protiv korupcije u smislu politike koja se odnosi na mjerljive ciljeve i prekretnice, a ne samo na mjere ili zakonodavstvo. Ovo bi dovelo do postavljanja konkretnih ciljeva koji se žele postići i odabira odgovarajućih interventnih metoda. Ovi ciljevi trebaju biti mjerljivi koliko i izvedivi.
- Dati prednost pojedinim sektorima, vrstama korupcije i interventnim metodama i pokušati sa različitim pristupima prije nego što se počne koristiti u punoj mjeri. Korupcija je širok pojam, povezana sa raznim i različitim vrstama prevara koje se ne mogu rješavati istovremeno na djelotvoran način.
- Politike trebaju biti informisane. Dok su neki naponi učinjeni u državnim strategijama za borbu protiv korupcije za procjenu prethodnih rezultata, nijedna SELDI zemlja nema održivi mehanizam za evaluaciju antikoruptionih politika. U najmanju ruku, to zahtijeva: a) pouzdane i redovne statistike o naporima u borbi protiv korupcije (istrage, krivična gonjenja, administrativne mjere, itd.); b) redovno praćenje i analize raširenosti i oblika korupcije u različitim javnim sektorima. Praćenje bi trebalo biti nezavisno, odnosno izvan zemlje, uključivati civilno društvo i ugraditi osnovne komponente neupravnih sistema praćenja korupcije, kao što je SELDI-jev sistem praćenja korupcije.

### Institucije za borbu protiv korupcije i provođenje zakona

- Uvesti mehanizam povratnih informacija za provođenje antikoruptionih politika. Mehanizam bi se mogao zasnivati na inovativnim novim instrumentima koji su lakše dostupni u posljednjih nekoliko godina, kao što je *Integrirani alati za praćenje*

*provođenja borbe protiv korupcije* razvijeni od strane Centra za demokratske studije (CSD) i Univerziteta u Trentu. Oni omogućuju kreatorima politike da procijene rizike od korupcije u određenoj državnoj instituciji i uspješnost odgovarajuće antikoruptione politike tako što identifikuju rješenja koja imaju najveći učinak.

- Institucionalni kapaciteti nadležnih državnih organa – posebno specijalizovane antikoruptione agencije i nadzorne agencije poput državnih revizorskih institucija, uključujući njihove budžete, objekte i osoblje, moraju biti usklađeni sa širokim nadležnostima koje su date ovim institucijama. Isto tako, one bi trebale osmisliti uže godišnje ili srednjoročne programe, u kojima su određeni prioriteti intervencija.
- Državne revizorske institucije bi takođe trebale ojačati svoju institucionalnu moć, uključujući ovlaštenja da nametnu strožije sankcije. Državni parlamenti i oni koji podliježu reviziji treba da su obavezni da postupaju u skladu sa izvještajima ovih institucija. Državne revizorske institucije takođe treba da imaju mandat da vrše reviziju upravljanja sredstvima EU-a kojima upravljaju državni nadležni organi. S obzirom da je rad na reviziji djelovanja u vrlo ranoj fazi, treba da razvijaju svoje kapacitete za obavljanje više takvih revizija.
- Potrebne su dodatne mjere kako bi se osiguralo da se zapošljavanje u državnu službu zasniva na zaslugama i da ne zavisi od pripadnosti nekoj političkoj stranci.
- Rad na borbi protiv korupcije treba da se raspodijeli ravnomjernije među organima vlasti. Proširenje opsega zakonske inkriminacije trebalo bi biti u ravnoteži sa povećanim kapacitetima u svim javnim organima za rješavanje korupcije u svojim redovima administrativnim instrumentima umjesto prebacivanja vlastitih odgovornosti na policiju i tužilaštvo. Opšti organi uprave treba da djeluju kao čuvari krivičnog pravnog sistema tako što će se baviti sa što više slučajeva korupcije koliko im njihove upravne ovlasti dopuštaju. U najmanju ruku, to podrazumijeva stvaranje djelotvornih mehanizama upravljanja pritužbama.
- Antikoruptioni instrument čija bi se primjena trebala proširiti je oduzimanje nezakonito stečene imovine u slučajevima korupcije. I dok je potrebno primijeniti ga da bi postojala ravnoteža između prava optuženika i interesa javnog dobra – pogotovo u okruženju u kojem je javna uprava često korumpirana – oduzimanje bogatstva provođenjem krivičnih osuda je važno kažnjavanje za primjer koje se još uvijek ne koristi dovoljno u Jugoistočnoj Evropi.

## Pravosuđe

- Zemlje u kojima se većina pravosudnih nezavisnih organa ne bira među sudijama trebaju usvojiti reforme kojima će se povećati njihova glasačka moć. Zemlje koje nemaju princip „jedan sudija – jedan glas“ trebaju ga usvojiti.
- Osigurati da je izbor pravosudne kvote što reprezentativniji, uključujući sudije iz prvostepenih sudova. Pažljivo pregledati, a ako je potrebno i ponovo razmotriti, kompatibilnost pozicije predsjednika suda sa članstvom pravosudnih nezavisnih organa.
- U zemljama u kojima tužilaštvom i sudstvom upravlja isto tijelo, treba odvojiti dva vijeća – za tužioce i za sudije – u tom tijelu. Tužiocima i sudijama treba biti izabrani za ova dva vijeća.
- Ukinuti ili smanjiti na najmanju moguću mjeru ulogu vladinih ministara (obično pravde) u pravosudnim nezavisnim organima, pogotovo što se tiče odluka o disciplinskim postupcima.
- Sudije trebaju biti prioritet u mehanizmu za provjeru izjava o imovinskom stanju.
- Nezavisnost i kapacitet pravosudnih inspekcija inspektorata treba ojačati kako bi im se omogućilo da unaprijede inspekcije.
- Uvesti mehanizme povratnih informacija za provođenje antikorupcionih politika u odnosu na sudije. Ovi mehanizmi su znatno manjkavi ili praktično ne postoje u svim SELDI zemljama; njihovo odsustvo sabotira represivni aspekt antikorupcionih politika i čini dodatnu inkriminaciju korupcije beskorisnom. Najbolja moguća praksa koju treba ponoviti – iako je još uvijek nedovoljno razvijena – je kosovska platforma antikorupcione statistike, koju je izradila nevladina organizacija. Takav mehanizam treba uključivati redovne informacije o: disciplinskim i upravnim i krivičnim mjerama u javnoj službi i pravosuđu; različitim aspektima krivičnog gonjenja, uključujući optužnice i presude/oslobađajuće presude, presude prema raznim vrstama krivičnih djela korupcije.

## Korupcija i ekonomija

- Svesti na minimum i pregledati jednom godišnje politike državne pomoći jer stvaraju značajne rizike od korupcije. Unaprijed uvesti strogo provođenje propisa o državnoj pomoći EU, te razviti kapacitet državnih nezavisnih regulatornih organa za državnu pomoć za provođenje propisa.
- Poboljšati provođenje protivmonopolskog zakonodavstva u cilju promoviranja slobodnog poduzetništva i konkurencije. Biti posebno pažljiv i redovno

pregledati koncentraciju u sektorima koji su strogo regulisani i koji se suočavaju sa licenciranjem i drugim ograničenjima, stvarajući na taj način rizik od tajnih dogovora između većih konkurenata i političara.

- Zemlje koje to nisu učinile trebaju uspostaviti institucionalne veze između upravljanja aktivnom i pasivom svih javnih finansija, uključujući i preduzeća u državnom vlasništvu, kako bi se ublažili finansijski rizici i poboljšala vjerodostojnost vlasti u upravljanju javnim finansijama. Preduzeća u državnom vlasništvu trebaju zadovoljiti strogo korporativno upravljanje i uslove izvještavanja (npr. pravila OECD-a), dorasle javnim dioničkim preduzećima. Ta preduzeća trebaju objavljivati kvartalne izvještaje na internetu.
- Uvesti odgovornost i sankcije za ugovorne strane koje ne dostavljaju redovne izvještaje o javnim nabavkama, izvještaje o kršenjima antikorupcionih propisa ili koje podnose netačne ili nepotpune podatke.
- Poboljšati nadzor nabavke velikih javnih nabavljača (preduzeća u državnom vlasništvu i komunalnih poduzeća) kako bi se povećala djelotvornost i smanjile nepravilnosti.
- Usvojiti politike za smanjenje dijeljenja tendera javnih nabavki sa samo jednim ponuđačem i unaprijediti konkurenciju. Objaviti u vidu baze podataka koju je moguće pretraživati na internetu kompletnu dokumentaciju o javnim nabavkama, najave, obavijesti, ponude, ugovore i bilo koje njihove dodatke. Definirati pravni i institucionalni okvir za upravljanje i kontrolu ugovorima koje su zaključila javno-privatna partnerstva.
- Zemlje kandidati za EU trebaju uspostaviti decentralizovane provedbene sisteme za EU fondove kako bi osigurale odgovarajući pravni i administrativni okvir za prenošenje odgovornosti za provođenje programa koje finansira EU. Nadzor bi trebao biti centralizovan i nezavisan od provedbenih organa.
- Uvesti koncept vrijednost-za-novac u evaluaciji ugovora o javnim nabavkama.

## Civilno društvo

- Jačati kapacitet organizacija civilnog društva za praćenje i izvještavanje o korupciji i borbi protiv korupcije, uključujući sposobnost za prikupljanje i sređivanje osnovnih informacija o radu institucija vlasti, vještine za mjerenje stvarnog širenja korupcije i u analizi podataka, evaluaciju institucija i pisanje izvještaja.

- Zakonodavstvo o sukobu interesa treba uključivati neprofitne institucije, posebno tamo gdje se financiraju putem programa kojima upravlja država, kao što su državni budžet, fondovi EU, itd.
- Pravila i propisi za javno finansiranje – od strane središnje i lokalne vlasti – neprofitnih organizacija trebaju biti jasni i transparentni. Samo nevladinim organizacijama koje su registrovane za dobrobit javnosti treba biti dopušteno da primaju javna sredstva, a svaka sa svoje strane treba ispunjavati strožije uslove za izvještavanjem i iznošenjem podataka.
- Evropska unija i druge donatorske agencije trebaju uzeti u obzir veći udio finansiranja za programe dobrog upravljanja koji se provode u saradnji između organizacija civilnog društva i javnih institucija. Ovi programi trebaju imati jasne uslove protiv zahvatanja nevladinih organizacija posebnim interesima. Treba napomenuti da postizanje učinka zahtijeva dugoročnu održivu posvećenost (10 godina i više).
- Sektor civilnog društva treba da se pobrine za vlastitu samoregulaciju. To u najmanju ruku uključuje donošenje kodeksa ponašanja sa ambicioznim standardima. Treba pronaći više i bolje načine organizovanja interesnih koalicija.
- Nevladine organizacije trebaju imati bolje razumijevanje potrebe za transparentnošću i odgovornošću. To uključuje da podliježu redovnoj reviziji, objavljivanju finansijskih izvještaja, jasne i transparentne procedure korporativnog upravljanja, kao i mjere protiv zahvaćenosti posebnim interesima.
- Za zemlje koje nisu članice EU u Jugoistočnoj Evropi bilo bi dobro da uče iz ukupnog znanja i stručnosti

sadržanih u Izvještaju o borbi protiv korupcije EU. To će im dati vrijedne uvide u pogledu evaluacije širenja korupcije i izrade antikorupcionih politika.

### Međunarodna saradnja

- Programi strane pomoći trebaju bolje odražavati zaključke međunarodnih i nezavisnih domaćih evaluacija. Da bi se to postiglo, programi pomoći trebaju biti prilagodljiviji i fleksibilniji, uključujući kraći vremenski pomak između planiranja i isporuke.
- Međunarodna pomoć u borbi protiv korupcije državnim vlastima treba predvidjeti jaču ulogu civilnog društva. To obuhvata uključenost nevladinih organizacija kao provedbenih partnera, posmatrača i resursnih organizacije, posebno u evaluaciji učinka projekata pomoći.
- Djelotvornost pomoći treba povremeno ocjenjivati putem metoda procjene učinka. Osim što bi ovo obezbijedilo mjeru vrijednost-za-novac – pogotovo kada se radi o javnom finansiranju – to bi omogućilo održavanje uspješnih i obustavu neuspješnih programa. Imperativ je da ta procjena bude nezavisna i da koristi stručnost organizacija civilnog društva.
- Pomoć treba poticati programe između zemalja o zajedničkim pitanjima, kao što su prekogranični kriminal. Bugarsko iskustvo u javno-privatnoj saradnji u analizi povezanosti organizovanog kriminala i korupcije treba iskoristiti u cijeloj regiji.
- Priprema i zaključci redovnih izvještaja Evropske komisije trebaju se bolje ugraditi u domaće kreiranje politika uz više oslanjanja na lokalno civilno društvo i poslovnu zajednicu.

## BULGARIA

### РЕЗЮМЕ

Корупцията в Югоизточна Европа е чест предмет на медийно внимание, обществени дебати и политически инициативи от страна на националните и международните институции. Именно поради факта, че проблемът е така упорит, всеки иновативен подход към неговото осмисляне – и следователно разрешаване – заслужава внимание. Перспективата пред страните от региона за присъединяване към ЕС, макар и далечна, открива нови възможности за протиеодействие на корупцията, но същински напредък в тази насока е единствено възможен чрез усилия на местно ниво и по-конкретно – чрез усилията на местното гражданско общество. Сред основните приоритети на Инициативата за развитие и почтеност в Югоизточна Европа (SELDI) са задълбочената диагностика на корупцията и пропуските в управлението в региона като необходимо условие за формулирането на **антикорупционни политики**. Настоящият доклад на SELDI е част от рамката, в която се разработва и прилага регионалната антикорупционна политика и инфраструктура, пример за която е приоритет „Управление“ в Стратегия 2020 за Югоизточна Европа на Съвета за регионално сътрудничество.

Докладът е резултат от съвместните усилия на членовете на SELDI и използва иновативна методология и процедури. Той е продукт на разработената от SELDI след 2000 г. система за оценка **на корупцията и на антикорупционните реформи** в специфичния контекст на Югоизточна Европа<sup>1</sup>. Използваната в доклада Система за мониторинг на корупцията (СМК) е базирана на виктимизационни изследвания и дава възможност да се извърши уникална, основаваща се на тези данни оценка на напредъка в антикорупционните усилия в региона от 2001 г. насам. Последната такава оценка, чиито резултати са обобщени в настоящия доклад, обхваща периода 2013 – 2014 г. и представлява рядък пример за международен мониторинг, при който **едни и същи проблеми в един и същ регион се изследват повторно след малко повече от едно десетилетие**. В сравнителен план се оценяват националното законодателство и институционалните практики в няколко области, които са

от съществено значение за успеха на антикорупционните реформи: регулаторна и правна рамка, институционални предпоставки, корупция в икономиката, роля на гражданското общество и международно сътрудничество. Докладът представя **гледната точка и оценката на политиките на гражданското общество** в региона, като изводите и препоръките му са плод на консултации с националните и регионални държавни институции.

Оценката на националните институционални и правни фактори, които създават корупционна среда в региона, няма претенции за изчерпателност по отношение на политиките и практиките във всички страни, а по-скоро поставя акцент върху някои от приоритетните проблеми, свързани с потенциалните възможности за противодействие на общите за Югоизточна Европа прояви на корупция. Настоящият доклад представлява **модел за мониторинг и анализ на напредъка на антикорупционните усилия** от страна на гражданското общество в Югоизточна Европа.

### ОСНОВНИ ИЗВОДИ

#### Обща оценка

Въпреки някои важни постижения, свързани най-вече със стабилизирането на демократичните институции, приемането на нормативна уредба в основните направления за противодействие на корупцията, намаляването на т.нар. малка корупция (дребни подкупи) и повишаването на обществената нетърпимост към корупцията, реформите в областта на антикорупцията и доброто управление в Югоизточна Европа не са устойчиви. Налице е тенденция политиките и магистратите да се възприемат като все по-корумпирани, а антикорупционното законодателство не се прилага последователно. Антикорупционните политики и институции в региона имат нужда от въвеждането на периодичен инструмент за измерване на корупцията и напредъка в доброто управление, базиран на виктимизационни изследвания, по подобие на специализираните изследвания на Евробарометър, на мониторинга на Службата на ООН по наркотици и престъпност и на Системата за мониторинг на корупцията, използвана в настоящия доклад.

<sup>1</sup> (SELDI, 2002).



## Разпространение на корупцията в Югоизточна Европа

Корупцията е широко разпространено явление в Югоизточна Европа. Дори в Турция и в Хърватия, където равнището на административната корупция е най-ниското в региона, около 8-9% от населението съобщават, че през последната година са давали подкуп. Подобни равнища на корупция далеч надхвърлят средните, регистрирани в изследванията на Евробарометър в Европейския съюз<sup>2</sup>. Тези данни показват, че административната корупция е **масово явление** и не може да се сведе до разглеждането на единични случаи на корумпирани длъжностни лица и тяхното преследване единствено чрез инструментите на наказателното правосъдие.

Значителните разлики в равнищата на корупция между страните с близко историческо развитие в Югоизточна Европа показват, че различните пътища на социално, икономическо и институционално развитие водят до различни резултати. Като цяло, освен България, всички страни отбелязват положителна промяна от предишните диагностични изследвания

### Корупционен натиск и участие в корупционни сделки



Източник: SELDI/Център за изследване на демокрацията, Система за мониторинг на корупцията, 2014.

<sup>2</sup> Индикаторите за опита, които гражданите имат с корупцията, използвани в изследванията на Евробарометър, са с малко по-различно съдържание, тъй като се отнасят както до прекия опит на респондентите, така и до случаите, в които те са били свидетели на даване на подкуп. Повече подробности може да намерите в (TNS Opinion & Social, February 2014).

чрез СМК на SELDI (през 2001 г. и 2002 г.); напредъкът обаче е бавен и неравномерен.

Корупционният натиск от страна на длъжностните лица е основният фактор, който влияе статистически върху равнището на участие в корупционни сделки. В повечето от страните с високи равнища на участие в корупционни сделки и на корупционен натиск е характерна слаба **съпротива** срещу корупционния натиск (повечето от респондентите, на които е бил поискан подкуп, са дали такъв). Макар съпротивата да не може да се смята за главен фактор, спомагащ за намаляване на корупцията, тя отразява преобладаващите обществени нагласи към почтеността и се възпитава най-вече чрез усилията на гражданското общество и компетентните органи за изграждане на обществено съзнание за противодействие на корупцията.

### Съпротива на корупционния натиск



Източник: SELDI/Център за изследване на демокрацията, Система за мониторинг на корупцията, 2014 г.

## Политики и законодателство за противодействие на корупцията

Страните от SELDI са въвели по-голямата част от международните антикорупционни стандарти в своето национално законодателство, като най-важното е, че възприемат логиката и подхода, залегнали в тях. Качеството на законите обаче продължава да е проблематично. В резултат на честите и непоследователни законови изменения са налице сложни процедури и разпоредби, които се интерпретират противоречиво от отделните съдилища и водят до слабо правоприлагане.

Всички държави от Югоизточна Европа са приели някакъв стратегически документ, в който е описан цялостният им подход в борбата с корупцията. Макар да има известни разлики, прилагането на тези документи в отделните страни се затруднява от липсата на средства и недостатъчната ангажираност на висше управленско равнище. Общ недостатък е и стремежът със стратегиите да бъдат разрешавани всички възможни проблеми на корупцията. Подобни документи се стремят да бъдат всеобхватни, а не да постигнат въздействие върху най-проблемите области, което ги превръща в добър списък с всички възможни корупционни проблеми, но не ги прави действени политически документи.

Що се отнася до приоритетите в антикорупционната политика, подходът се е променил значително в два аспекта – вниманието вече е пренасочено от дребната (административна) корупция (например в пътна полиция или сред лекарите в държавните лечебни заведения) към едрата (политическа) корупция (сред депутатите/министрите). Все повече видове злоупотреба със служебно положение се инкриминират. Резултатите по отношение на наказването на едрата корупция обаче, в най-добрия случай, са ограничени. Антикорупционните политики в региона трябва да отговарят на основното предизвикателство да спомогат за успешното прилагане на нормативната уредба и да са приспособими към променящите се проявления и форми на корупция, като в същото време поддържат нормативна стабилност и не затрудняват съдебната власт с прекалено чести промени.

Резултатите от мониторинга на SELDI подчертават **колко важна е обществената подкрепа за успеха на антикорупционните политики**. Съществува взаимозависимост между общественото доверие в управлението и ефективността на политиката: по-високият дял на хората, убедени в реалистичността на антикорупционните мерки, води до по-ниски равнища на корупция. По-високото разпространение на корупцията, напротив, върви ръка за ръка с повече песимизъм спрямо перспективите на антикорупционните усилия.

## Институционална практика и прилагане на законодателството

Доскорошният акцент върху хармонизирането на националното законодателство с международните антикорупционни стандарти в Югоизточна Европа постепенно отстъпва на фокуса върху тяхното прилагане, под натиска както на ЕС, така и на гражданското общество.

Във всички държави от SELDI е налице една и съща слабост – недостатъчната независимост на надзорните и правоприлагащи органи. Намесата на политиките в работата на държавната администрация и независимите органи е характерно явление. Администрацията в държавите от SELDI не разполага с адекватно функциониращ механизъм за управление на жалбите. В повечето страни е създаден национален орган за борба с корупцията, където се предвижда гражданите да подават жалби. Друг общ проблем е недостига на надеждни и публично достъпни данни за работата на държавните институции, особено по отношение на противодействието на корупцията. Информация и статистика или не се събират, или не са достъпни за обществеността, или качеството им не дава възможност за мониторинг и анализ.

Един от основните проблеми, свързани с устройството на специализираните органи за противодействие на корупцията в региона е **как да бъдат съчетани превантивните и репресивните функции**. Като правило страните от SELDI се опитват да съвместят и двете роли в **антикорупционните си органи**, макар репресивната функция да е далеч по-слабо застъпена. Повечето от задачите на тези органи се състоят в някакъв вид надзорна или контролна дейност, обикновено на националните им антикорупционни стратегии, и няма сериозни свидетелства те да имат значимо влияние върху законодателния дневен ред на правителствата. Създаването и функционира-

### Осъществимост на антикорупционните политики: как се оценява тя от обществото



Източник: SELDI/Център за изследване на демокрацията, Система за мониторинг на корупцията, 2014 г.

нето на подобни институции се сблъсква с редица трудности:

- Макар корупцията да е сред основните приоритети на правителствата, е трудно да се създават институции с извънредни правомощия, които биха могли по някакъв начин да нарушат съществуващия баланс на властите. Типичният компромис е тези служби да са към изпълнителната власт и да им се дават надзорни правомощия, ограничени до това да изискват от другите държавни институции да отчетат пред тях изпълнението на възложените им антикорупционни задачи.
- Специализираните органи за противодействие на корупцията трябва да не дублират правомощията, които вече са възложени на други надзорни органи (например националните органи за финансов контрол или правоприлагащите органи).
- На повечето от тях е даден ограничен институционален капацитет – бюджет, кадри – въпреки заявените намерения за обратното.

Що се отнася до **законодателната власт**, парламентите в региона не се ползват с особено високо обществено доверие и подобно незавидно положение не е безпечно. Законодателните органи в редки случаи разполагат с кодекси за етично поведение или ако имат такива не се съобразяват с тях; в още по-редки случаи е регулирано лобирането; процедури за снемане на депутатския имунитет се въвеждат, макар и плахо, едва в последните години; в страните, където парламентът разполага с антикорупционен орган, ролята му обикновено се свежда до надзор върху някоя изпълнителна агенция, а не до противодействие на корупцията сред депутатите. Сериозен проблем в държавите от SELDI е финансирането на политическите партии и предизборните кампании. В повечето от тях са възприети препоръките на ГРЕКО за финансиране на политическите партии, но продължават да съществуват проблеми като анонимни дарения, купуване на гласове (кое-то на практика е подкупуване на гласоподаватели), недостатъчен капацитет за финансов контрол на партиите и ограничени правомощия за налагане на санкции.

Състоянието на **държавната администрация** в момента отразява преходния етап, на който се намират страните от ЮИЕ, като нуждата от насърчаване на управленското и организационно развитие на държавната администрация е обща черта за всички държави от региона. Културата на „контрол“ над администрацията вместо управление на рабо-

тата ѝ чрез мотивация не позволява да се повиши равнището на професионализъм и да се намали корупцията. Един от основните изводи на доклада е **взаимозависимостта между компетентност и добросъвестност**. Типичен случай е при подозрения за корупция в някоя държавна институция да се открива и липса на институционален капацитет. Когато професионализмът се повиши нараства и добросъвестността на служителите. Така едно от основните предизвикателства в региона е как да се постигне прозрачност и отчетност на държавната администрация, като едновременно с това се повиши нейния професионализъм. В много случаи реформите и авторитета на дадено управление се подкопават от лошо управление, неясни критерии и неправилно разпределение на правомощията.

Антикорупционната роля на **правоприлагащите органи** в региона, трябва да се оценява в контекста на непрестанно разширяващия се обхват на инкриминирани практики, твърде голяма част от които разпространени сред самите правоприлагащи органи. Ефективността на тези институции в Югоизточна Европа допълнително се намалява от уязвимостта им към корупционно влияние от организираната престъпност. Полицията в повечето страни от SELDI разполага със специализирани подразделения за борба с организираната престъпност; често те са натоварени и с противодействие на корупцията. Съвместяването на тези две функции се налага не само защото организираната престъпност прибягва до корупция, но и защото разкриването на сложните корупционни схеми изисква специализирани методи за разследване, на които обикновено се обучават служителите от отделите за борба с организираната престъпност. Те обаче в общия случай са част от полицията или министерствата на вътрешните работи, което им отнема институционалната автономност, необходима за един специализиран орган за борба с корупцията.

## Съдебната система в борбата с корупцията

В Югоизточна Европа усилията да се гарантира независимост на съдебната система не са балансирани от също толкова категорични изисквания за отчетност на магистратите. Поради липса на адекватен взаимен контрол на властите, самоуправлението на съдебните органи в нарастваща степен излиза извън контрол като довежда до корпоратизъм, с всички свързани с него корупционни рискове. В случая

прекаленият акцент върху формалната независимост е типичен пример за решение, превърнало се в проблем – вместо да послужи за поддържане на равновесието с изпълнителната власт, самоуправлението задълбочи клиентелните отношения между магистратите и различни корупционни интереси. Така днес съдебната власт в Югоизточна Европа е не по-малко засегната от корупция, отколкото изпълнителната или законодателната. Освобождаването от обществен контрол успява да премахне почти всички пречки пред стремежа към облаги от страна на магистратите.

Не е изненадващо, че обществеността няма особено висока оценка за съдебната власт. Според *Системата за мониторинг на корупцията* на SELDI магистратите се смятат за едни от най-корумпираните; значим фактор за подобни оценки е липсата на прозрачност и отчетност. От 2001 г. насам в страните от SELDI **оценката за разпространението на корупцията сред магистратите осезателно се влошава.**

Натрупани са редица проблеми, които значително намаляват капацитета на съдебната власт в региона за прилагане на законодателството за борба с корупцията, особено политическата корупция:

- Структурни несъответствия, свързани предимно с възстановяване на баланса между от една страна независимостта, и от друга – отчетността и прозрачността на съдебната власт;
- Сложността на наказателното преследване срещу извършителите на корупционни престъпления, особено на политическо равнище;
- Обща липса на капацитет и свързаните с нея проблеми като недостатъчен професионализъм, претовареност с дела и съответното натрупване на неразрешени дела, лошо управление на делата, слабо техническо осигуряване.

Важен извод за ролята на съдебната власт в противодействието на корупцията, който може да се направи от настоящия мониторинг на SELDI е, че **липсват механизми за обратна връзка**, които да позволят на бъдат оценявани прилагането на наказателното антикорупционно законодателство и добросъвестността на магистратите. Нито една държава от ЮИЕ не разполага с надежден, последователен и всеобхватен механизъм за събиране, обработка и представяне на обществено достъпни статистически данни за работата на съдилищата и прокуратурата като цяло и във връзка с делата за корупция в частност.

## Корупция и икономика

Значителното участие на държавата в икономиката в Югоизточна Европа поражда множество възможности за смесване на функциите на държавните институции и бизнеса; това на свой ред създава корупционен риск. Особено **висок е корупционният риск в областта на приватизацията и обществените поръчки и концесиите** в сектори като енергетиката и здравеопазването. Свърхрегулацията на бизнеса – най-вече по отношение на регистрацията, лицензионните и разрешителните режими – продължава да поставя различни бариери пред стартиращите фирми и да увеличава фирмените разходи, макар че някои от страните в региона са постигнали значителен напредък в премахването на пречките пред бизнеса. Административните органи (различните държавни и изпълнителни агенции) обаче все още влияят негативно върху пазара чрез упражняването на прекомерен контрол и санкции без адекватна оценка на риска, и на разходите и ползите от техните действия. Това важи в най-голяма степен за **митническите органи** на държавите в региона, които продължават да се използват като средство за натиск върху бизнеса. В резултат на това предприемачите биват или изтласкани в неформалния сектор, или принудени да прибегват до подкупи, което на свой ред служи като оправдание за въвеждане на допълнителни регулации и административни бариери.

Множеството потенциални корупционни ситуации в отношенията между бизнеса и държавните служители илюстрират колко трудно е да се формулират политики за противодействие на корупцията поради големия брой фактори, които трябва да бъдат взети под внимание. Съществуват две основни категории корупционни практики, чийто инициатор са фирмите – избягване на допълнителни разходи и получаване на конкурентно преимущество по непотен начин. В първата група попадат подкупите, мотивирани от неадекватни или прекомерни регулации, лична или институционална некомпетентност и други подобни; към втората спадат различните измами – заобикаляне на данъци, измами с ДДС, контрабанда, неспазване на стандартите за здравословни и безопасни условия и пр.

Обществените поръчки са един от основните канали, по които корупцията засяга икономиката на страните в Югоизточна Европа. Корупционен риск възниква поради редица слабости като недостатъчно прозрачните процедури, голям дял на поръчки-

те, възлагани без конкурс, неефективен съдебен контрол за законосъобразност (дължащ се на корупцията в съдебната власт) и пр. Въпреки че в изследване на SELDI от преди повече от десетилетие се отбелязва, че страните от региона са усъвършенствали законодателната уредба в областта на обществените поръчки и са я хармонизирали значително с европейското законодателство, обществените поръчки продължават да са един от най-уязвимите аспекти на общественото управление. За цялото това време не се наблюдава особена промяна, тъй като въведените разпоредби успешно се заобикалят от корумпираните политици и свързаните с тях фирми. Липсата на институционална съгласуваност не позволява правилата и разпоредбите в сферата на обществените поръчки да бъдат прилагани ефективно.

## Гражданското общество в борбата с корупцията

Една от най-значимите движещи сили в противодействието на корупцията в Югоизточна Европа са неправителствените организации. Редица недостатъци обаче възпрепятстват сериозно възможностите им да превръщат изискванията на обществото в ефективно застъпничество за конкретни политики и да се противопоставят адекватно на корупцията. В не малка степен това зависи от способността им **едновременно да осъществяват независим мониторинг и да сътрудничат с държавните институции** в антикорупционните реформи. Все още липсват механизми, чрез които правителствата на държавите в региона да ангажират гражданското общество, както и ясна визия и разбиране за потенциала на гражданските организации в областта на противодействието на корупцията. Техните усилия трудно могат да доведат до траен ефект, тъй като те разчитат прекомерно на международно, включително и европейско финансиране, а в страните от Югоизточна Европа не съществува политика за насърчаване на активността на гражданския сектор.

През последните години неправителствените организации в страните от SELDI успяват да създадат няколко международни публично-частни партньорства, които обаче не прерастват в ефективни партньорства с държавните институции в собствените им страни. Способността да се поддържат различни отношения с държавните органи – да се сътрудничи с тях, но и да им се опонира – е от ключово значение за успеха на едно партньорство. Един от използваните от неправителствените организации начини за съ-

четаване на сътрудничеството с ролята на регулатор е професионализирането на техния мониторинг на корупцията и антикорупционните политики.

Ефективността на неправителствените организации в противодействието на корупцията зависи в голяма степен от способността им да дадат пример за добро управление. Гражданските организации също могат да бъдат „присвоени“ или „завладяни“ от държавата чрез корупционни схеми, поради няколко фактора, подкопаващи стабилността на неправителствения сектор в региона:

- липса на задължителни процедури за прозрачност в сектора;
- неефективен контрол върху спазването на финансовите правила;
- липса на разбиране за ролята на финансовия одит;
- слаба саморегулация и координация на усилията.

Борбата със присвояването/завладяването на гражданското общество в рамките на антикорупционните усилия в страните от Югоизточна Европа трябва да се превърне в приоритетна област на реформи в региона.

## Международно сътрудничество

Международните институции и партньорските държави играят значима роля в противодействието на корупцията в Югоизточна Европа. Предвид че малко реформи са консенсусни в тези страни, поемането на международни задължения спомага за формулиране на реформи, които местните политици вероятно иначе не биха предприели. Повечето страни от ЮИЕ съобразяват антикорупционната си политика с докладите на Европейската комисия, а европейското финансиране и споразуменията за туининг съдействат за осъществяването ѝ. Докладите на Европейската комисия за напредъка на страните акцентират върху борбата с корупцията, но реакцията към тях варира в отделните страни – държавите с по-ясни изгледи за присъединяване към ЕС отделят по-голямо и задълбочено внимание на изводите и препоръките, докато в други, като например Турция те не предизвикват подобен отклик.

Възприемането на международни препоръки и стандарти, обаче, може да предизвиква и нереалистични очаквания за бърза промяна на ситуацията, а това би могло да доведе до повърхностни и огра-

ничени мерки. Освен това, в международното антикорупционно сътрудничество, особено що се отнася до отношенията с ЕС, е ангажирана почти изключително изпълнителната власт, докато съдебната власт, парламентът и други институции и организации не са въввлечени в достатъчна степен, въпреки че последствията от това сътрудничество пряко ги засягат. Ефектът от ангажираността на международните и чуждестранни институции с антикорупционните реформи в страните от ЮИЕ се увеличава главно благодарение на по-широкото местно участие, включващо гражданското общество, медиите, професионалните организации, профсъюзите и пр. По-големият брой местни партньори оказва двоен ефект, като засилва авторитета на отделни реформаторски настроени политици или политически групи, както и неправителствени организации, и насърчава обществото да изисква реформи. Разширяването на този подход би било от решаващо значение за влиянието на ЕС в региона. Международният ангажимент към реформаторски настроените политици и партии трябва да бъде подкрепен, но и санкциониран от гражданското общество чрез форма на тристранно сътрудничество.

## КЛЮЧОВИ ПРЕПОРЪКИ

Опитът на страните от SELDI от 2001 г. насам показва, че решаването на проблема с корупцията изисква непрестанни усилия в няколко приоритетни направления и дългосрочен ангажимент от страна на местните и международни институции и организации. Настоящият доклад дава редица препоръки за по-нататъшно ограничаване на корупцията. За да бъде постигната промяна в средносрочен план във всяка от страните и на европейско равнище трябва да се акцентира върху следните приоритетни области:

**Ефективното наказателно преследване на корумпирани висши политици, магистрати и държавни служители** е единственият начин да се отпрати недвусмислено и незабавно послание за нулева толерантност към корупцията. В Хърватия и Словения например осъждането на корумпирани политици има забележим ефект върху укрепването на мерките за противодействие на корупцията. Подобни действия трябва да бъдат подкрепени на международно равнище, включително и с участието на правоприлагащите органи на държавите – членки на ЕС.

Трябва да се въведе **независим механизъм за мониторинг на корупцията и антикорупцията** на национално и регионално равнище, за да се осигурят надеждни данни и анализ, и да се интегрират **диагностиката на корупцията и оценката на антикорупционните политики**. Този механизъм трябва да се прилага от национални и/или регионални граждански организации и мрежи и не трябва да се финансира пряко от правителствата на страните в региона. Той трябва да стане средство за отваряне на административните данни и разширяване на обществения достъп до информация. На обществеността трябва да бъде даден достъп до бази данни, чрез които може да се проследяват обществените поръчки, държавните субсидии, бюджетните трансфери, годишните доклади за дейността на надзорните и контролни органи и пр., което ще позволи задълбочения им анализ и да подпомогне използването на инструментите за мониторинг.

**Трябва да се обърне приоритетно внимание на сектори с висок риск от корупция като енергетиката**, с фокус върху приоритетни мерки като:

- повишаване на конкуренцията в сферата на обществените поръчки;
- подобряване на корпоративното управление на държавните предприятия;
- прозрачно управление на големите инвестиционни проекти;
- повишаване на отчетността и независимостта на енергийните регулатори.

**Международните партньори, и най-вече Европейската комисия, трябва да ангажират пряко гражданските организации в региона.** Това е необходимо по няколко причини: а) за да имат траен ефект реформите, ползващи се с международна подкрепа, те трябва да получат широко обществено одобрение, което е невъзможно без участието на гражданските организации; б) участието на гражданските организации е начин да се гарантира, че отчетността на правителствата пред донорите и международните организации не измества отчетността пред местните избиратели; в) ефективността на международната помощ ще се повиши, ако се използва аналитичният и мониторингов капацитет, както и общественото влияние на гражданските организации; г) сътрудничеството им с ЕК ще препятства въвличането на гражданското общество в клиентелните мрежи на неререформирани и често корумпирани държавни администрации.

## КОНКРЕТНИ ПРЕПОРЪКИ

### Политики и законодателство

- Дефинирането на национални антикорупционни политики да включва залагането на измерими постижения, а не просто „мерки“ или законови актове. Това означава да се заложат конкретни резултати, които трябва да бъдат постигнати, и да се посочат адекватните методи за това. Резултатите трябва да имат постижимо количествено измерение.
- Да се даде приоритет на определени сектори, видове корупция и методи на действие и да се изпробват пилотно различни подходи, преди мерките да бъдат прилагани в широк мащаб. Корупцията е широко понятие, свързано с различни видове измами, на които не може да се противодейства едновременно по ефективен начин.
- Антикорупционните политики да се основават на надеждни данни и изследвания. Въпреки че са правени опити за оценка на досегашните резултати в националните стратегии за борба с корупцията, нито една от държавите от SELDI не разполага с регулярен механизъм за оценка на антикорупционните политики. За това е необходимо поне: а) надеждна и редовна статистика за антикорупционните мерки (разследвания, наказателни дела, административни мерки и др.); б) редовен мониторинг и анализ на разпространението и формите на корупцията по обществени сектори. Мониторингът трябва да е независим и/или външен за страната, да включва участието на гражданското общество и основните компоненти на системите за мониторинг на административната корупция като СМК на SELDI.

### Институции за борба с корупцията и право-прилагащи органи

- Да се въведат иновативни инструменти за обратна връзка, каквито през последните години се създават в по-широк мащаб, като например Интегрирания метод за мониторинг на прилагането на антикорупционни мерки, разработен от Центъра за изследване на демокрацията и Университета в Тренто. Той дава възможност на управленските екипи да извършват оценка на корупционните рискове в определена държавна институция, както и на ефекта от съответната антикорупционна политика, като идентифицира решенията с най-голямо въздействие.
- Институционалният капацитет на съответните държавни органи, по-конкретно на специализираните агенции за борба с корупцията и надзорните агенции като органите за финансов контрол, включително техните бюджети, материална база и кадри трябва да бъдат приведени в съответствие с широките компетенции, които са им дадени и на високите обществени очаквания от работата им. Алтернативно те биха могли да разработват не мащабни годишни и средносрочни програми, а мерки фокусирани към решаването на конкретни приоритетни проблеми.
- Капацитетът на националните сметни палати трябва да бъде укрепен, включително да им бъдат дадени правомощия за налагане на санкции. Подлежащите на финансов контрол органи и националните парламенти трябва да бъдат задължени да предприемат действия вследствие на докладите на сметните палати. На последните трябва да бъде възложено да контролират и управлението на фондовете на ЕС, когато те са администрирани от национални органи. В страните от Югоизточна Европа, трябва да бъде развит капацитета на сметните палати да одитират ефективността и въздействието на функционирането на държавни органи, а не само да следят за спазването на финансовите правила.
- Необходими са по-нататъшни мерки, за да се гарантира, че назначенията на държавните служители се правят с оглед на способностите на кандидатите, а не с партийни протекции.
- Антикорупционната дейност трябва да бъде равномерно разпределена между държавните органи. Разширяването на кръга от корупционни престъпления трябва да бъде подсилено с повишаване на капацитета на всички държавни органи за справяне с корупцията сред служителите им чрез административни методи, а не като прехвърлят все по-голяма отговорност на полицията и прокуратурата. Администрацията би трябвало да се стреми да разрешава възможно най-много случаи на корупция с административните средства, с които разполага. Като първа стъпка това изисква създаване на ефективен механизъм за управление на жалби.
- Отнемането на незаконно придобито имущество в случаите на корупция е антикорупционен инструмент, чието приложение трябва да бъде разширено. Въпреки че трябва да се подхожда внимателно, за да не се наруши балансът между правата на обвиняемия и обществения интерес, особено в среда, където държавната администрация често е корумпирана, конфискацията на имуществото

вследствие на наказателен процес е важна възприраща мярка, която все още не се използва в достатъчна степен в ЮИЕ.

### Съдебна власт

- В страните, където мнозинството членове в органите на управление на съдебната власт не се избират от самите магистрати, трябва да се приемат реформи, които им дават по-голямо право на глас. В страните, в които още не е приет принципът „един магистрат – един глас“, той трябва да се приеме.
- Да се гарантира, че изборът на съдебната квота е възможно най-представителен, като се включат и съдии от първоинстанционни съдилища. Внимателно да се прецени и, ако е необходимо, да се преразгледа съвместимостта на поста председател на съд с членството в органите за управление на съдебната власт.
- В страните, където прокуратурата и съда се управляват от един и същ орган, в него трябва да бъдат обособени две отделни колегии – за прокурорите и за съдиите. Прокурори и съдии да бъдат представени само в съответните колегии.
- Да се премахне или сведе до минимум участието на министри (обикновено на правосъдието) в органите за управление в съдебната власт, особено във връзка с решенията за дисциплинарни процедури.
- В механизма за проверка на имуществените декларации трябва да бъде даден приоритет на имуществото на магистратите.
- Трябва да се повиши независимостта и капацитета на съдебните инспекторати, за да могат те да активизират дейността си.
- Да се въведат механизми за обратна връзка относно приложението на антикорупционните политики по отношение на магистратите. Такива механизми или имат множество недостатъци, или изобщо липсват в страните от SELDI; липсата им подкопава репресивния аспект на антикорупционните политики и обезсмисля по-нататъшното инкриминиране на корупцията. Добра практика в това отношение, която би могла да се възпроизведе, макар все още да не е достатъчно добре разработена, е Платформата за антикорупционна статистика, разработена от неправителствена организация в Косово. Подобен механизъм следва да включва редовна информация за: дисциплинарните, административните и наказателните мерки в държавната администрация и съдебната система; различните аспекти на наказателното

преследване, включително повдигнати обвинения и произнесени осъдителни/оправдателни присъди, разбивка на присъдите по вид корупционно престъпление.

### Корупцията и икономиката

- Да се намалят до минимум и да се преразглеждат ежегодно политиките за държавни субсидии, тъй като те създават значителни корупционни рискове. Да се въведе предварително строгото прилагане на правилата за отпускане на субсидии от ЕС и да се изгради капацитет за прилагане на тези правила в рамките на съответните регулаторни органи.
- Да се подобри прилагането на антимонополното законодателство с цел да се насърчи свободното предприемачество и конкуренцията. Да се обърне специално внимание и да се наблюдава редовно концентрацията на икономическа власт в силно регулираните сектори, където са налице лицензионни и други ограничения, които създават риск за негласни споразумения на по-големите икономически субекти с политиките.
- В страните, в които липсват институционални връзки между управлението на активите и пасивите на всички публични финансови средства, включително на държавните предприятия, да бъдат изградени такива, за да се повиши доверието към правителството по отношение на управлението на публичните средства. Държавните предприятия трябва да отговарят на строги изисквания за корпоративно управление и отчетност (напр. правилата на Организацията за икономическо сътрудничество и развитие), наравно с публичните акционерни дружества. Те трябва да публикуват онлайн тримесечните си отчети.
- Да се въведе наказателна отговорност и санкции за възложителите на обществени поръчки, които не представят съответните отчети за тях, не докладват за нарушения на антикорупционното законодателство или представят неверни или непълни данни.
- Да се определи правна и институционална рамка за управлението и контрола на договорите, сключени чрез публично-частни партньорства.
- Да се подобри надзора върху обществените поръчки на големите поръчители (държавни предприятия и предприятия за комунални услуги), за да се постигне максимална ефективност на работата им и да се сведат до минимум нарушенията.
- Да се намали делът на търговете за обществени поръчки, в които участва само един кандидат,



за да се насърчи конкуренцията. Пълната документация с предварителната обява, получените оферти, сключените договори и свързаните с тях документи, да се публикува в онлайн база-данни с възможности за търсене.

- Страните – кандидатки за членство в ЕС, които не разполагат със децентрализирани системи за управление на фондовете на ЕС, трябва да изградят такива, за да осигурят необходимата правна и административна рамка за прехвърляне на отговорностите по приложението на финансирани от ЕС програми. Контролът върху изпълнението им трябва да остане централизиран и отделен от органите, отговорни за изпълнението на програмите.
- При оценката на договорите за обществени поръчки да се възприеме подхода „най-добро съотношение цена/качество“ за изразходваните средства.

### Гражданско общество

- Да се повиши капацитета на гражданските организации за мониторинг на корупцията и антикорупцията, включително уменията им за събиране и съпоставяне на първична информация за държавните институции, за измерване на действителното разпространение на корупцията и за анализ на данни, оценяване на институции и подготовка на доклади по темата.
- В законодателството за конфликтите на интереси трябва да се включат разпоредби относно организациите с нестопанска цел, особено онези, което се финансират по администрирани от правителството програми като националния бюджет и фондовете на ЕС.
- Да се въведат ясни и прозрачни правила и разпоредби за публично финансиране, както на централно, така и на общинско равнище, на организациите с нестопанска цел. Право на публично финансиране трябва да имат само организациите, регистрирани в обществена полза, като за тях трябва да бъдат въведени по-строги изисквания за отчетност и прозрачност.
- Европейският съюз и други донорски организации трябва да разгледат възможността за предвиждане на повече средства за програми за добро управление, които да се прилагат съвместно от гражданското общество и държавните институции. В тях трябва да бъдат заложени недвусмислени изисквания, предотвратяващи възможността за корупционно влияние върху неправителствените организации. Трябва да се отбележи, че ефект от подобни програми се постига след дъл-

готрайно приложение (над 10 години).

- Гражданският сектор трябва да се стреми да се саморегулира. Най-малкото, което може да се направи за тази цел, е да се приемат кодекси на поведение с високи стандарти. Гражданските организации трябва да търсят повече и по-добри начини за създаване на коалиции по интереси.
- Неправителствените организации трябва да разбират необходимостта от прозрачност и отчетност. Това означава редовно одитиране, публичност на финансовите отчети, открито формулирани и прозрачни процедури за корпоративно управление и мерки, предотвратяващи корупционно влияние.
- Държавите от ЮИЕ, които не са членки на ЕС, трябва да проучват в дълбочина Доклада на ЕС за борбата с корупцията, за да се възползват от събраните в него информация и експертни познания. От него могат да почерпят ценни познания относно оценката на разпространението на корупцията и формулирането на антикорупционни политики.

### Международно сътрудничество

- Програмите за чуждестранна помощ трябва по-адекватно да отразяват изводите на международните и на независимите вътрешни оценки за корупцията в страните от ЮИЕ. За да се постигне това, програмите трябва да бъдат по-гъвкави, което означава и по-кратък период между тяхното разработване и изпълнение.
- Международното подпомагане за националните правителства в сферата на борбата с корупцията трябва да предвижда по-значителна роля на гражданското общество. Това означава включването на неправителствени организации като партньори и наблюдатели, особено при оценката на въздействието на програмите и проектите.
- Ефективността от подпомагането трябва периодично да се оценява посредством методи за оценка на въздействието, особено когато става дума за публично финансиране, тъй като това би спомогнало за продължаването на успешните и прекратяването на неуспешните програми. Необходимо е тази оценка да е независима и да използва експертния капацитет на гражданските организации.
- Международната помощ трябва да насърчава създаването на междудържавни програми по общи за ЮИЕ проблеми, например трансграничната престъпност. Българският опит в публично-частното сътрудничество при анализа на връзките

между организираната престъпност и корупцията трябва да бъде използван в целия регион.

- Подготовката и изводите от редовните доклади на Европейската комисия трябва да се превърнат

в по-съществена част от създаването на политики на местно равнище, като се разчита повече на местното гражданско общество и бизнес среди.

## CROATIA

### IZVRŠNI SAŽETAK

Korupcija u jugoistočnoj Europi u vijestima je, u središtu javne rasprave, te na političkoj *agendi* nacionalnih i međunarodnih ustanova toliko često i toliko dugo da istraživanja i ispitivanja svih njenih aspekata nije potrebno opravdavati. Upravo činjenica da se korupcija dokazano smatra toliko tvrdokornim problemom, opravdava inovativne pristupe njezinu razumijevanju – a time i smanjenju. Izgledi zemalja u regiji za pristupanje EU-u – iako dalekom – pružaju mogući okvir za djelovanje, no kontinuiran napredak u području korupcije mogu pokrenuti lokalni dionici, točnije civilno društvo. Vodstvo za razvoj i integritet jugoistočne Europe (SELDI) utvrdilo je dubinsku dijagnozu i razumijevanje razlika između korupcije i vlasti u regiji jednim od svojih glavnih prioriteta, neophodnim uvjetom za njegovo zagovaranje **antikorupcijskih politika koje počivaju na znanju**. Ovo izvješće mreže SELDI spada u razvojni i provedbeni okvir regionalne antikoruptionske politike i infrastrukture u nastajanju, za što je primjer glavni stup upravljanja Strategije JIE 2020. kojim upravlja Regionalna antikoruptionska inicijativa.

Ovo izvješće rezultat je suradnje unutar mreže SELDI te je inovativno i metodom i procesom. Ono je rezultat primjene sustava koji je u ranim 2000-ima razvila mreža SELDI za procjenu i **korupcije i borbe protiv korupcije**, a koji je prilagođen društvenom i institucijskom okruženju jugoistočne Europe.<sup>1</sup> Pristup istraživanju koji se temelji na viktimizaciji, primjenjujući *Sustav za praćenje korupcije*, pruža jedinstvenu procjenu antikoruptionskog napretka u regiji od 2001. godine koja se temelji na podacima. Krug procjene za razdoblje 2013. – 2014. godine, čiji su rezultati sažeti u ovom izvješću, predstavlja rijedak slučaj u međunarodnoj praksi praćenja **jer se nakon malo više od desetljeća ponovno bavi istim problemima i istom regijom**. Procjenom su uspoređeni nacionalno zakonodavstvo i institucionalna praksa u brojnim područjima ključnim za antikoruptionske napore: regulatorni i zakonodavni okvir, institucionalni preduvjeti, gospodarska korupcija, uloga civilnog društva i međunarodna suradnja. U izvješću se navodi **stajalište civilnog društva i**

<sup>1</sup> (SELDI, 2002).

**procjena politika**, a o rezultatima i preporukama iz izvješća konzultiralo se s nacionalnim i regionalnim javnim institucijama.

Namjena procjene nacionalnih institucionalnih i pravnih aspekata koji omogućuju korupciju u regiji nije da bude sveobuhvatni inventar uredbi i praksi u svim zemljama, već da naglasi neke od prioritarnih pitanja važnih za detektiranje zajedničkih izvora korupcije u jugoistočnoj Europi (JIE). Izvješće nudi **model za izvješćavanje o napretku u borbi protiv korupcije civilnog društva u JIE-u**.

### GLAVNI NALAZI

#### Sveukupna ocjena

Unatoč nekim važnim postignućima – uglavnom glede stabilizacije demokratskih ustanova, donošenja zakona u ključnim područjima borbe protiv korupcije, smanjenja podmićivanja i sve veće netolerancije javnosti na korupciju – antikoruptionske i reforme dobrog upravljanja nisu objedinjene. Čini se da je među izabranim političarima i sudcima korupcija sve češća, dok je provedba antikoruptionskog zakonodavstva slučajna. Antikoruptionske politike i ustanove u regiji imat će iznimne koristi od donošenja redovitog i preciznog alata istraživanja koji se temelji na viktimizaciji za mjerenje korupcije i stope napretka u dobrom upravljanju, nalik posebnom Eurobarometru o antikoruptionski, UNODC-ovu praćenju korupcije i organiziranog kriminala u JIE-u te *Sustavu za praćenje korupcije* koji se koristi u ovom izvješću.

#### Rasprostranjenost korupcije u jugoistočnoj Europi

Iskustvo s korupcijom – drugim riječima, uključenost članova javnosti u korupcijske transakcije – vrlo je visoko u JIE-u. Čak i u Turskoj i Hrvatskoj, u kojima su razine upravne korupcije najniže u regiji, otprilike 8 – 9% stanovništva je prijavilo da su u prethodnoj godini dali mito. Takve razine iskustva s korupcijom daleko su iznad prosječnih razina zabilježenih u

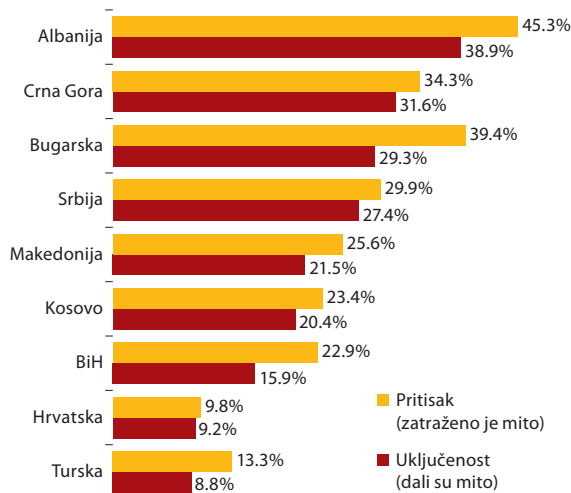
<sup>2</sup> Pokazatelji iskustva s korupcijom, koji se koriste u istraživanjima Eurobarometra, malo su drugačijeg sadržaja jer se odnose na izravno iskustvo i slučajeve u kojima su ispitanici svjedočili slučajevima podmićivanja. Detalje potražite u (TNS Opinion & Social, February 2014).

istraživanjima Eurobarometra u EU-u.<sup>2</sup> To pokazuje da je upravna korupcija **masovni fenomen** te da se ne može ograničiti na pojedinačne slučajeve korumpiranih službenika.

Znatne razlike među zemljama sa zajedničkom prošlošću pokazuju da različiti putovi društvenog, gospodarskog i institucionalnog razvoja daju različite rezultate. Općenito, promjene od prethodnih krugova dijagnostike sustava za praćenje korupcije (CMS) mreže SELDI (2001. i 2002.) za sve su zemlje, osim Bugarske, pozitivne. No, napredak je spor i neujednačen.

### Pritisak korupcije i uključenost u korupciju

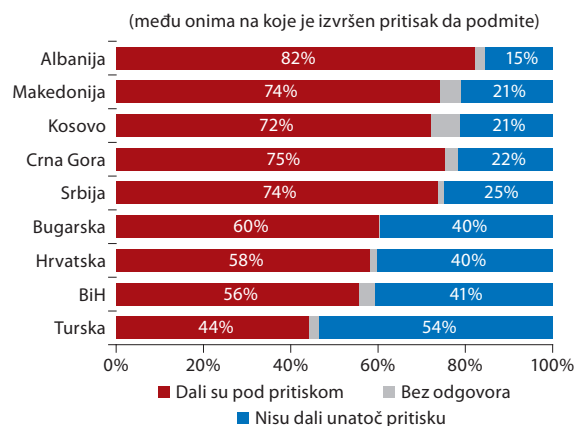
(% stanovništva starijeg od 18 godina od kojeg je zatraženo da daju i koji je dao mito (novac, uslugu, dar) u protekloj godini)



Izvor: Sustav mreže SELDI/CSD-a za praćenje korupcije, 2014.

Pritisak korupcije koji potječe od službenika glavni je čimbenik koji statistički utječe na razinu uključenosti. Većinu zemalja u kojima su visoki i pritisak i uključenost karakterizira i niska **otpornost** na pritisak korupcije (većina ispitanika od kojih je traženo mito ga je i dala). Iako se otpornost ne može smatrati glavnim čimbenikom smanjenja korupcije, ona odražava prevladavajuća društvena stajališta o integritetu, te je uvelike rezultat nastojanja civilnog društva i vlasti da se poveća antikorupcijska svijest. U tom je pogledu uloga civilnog društva ključna jer je ono u položaju da ocjenjuje rezultate i predvodi pritisak javnosti za promjenom.

### Otpornost na pritisak korupcije



Izvor: Sustav mreže SELDI/CSD-a za praćenje korupcije, 2014.

## Antikorupcijske politike i zakonodavstvo

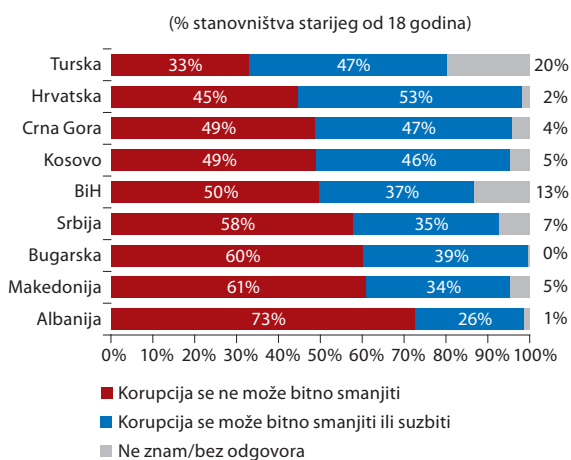
Sve u svemu, zemlje mreže SELDI prihvatile su veći dio međunarodnih antikorupcijskih standarda u svoja nacionalna zakonodavstva – još važnije, prihvatile su njihovu logiku i pristup. Međutim, zakonska kvaliteta ostaje problematična. Česte i nedosljedne izmjene zakona rezultirale su proceduralnom i zakonskom složenosti i proturječnim sudskim interpretacijama.

Sve zemlje donijele su neki oblik strateškog dokumenta koja sadržava njihov općeniti pristup rješavanju korupcije. Iako među zemljama postoje određene razlike, provedbu tih dokumenata općenito ometaju nedostatni resursi i obveze na višim razinama vlade. Dodatni problem diljem regije predstavlja osmišljavanje strategija na način da se bave svim mogućim aspektima korupcije. Umjesto da utvrde prioritete, strateški dokumenti su postale sveobuhvatni – kad je riječ o antikorupciji, *strateško* je počelo značiti iscrpnost.

Kad je riječ o prioritetima javnih politika, u pristupu borbi protiv korupcije uočene su dvije značajne promjene – pomicanje pozornosti sa sitne korupcije (prometnog policajca ili liječnika u javnom sektoru) na krupnu (parlamentarnih zastupnika ili ministara) te na kriminalizaciju šireg raspona zlouporabe položaja i ovlasti. No, postizanje učinka u pogledu kažnjavanja krupne korupcije u najboljem slučaju ostaje ograničeno. Ključni izazov antikorupcijskih politika u regiji jest poništiti nesrazmjer glede provedbe, te biti u toku s promjenjivim manifestacijama i oblicima korupcije uz zadržavanje regulatorne stabilnosti i izbjegavanje zatrpavanja sudstva čestim izmjenama.

Nalazi praćenja mreže SELDI naglašavaju **važnost javne potpore za uspjeh antikorupcijskih politika**. Povjerenje javnosti u vladu, te učinkovitost javnih politika objedinjeni su u pozitivan niz događaja: veći udio ljudi koji su optimistični u pogledu uspješnosti borbe protiv korupcije povezan je s nižim razinama korupcije. Suprotno tomu, zastupljenija korupcija podrazumijeva povećani pesimizam kad je riječ o izgledima suzbijanja korupcije.

### Izvedivost odgovora javnih politika na korupciju: koja je procjena javnosti



Izvor: Sustav mreže SELDI/CSD-a za praćenje korupcije, 2014.

## Institucionalna praksa i provođenje zakona

U jugoistočnoj Europi prijašnji naglasak na ujednačavanju nacionalnog zakonodavstva s međunarodnim standardima u području borbe protiv korupcije postupno ustupa mjesto usredotočenosti na provedbu u sklopu sve većeg pritiska EU-a i lokalnog civilnog društva.

Sve zemlje mreže SELDI dijele jednak nedostatak, tj. ugroženu autonomiju različitih nadzornih i tijela za provedbu zakona. Tipičan je određeni stupanj miješanja izabranih političara – parlamentarnih zastupnika ili ministara u vladi – u rad državne službe. Nadalje, nijedna od zemalja mreže SELDI u državnoj upravi nema odgovarajući mehanizam upravljanja pritužbama. Većina je osnovala antikorupcijsko tijelo od kojeg se očekuje da zaprima pritužbe javnosti. Dodatni nedostatak zajednički zemljama uključuje nedostatak pouzdanih i javno dostupnih informacija o radu vladinih ustanova, posebice onih koje se odnose na borbu protiv korupcije. Informacije i statistike nisu

prikupljene, nisu dostupne javnosti ili su prikupljene toliko neplanski da ne omogućuju praćenje i analizu.

Jedno od ključnih pitanja povezanih s osmišljavanjem specijaliziranih nacionalnih ustanova za borbu protiv korupcija u regiji jest kako kombinirati **preventivne i represivne funkcije**. Zemlje mreže SELDI obično pokušavaju da njihove **ustanove za borbu protiv korupcije** čine oboje, iako represija čini daleko manji aspekt njihova rada. Većina zadaća tih tijela povezana je s nekim oblikom nadzora i kontrole, obično nacionalnih strategija za borbu protiv korupcije, te postoji malo dokaza da su znatnije utjecali na zakonodavnu agendu vlade. Osnivanje i poslovanje takvih institucija otežavaju brojne poteškoće:

- Neovisno o tome koliko je korupcija bila visoko na dnevnim redovima vlada, nije izvedivo osmisliti ustanove iznimnih moći koje bi na neki način utjecale na utvrđenu ravnotežu moći. Uobičajen kompromis jest da takve agencije budu povezane s izvršnom razinom vlasti te da im se daju nadzorne ovlasti koje su, međutim, obično ograničene na zahtjev drugim vladinim agencijama o izvješćivanju o provedbi antikorupcijskih zadaća koje su im dodijeljene.
- Takve agencije moraju biti oprezne kako ne bi duplicirale ovlasti koje su već dodijeljene drugim nadzornim tijelima (npr. nacionalnim revizorskim ustanovama ili agencijama za provedbu zakona.)
- Većini je dodijeljena ograničena institucionalna ovlast – proračun, osoblje – unatoč iskazanim suprotnim namjerama.

Kad je riječ o **zakonodavstvu**, parlamenti u regiji ne zauzimaju visoko mjesto na ljestvici povjerenja javnosti, a taj nezavidan položaj nije bezrazložan. Kodeksi etičkog poslovanja rijetki su i ne provode se. Regulacija lobiranja još je rjeđa; tek se odnedavno, premda bojažljivo, uvode postupci za oduzimanje imuniteta u kaznenom postupku. Gdje god u parlamentu postoji antikorupcijsko tijelo, to je zbog nadgledanja neke izvršne agencije umjesto rješavanja korupcije među zastupnicima. Pitanje od znatnog interesa u zemljama mreže SELDI jest financiranje političkih stranaka i izbornih kampanja. Većina zemalja provodi GRECO-ove preporuke o financiranju stranaka, no i dalje postoje brojni problemi poput anonimnih donacija, kupnje glasova (ili podmićivanja glasača), nedostatnih kapaciteta za reviziju financija stranke i ograničenih ovlasti za provođenje sankcija itd.

Trenutno stanje **državne službe** odgovara prijelaznoj prirodi zemalja JIE-a te nedostatku odgovarajućih

pravnih i institucionalnih tradicija, kao i kroničnim nedostatkom sredstava. Unatoč određenim razlikama među zemljama, većina dijeli potrebu za olakšavanjem upravljačkog i organizacijskog razvoja u sklopu državne službe. Kultura „kontrolne“ uprave umjesto upravljanja njezinim radom motiviranjem ometa i unaprjeđenje profesionalizma i smanjenje korupcije. Jedan od glavnih nalaza izvješća jest **uzajamno osnaživanje stručnosti i integriteta**. Uobičajeno, kad god se preispituje antikorupcijska vjerodostojnost određenog vladinog ministarstva, utvrđen je i nezadovoljavajući institucionalni kapacitet. Suprotno tomu, svaki napredak u stručnosti također je vodio do unaprjeđenja integriteta. Stoga je izazov u regiji pitanje kako ostvariti osnovne karakteristike transparentnosti i odgovornosti državne službe uz unaprjeđivanje stručnosti. Vrlo često loše upravljanje, nejasni kriteriji i neprikladna podjela ovlasti i odgovornosti sprječavaju reforme i potkopavaju državni autoritet.

Antikorupcijsku ulogu **agencija za provedbu zakona** u regiji valja promatrati u kontekstu inkriminiranih praksi povezanih s korupcijom čiji se raspon neprestano širi, čime se riskira preusmjeravanje nesrazmjernog broja predmeta tijelima za provedbu zakona i tužiteljstvu. Antikorupcijsku ulogu agencija za provedbu zakona u jugoistočnoj Europi dodatno ugrožava njihova osjetljivost na korupciju, posebice od organiziranog kriminala. Policijske snage u većini zemalja mreže SELDI imaju jedinice specijalizirane za suzbijanje radnji organiziranog kriminala. Od tih se jedinica očekuje da rade i na borbi protiv korupcije. Objedinjavanja tih dviju funkcija u jedno tijelo uglavnom se opravdava time da se organizirani kriminal služi korupcijom, ali i potrebom za posebnim metodama ispitivanja u otkrivanju sofisticiranih korupcijskih shema – riječ je o stručnosti koja se obično pronalazi u sklopu odjela za borbu protiv organiziranog kriminala. Međutim, te su jedinice uglavnom dio većih policijskih snaga ili ministarstava vanjskih poslova koji im uskraćuju institucionalnu autonomiju potrebnu specijaliziranoj ustanovi za borbu protiv korupcije.

## Sudstvo u borbi protiv korupcije

Snažna usmjerenost na osiguranje sudske neovisnosti u jugoistočnoj Europi nije uravnotežena jednako snažnim zahtjevima za odgovornošću. Bez odgovarajućih provjera i uravnoteženosti, sudska je samouprava izmakla kontroli te se pretvorila u korporativizam sa svim pridruženim rizicima od korupcije. Pretjerano naglašavanje formalne izborne neovisnosti postalo je

uobičajeni primjer u kojem se lijek pretvorio u bolest – umjesto da osigura uravnoteženost s izvršnom vlasti, samouprava je produžila klijentelističke odnose između sudaca i posebnih interesa. Danas je sudstvo u JIE-i podjednako zarobljeno kao i ostale grane vlasti. Nakon što se odvojilo od pomne kontrole javnosti i političkih čimbenika koji su doveli do takvih postupaka, danas se rjeđe provjeravaju *rent-seeking* koje traže suci.

Ne iznenađuje da javnost nema pretjerano visoko mišljenje o sudstvu. *Sustav mreže SELDI/CSD-a za praćenje korupcije* utvrdio je da se suci ubrajaju među najkorumpiranije javne službenike u regiji. Nepostojanje transparentnosti i odgovornosti mogu se smatrati važnim čimbenikom u takvim procjenama. U svim zemljama mreže SELDI vidljivo je **pogoršanje procjene širenja korupcije među sucima** od 2001.

Ovlast sudstva u regiji da provodi antikorupcijsko zakonodavstvo, posebice u pogledu političke korupcije, oslabljena je kumulativnim učinkom brojnih problema:

- ustavnim pitanjima, prvenstveno povezanim s ponovnom uspostavom ravnoteže između neovisnosti i odgovornosti sudstva
- složenosti kaznenog progona počinitelja kaznenih djela korupcije, posebice na političkoj razini
- općenito nedostatnih kapaciteta i povezanih problema niske stručnosti, pretjeranog radnog opterećenja te posljedičnih zaostalih predmeta, upravljanja predmetima, sredstava itd.

Važan nalaz ovog kruga praćenja korupcije mreže SELDI, koji je mjerodavan za ulogu sudova u borbi protiv korupcije, jest **nedostatak mehanizama povratnih informacija** koji javnosti i donositeljima politika omogućuje da ocijene i integritet sudstva i njegovu učinkovitost u primjeni antikorupcijskih kaznenih zakona. Ni u jednoj od zemalja JIE-e ne postoji pouzdan, sustavan i sveobuhvatan mehanizam prikupljanja, obrade i javnog objavljivanja statistika o radu sudova i tužiteljstva, posebice u korupcijskim predmetima.

## Korupcija i gospodarstvo

Izvanredna značajna uključenost vlada u jugoistočnoj Europi u gospodarstvo stvara brojne točke mogućeg sukoba između javnih ustanova i poduzeća što, zauzvrat, stvara rizik od korupcije. Rizik je posebice visok u području privatizacije te javne nabave i koncesija teških industrija kao što su energetska i zdravstvena. Nadalje, prevelik broj propisa za poduzeća – koji se

uglavnom odnose na postupke registriranja, licenciranja i stjecanja dozvola – i dalje stvara različite prepreke sudionicima na tržištu te više troškove poslovanja iako su neke zemlje u regiji postigle znatan napredak u rješavanju prepreka u poslovanju. No, uprave za nadzor i usklađenost i dalje narušavaju tržišta pretjeranim usredotočenjem na kontrolu i kazne, a bez primjerene ocjene rizika te analize troškova i koristi. To je posebice istinito za carinske uprave diljem regije koje se još uvijek smatraju učinkovitim sredstvom pritiska na poduzeća. To poduzetnike ili odvraća u neformalni sektor ili ih prisiljava da pribjegu mitu. To u negativnoj spirali opravdava nove propise i upravne prepreke.

Različite okolnosti koje stvaraju povod za korupciju u interakcijama poduzeća i javnih službenika ilustriraju poteškoću s kojom se susreću antikorupcijske politike koje u obzir trebaju uzeti mnoštvo čimbenika. Kada ih iniciraju poduzeća, korumpirane prakse mogu se podijeliti u dvije glavne kategorije – izbjegavanje dodatnih troškova i stjecanje nepoštene prednosti. U prvu skupinu ubrajaju se provizije uvjetovane lošim ili pretjeranim propisima, pojedinačnom ili institucionalnom nestručnošću itd. U drugoj su skupini različite vrste prijevare – utaja poreza, utaja PDV-a, krijumčarenje, neusklađenost sa zdravstvenim i sigurnosnim standardima itd.

U jugoistočnoj Europi javna je nabava jedan od glavnih kanala kojima korupcija utječe na gospodarstvo. Rizik od korupcije u ovom je području povezan s brojnim nedostacima: nedovoljno transparentnim postupcima, velikim udjelom nekonkurentnih postupaka, slabim nadzorom i neučinkovitim sudskim revizijama (imajući u vidu korupciju sudstva) itd. Iako je prije više od desetljeća istraživanje mreže SELDI otkrilo da su zemlje u regiji napredovale u jačanju zakonodavnog okvira procesa i njegovu ujednačavanju s pravnom stečevinom EU-a, javna nabava i dalje je među najslabijim aspektima javnog upravljanja. Činjenice se nisu mnogo promijenile jer korumpirani političari i poduzeća s dobrim vezama zaobilaze dobro zamišljena pravila. Institucionalna fragmentacija ne dopušta učinkovitu primjenu pravila javne nabave.

## Civilno društvo u borbi protiv korupcije

Nevladine organizacije u jugoistočnoj Europi ubrajaju se među najvažnije pokretačke snage u borbi protiv korupcije. One su, međutim, još jako daleko od provođenja zahtjeva javnosti u učinkovito zagovaranje politika kao i od pružanja otpora korupciji zbog brojnih

nedostataka. Njihov doprinos uvelike ovisi o sposobnosti da **vrše nadzor, ali i da potiču vladu** na antikorupcijske reforme. Ipak, nedostaju formalni mehanizmi kojima bi nacionalne vlade u regiji angažirale civilno društvo. Također nedostaju administrativni kapaciteti, jasna vizija i razumijevanje potencijala organizacija civilnog društva u polju borbe protiv korupcije. Pretjerano oslanjanje na međunarodne, uključujući europske, financije te nepostojanje nacionalnih politika za poticanje aktivnih građanskih sektora u jugoistočnoj Europi kompromitiraju održiv učinak lokalnih prvaka u borbi protiv korupcije.

Iako su nevladine organizacije u području obuhvaćenom mrežom SELDI uspjele osnovati neka međunarodna javno-privatna partnerstva, istovremeno nisu uspjele razviti učinkovita partnerstva i s ustanovama nacionalne vlade. Ključ stvaranja uspješnog partnerstva leži u sposobnosti sklapanja različitih odnosa s državnim ustanovama, i komplementarnih i suprotstavljenih. Primjerice, jedan način usklađivanja suradnje s obavljanjem funkcije čuvara jest unaprjeđenje stručnosti nevladine organizacije koja prati korupciju i antikorupcijske politike.

Učinkovitost nevladinih organizacija u rješavanju pitanja dobrog javnog upravljanja u zemljama mreže SELDI u velikoj mjeri ovisi o njihovoj sposobnosti održavanja vlastitog upravljanja učinkovitim. Rizik od zarobljavanja nevladinih organizacija od strane pojedinačnih interesa i s pomoću korumpiranih javnih službenika ili izabраниh političara potječe od mogućnosti iskorištavanja niza ranjivosti neprofitnog sektora u regiji:

- izostanka obaveznih procedura za osiguravanje transparentnost
- neučinkovite kontrole usklađenosti s financijskim regulativama
- nepostojanja kulture revizije
- niske razine samoregulacije i koordinacije.

Suprotstavljanje zarobljavanju civilnog društva, kao dio nacionalnih nastojanja u borbi protiv korupcije u jugoistočnoj Europi, trebalo bi biti na samom vrhu dnevnog reda reformi u regiji.

## Međunarodna suradnja

Međunarodne ustanove i inozemne partnerske zemlje imaju važnu ulogu u napretku u borbi protiv korupcije u jugoistočnoj Europi. Imajući na umu

iznimnu pristranost u domaćoj politici, međunarodne obveze olakšavaju donošenje reformskih politika koje bi nacionalni političari inače možda odbacili. Izvješća Europske komisije o napretku, EU-ovo financiranje reformi i twinninga predstavljaju ključne međunarodne utjecaje na nacionalne planove borbe protiv korupcije u većini zemalja JIE-e. Iako je borba protiv korupcije jedan od glavnih elemenata izvješća Europske komisije o napretku, lokalno ih se doživljava vrlo različito – zemlje s jasnijim izgledima pristupanja EU na nalaze izvješća obraćaju mnogo više pozornosti dok, primjerice, u Turskoj izvješćima općenito pridaju manje pažnje.

Međunarodna uključenost, međutim, sa sobom je donijela i rizik nerealnih očekivanja brzih rješenja koja bi zauzvrat mogla potaknuti donošenje površnih i *ad hoc* mjera. Uvjetovanost i većina poticaja primarno utječu na agencije izvršne razine vlasti, dok sudstvo, parlamenti i ostale obuhvaćene javne i privatne ustanove nisu dostatno uključeni. Održivost međunarodnog angažmana ostvaruje se uz širenje lepeze lokalnih dionika kako bi se uključili civilno društvo, mediji, stručna udruženja, sindikati itd. To proširenje domaćih sugovornika međunarodnih partnera utjecalo je na osnaživanje izdvojenih reformatorskih političara ili političkih skupina kao i različitih nevladinih dionika te je potaknulo javno zahtijevanje reformi. Nastavljanje i razvijanje ovakva angažmana bilo bi ključno za utjecaj EU-a u regiji. Kako bi do toga došlo, veza vlade s Bruxellesom nije dostatna. Civilno društvo treba podržati i potvrditi angažman međunarodnih partnera, reformatorskih političara i stranaka u obliku trilateralne suradnje.

## KLJUČNE PREPORUKE

Iskustvo zemalja mreže SELDI u bavljenju korupcijom od 2011. pokazuje da bi rješavanje izazova korupcije u regiji zahtijevalo ulaganje stalnih napora na više fronti te uključenost svih lokalnih i međunarodnih dionika tijekom dugog vremenskog razdoblja. Trenutačno izvješće navodi brojne preporuke o tome kako dalje napredovati u ograničavanju korupcije. Među tim preporukama zemlje u regiji i na razini Europe trebale bi odrediti tri prioriteta ključna područja kako bi se postigao srednjoročni napredak:

**Učinkovit kazneni progon korumpiranih visokorangiranih političara i viših državnih službenika jedini**

je način slanja snažne i neposredne poruke o tome da se korupcija neće tolerirati. Privođenje nepoštenih političara pravdi pokazalo se vrlo učinkovitim u jačanju antikorupcijskih mjera u, primjerice, Hrvatskoj i Sloveniji. Uspjeh u tom smjeru zahtijevao bi međunarodnu potporu, uključujući participaciju tijela za provedbu zakona država članica EU-a.

Na nacionalnoj i regionalnoj razini treba uvesti **neovisan mehanizam za praćenje korupcije i borbe protiv korupcije** kako bi pružio jasne podatke i analize te integrirao i **dijagnostiku korupcije i ocjenu politike o borbi protiv korupcije**. Mehanizam bi trebale provoditi nacionalne i/ili regionalne organizacije i mreže civilnog društva te bi on trebao biti neovisan o izravnom financiranju nacionalne vlade. Trebao bi služiti kao instrument otvaranja upravnih podataka i poboljšanja pristupa javnosti informacijama. Podatci koji omogućuju praćenje javne nabave, koncesija, provedbi zakonodavstva o sukobu interesa, državne pomoći, proračunskih transfera, godišnjih izvješća o radu agencija za nadzor i usklađenost itd. trebali bi biti javno dostupni u obliku baze podataka, a time će se omogućiti analize velikih podataka te uporaba alata za praćenje.

**Prioritet u rješavanju trebali bi imati kritični sektori s visokim rizicima od korupcije i zauzeća države, poput energetskog sektora.** Ostale prioritetne mjere uključuju:

- povećanje konkurencije u javnoj nabavi
- poboljšanje korporativnog upravljanja državnim poduzećima
- transparentno vođenje velikih investicijskih projekata
- povećanje odgovornosti i neovisnosti regulatornih tijela za energiju.

**Međunarodni partneri, a prvenstveno Europska komisija, trebali bi izravno angažirati organizacije civilnog društva u regiji.** Ovo je ključno zbog nekoliko razloga: a) da bi međunarodno podržane reforme postale održive, mora ih prihvatiti šira javnost; da bi se to ostvarilo, neophodne su organizacije civilnog društva; b) uključivanje organizacija civilnog društva na način da se jamči da odgovornost vlade prema donatorima i međunarodnim organizacijama nema prednost pred odgovornošću prema lokalnim jedinicama; c) učinkovitost međunarodne pomoći poboljšala bi se korištenjem vještina praćenja i analize te sposobnostima zagovaranja organizacija civilnog društva; d) izravni angažman imao bi dodanu prednost jer bi klijentelističke mreže nereformiranih i



često korumpiranih javnih uprava spriječio da zarobe civilno društvo.

## POSEBNE PREPORUKE

### Politike i zakonodavstvo

- Definirajte nacionalna nastojanja u borbi protiv korupcije u smislu politika povezanih s mjerljivim ciljevima i mjerilima umjesto s jednostavnim mjerama ili zakonodavstvom. To bi zahtijevalo postavljanje specifičnih ciljeva koje valja postići te biranje odgovarajućih metoda intervencije. Ti bi ciljevi trebali biti mjerljivi u mjeri u kojoj je to izvedivo.
- Prioritizirajte određene sektore, vrste korupcije i metode intervencije te isprobajte različite pristupe prije nego što objavite potpune mjere. Korupcija je širok pojam povezan s različitim i promjenjivim vrstama prijevare koje se ne mogu istodobno učinkovito rješavati.
- Politike trebaju bit informirane. Dok su određena nastojanja uložena u nacionalne strategije za borbu protiv korupcije kako bi se procijenili prethodni rezultati, nijedna od zemalja mreže SELDI nema održiv mehanizam ocjenjivanja antikorupcijskih politika. To, u najmanju ruku, uključuje: a) pouzdanu i redovitu statistiku o nastojanjima koja se ulažu u borbu protiv korupcije (istrage, kazneni progoni, upravne mjere itd.); b) redovito praćenje i analiziranje raširenosti i oblika korupcije u različitim javnim sektorima. Praćenje bi trebalo biti neovisno i/ili se vršiti izvan zemlje, uključivati civilno društvo i objedinjavati osnovne sastavnice sustava za praćenje neupravne korupcije poput sustava za praćenje korupcije (CMS) mreže SELDI.

### Ustanove za borbu protiv korupcije i provođenje zakona

- Uvedite mehanizam povratnih informacija za provođenje antikorupcijskih politika. Mehanizam se može temeljiti na inovativnim novim instrumentima koji su zadnjih godina postali dostupniji poput *Integriranog kompleta alata za praćenje provođenja antikorupcijskih mjera* (engl. *Integrated Anticorruption Enforcement Monitoring Toolkit*) koji su razvili Centar za demokratske studije i Sveučilište u Trentu. Donositeljima politika omogućuje da procijene rizik od korupcije u danoj vladinoj ustanovi te učinak odgovarajuće antikorupcijske politike, utvrđujući

rješenja najvišeg učinka.

- Institucionalni kapacitet mjerodavnih vladinih tijela – posebice specijalizirane agencije za borbu protiv korupcije i agencija za nadzor kao što su nacionalne revizorske ustanove – uključujući njihove proračune, prostore i osoblje treba uskladiti s ovlastima danima tim ustanovama. Alternativno, trebali bi osmisliti sažetije godišnje ili polugodišnje programe koji prioritiziraju intervencije.
- Također bi trebalo ojačati institucionalni utjecaj nacionalnih revizorskih ustanova, uključujući ovlasti nametanja strožih sankcija. Subjekti koji se revidiraju i nacionalni parlamenti trebali bi biti dužni reagirati na izvješća revizorskih ustanova. Nacionalne revizorske ustanove trebalo bi ovlastiti i za reviziju upravljanja sredstvima EU-a kada njima upravlja nacionalna vlada. Budući da je rad na reviziji radne učinkovitosti u vrlo ranoj fazi, trebalo bi razviti kapacitete za provođenje više ovakvih revizija.
- Potrebne su dodatne mjere kako bi se osiguralo da se zapošljavanje u državnoj službi temelji na zaslugama i da ne ovisi o pripadnosti političkoj stranci.
- Rad na borbi protiv korupcije treba ravnomjernije raspodijeliti među vladinim tijelima. Proširivanje raspona zakonske inkriminacije trebalo bi ujednačiti povećanim kapacitetom u svim javnim tijelima za rješavanje problema korupcije u svojim redovima s pomoću upravnih alata umjesto prenošenja odgovornosti na policiju i tužiteljstvo. Opća tijela javne vlasti trebala bi djelovati kao vratari kaznenopravnog sustava te rješavati onoliko predmeta korupcije koliko im to dopuštaju njihove upravne ovlasti. To u najmanju ruku uključuje osmišljavanje učinkovitih mehanizama za upravljanje prigovorima.
- Oduzimanje nelegalno stečene imovine u slučajevima korupcije jest alat u borbi protiv korupcije čija bi se primjena trebala proširiti. I dok posebnu pozornost treba posvetiti ujednačavanju prava optužene osobe s interesima javnog dobra – posebice u okruženju često korumpirane javne uprave – oduzimanje bogatstva nakon čega slijedi kaznena presuda važan je alat odvratanja koji se u JIE još uvijek premalo koristi.

### Sudstvo

- Zemlje u kojima se većina sudskih samoupravnih tijela ne bira među sucima trebale bi donijeti reforme kojima se povećava njihovo pravo glasa. Zemlje u kojima to nije tako trebale bi donijeti načelo „jedan sudac – jedan glas“.

- Pobrinite se da izbor sudske kvote bude čim reprezentativniji, uključujući suce s prvostupajskih sudova. Pozorno revidirajte i, ako je to potrebno, ponovno razmislite o usklađenosti položaja predsjednika suda s članstvom u sudskim samoupravnim tijelima.
- U zemljama u kojima isto tijelo upravlja i tužiteljstvom i sudovima, dva kolegija – za tužitelje i za suce – trebaju biti razdvojena unutar tog tijela. U te bi kolegije bili izabrani samo tužitelji, odnosno suci.
- U sudskim samoupravnim tijelima ukinite ulogu vladinih ministara (uobičajeno za pravosuđe) ili je smanjite na najmanju razinu, posebice kad je riječ o odlukama o stegovnim postupcima.
- Suci bi trebali imati prioritet u mehanizmu potvrđivanja izjava o imovini.
- Trebalo bi osnažiti neovisnost i kapacitet sudskih inspektorata kako bi im se omogućilo da pojačaju nadzor.
- Uvedite mehanizme povratnih informacija za provođenje antikorupcijskih politika u odnosu na sudce. Tih je mehanizama u zemljama mreže SELDI iznimno malo ili ih uopće nema; njihovo nepostojanje sabotira represivni aspekt antikorupcijskih politika te dodatne inkriminacije korupcije čini beskorisnima. Moguća najbolja praksa koju treba preslikati – iako još nije dovoljno razvijena – jest kosovska Platforma za antikorupcijsku statistiku, koju je osmislila nevladina organizacija. Takav bi mehanizam trebao obuhvaćati redovite informacije o: disciplinarnim i upravnim te kaznenim mjerama u javnim službama i sudstvu, različitim aspektima kaznenog progona, uključujući optužnicu i presudu/oslobađajuću presudu, kazne za različite vrste korupcijskih prekršaja.
- aktivom i pasivom svih javnih financija, uključujući poduzeća u državnom vlasništvu, kako bi ublažile financijske rizike i poboljšale kredibilitet vlade u upravljanju javnim financijama. Poduzeća u vlasništvu države trebala bi udovoljavati strogim zahtjevima upravljanja i izvješćivanja (npr. OECD-ovim pravilima), slično javnim trgovačkim poduzećima. Ta bi poduzeća trebala objavljivati kvartalna izvješća na internetu.
- Uvedite odgovornost i sankcije za naručitelje koji kontinuirano ne podnose izvješća o javnoj nabavi, izvješća o kršenju antikorupcijskih propisa ili koji podnesu netočne ili nepotpune podatke.
- Definirajte pravni i institucionalni okvir za upravljanje ugovorima sklopljenim u javno-privatnom partnerstvu te za upravljanje njima.
- Poboljšajte nadzor nad nabavom velikih javnih naručitelja (poduzeća u vlasništvu države i komunalna društva) kako biste maksimirali učinkovitost i smanjili nepravilnosti.
- Donesite politike koje će smanjiti udio nadmetanja javne nabave u kojima sudjeluje samo jedan ponuđač i potaknute konkurentnost. U internetskom formatu nalik bazi podataka koja se može pretraživati objavite potpunu dokumentaciju o prethodnim obavijestima o javnoj nabavi, obavijestima o javnoj nabavi, obavijestima, ponudama, ugovorima i bilo kojim dodatcima postupcima.
- Zemlje kandidatkinje za pristup EU koje nemaju decentralizirane sustave provedbe sredstava iz EU fondova trebale bi uvesti takav sustav kako bi pružile primjeren pravni i upravni okvir za prijenos odgovornosti za provedbu programa financiranih sredstvima EU-a. Nadzor bi trebao ostati centraliziran i neovisan o provedbenim tijelima.
- U ocjeni ugovora za javnu nabavu uvedite koncept vrijednosti za novac.

### Korupcija i gospodarstvo

- Politike državnih potpora svedite na minimum i svake ih godine revidirajte jer one sadrže znatnu opasnost od korupcije. Unaprijed uvedite strogo provođenje pravila EU-a o državnoj pomoći te razvijte kapacitete nacionalnih neovisnih regulatora državnih potpora kako bi se pravila poštivala.
- Unaprijedite provođenje zakona protiv monopola kako biste promovirali slobodna poduzeća i konkurentnost. Posebnu pozornost obratite i redovito revidirajte koncentracije u sektorima koji su opterećeni brojnim propisima i suočeni s licenciranjem i drugim ograničenjima, stvarajući tako rizik od dosluha među većim ponuđačima i političarima.
- Zemlje koje to nisu učinile trebaju utvrditi institucionalne poveznice između upravljanja

### Civilno društvo

- Poboljšajte kapacitet organizacija civilnog društva kako bi što bolje provodile nadzor i izvještavale o korupciji i antikorupciji, uključujući sposobnost prikupljanja i objedinjavanja primarnih informacija o radu vladinih ustanova, vještine mjerenja stvarnog širenja korupcije te, u analizi podataka, evaluaciju institucija i pisanje izvještaja.
- Zakonodavstvo o sukobu interesa trebalo bi uključivati neprofitne ustanove, posebice kad se financiraju iz programa kojima upravlja vlada, kao što su nacionalni proračun, sredstva EU-a itd.
- Pravila za javno financiranje i propisi o javnom financiranju neprofitnih organizacija koje dolazi

kako od središnjih, tako i od lokalnih vlasti, trebaju biti jasni i transparentni. Primanje javnih sredstava trebalo bi dozvoliti samo nevladinim organizacijama registriranim u svrhu javnog dobra te bi one trebale zadovoljavati strože zahtjeve izvještavanja, odnosno objave.

- Europska unija i ostale donatorske agencije trebale bi razmisliti o većem udjelu sredstava za dobre programe upravljanja koji se provode u suradnji između organizacija civilnog društva i javnih ustanova. Ti bi programi trebali navoditi izričite zahtjeve protiv zarobljavanja nevladinih organizacija od strane partikularnih interesa. Valja napomenuti da postizanje učinka zahtijeva dugoročan (desetogodišnji i više) stalni angažman.
- Sektor civilnog društva treba pridonijeti vlastitom samouređenju. To minimalno uključuje donošenje kodeksa ponašanja sa standardima kojima valja težiti. Također treba pronaći više i bolje načine organiziranja interesnih koalicija.
- Nevladine organizacije trebaju bolje razumjeti potrebu za transparentnošću i odgovornošću. To uključuje redovitu reviziju, objavljivanje financijskih izvješća, jasne i transparentne korporativne postupke upravljanja te mjere protiv zarobljavanja od strane posjedinačnih interesa.
- Zemljama JIE-a koje nisu članice EU-a savjetuje se da uče iz skupa znanja i stručnosti sadržanih u Izvješću EU-a o borbi protiv korupcije. To bi im omogućilo vrijedne uvide u pogledu ocjene širenja korupcije i osmišljavanja antikorupcijskih politika.

## Međunarodna suradnja

- Programi inozemne pomoći trebaju bolje odražavati nalaze međunarodnih i nezavisnih domaćih mjerenja. Da bi se to postiglo, programi pomoći trebaju biti osjetljiviji i fleksibilniji, s kraćim vremenskim razmakom između osmišljavanja i isporuke.
- Međunarodna pomoć nacionalnim vlastima u borbi protiv korupcije trebala bi predvidjeti snažniju ulogu civilnog društva. To podrazumijeva uključenost nevladinih organizacija kao provedbenih partnera, nadzornika i resursnih organizacija, posebice u ocjenjivanju učinka projekata pomoći.
- Učinkovitost pomoći treba periodički ocijeniti metodama procjene učinka. To bi, uz pružanje mjere vrijednosti za novac, posebice kad su uključena javna sredstva, uspješnim programima omogućilo kontinuitet, dok bi se neuspješni programi prekinuli. Ključno je da ta procjena bude neovisna te da se koristi stručnošću organizacija civilnog društva.
- Pomoć treba potaknuti međudržavne programe o zajedničkim pitanjima kao što je prekogranični kriminal. Diljem regije trebalo bi se iskoristiti bugarsko iskustvo javno-privatne suradnje u analiziranju poveznica organiziranog kriminala i korupcije.
- Pripremu i nalaze redovitih izvješća Europske komisije trebalo bi bolje uključiti u donošenje lokalnih politika, više se oslanjajući na lokalno civilno društvo i poslovnu zajednicu.

## KOSOVO

### PËRMBLEDHJA EKZEKUTIVE

Korrupsion në Evropën Juglindore ka qenë në media, në fokusin e debatit publik, dhe në agjendën e politikë-bërjes e institucioneve kombëtare dhe ndërkombëtare aq shumë dhe për aq gjatë sa që analiza e tij nuk ka nevojë të arsyetohet. Pikërisht për shkak që është dëshmuar të jetë një problem i vështirë, qasje të reja për kuptimin e tij – rrjedhimisht reduktimin – janë të domosdoshme. Perspektiva e hyrjes në BE për shtetet e rajonit – edhe pse e largët – japin një kornizë që bënë të mundshme veprimin, po është akterët lokal, dhe në veçanti shoqëria civile që mundet të sjellë progres të qëndrueshëm në anti-korrupsion. Iniciative për Zhvillim dhe Integritet e Evropës Juglindore (SELDI) ka vënë si prioritet një diagnozë të thellë të korrupsionit dhe boshllëkut të qeverisjes në regjion, si parakusht për avokim në **politika anti-korrupsion të bazuara në njohuri**. Ky raport i SELDI hynë në kornizën e zhvillimit dhe implementimit të politikave dhe infrastrukturës rajonale anti-korrupsion siç pasqyrohet nga Shtylla Qeverisëse e Strategjisë SEE2020 të udhëhequr nga Iniciativa Rajonale për Anti-korrupsion.

Duke qenë rezultat i bashkëpunimit brenda SELDI, ky raport është diqka e re si në metodë dhe në proces. Është rezultat i aplikimit të sistemit të zhvilluar nga SELDI në fillim të viteve 2000 për matjen e **korrupsionit dhe anti-korrupsionit**, i qepur për ambientin shoqëror dhe institucional të Evropës Juglindore.<sup>1</sup> Qasja e anketimit e bazuar në anketë të “viktimizimit” të përdorur nga *Sistemi i Monitorimit të Korrupsionit* që përdoret në raport jap një vlerësim bazuar në të dhëna të progresit anti-korrupsion në regjion nga 2001. Raundi i vlerësimit 2013-2014 – të gjeturat e të cilit paraqitën në këtë raport – është një rast i rrallë në praktikën e monitorimit ndërkombëtar ku **problemet e njëjta në të njëjtin regjion analizohen prapë mbas më shumë se një dekadë**. Vlerësimi ka krahasuar legjislacionin kombëtar dhe praktikën institucionale në një numër të fushave kritike të përpjekjeve anti-korrupsion: korniza ligjore dhe rregulluese, parakushtet institucionale, korrupsioni në ekonomi, roli i shoqërisë civile dhe bashkëpunimi ndërkombëtar. Ky raport jep një perspektivë të shoqërisë civile dhe vlerësim të politikave përderisa të

gjeturat dhe rekomandimet e tij janë bërë me këshillim të institucioneve regjionale dhe kombëtare.

Vlerësimi i aspekteve kombëtare, institucionale dhe ligjore, që bënë të mundur ekzistencën e korrupsionit nuk është menduar si plotësi e rregullave të praktikave në të gjitha shtetet por thekson disa nga çështjet me prioritet të cilat janë relevante për gjetjen e shkaktarëve të përbashkët të korrupsionit në Evropën Juglindore (EJL). Ky raport ofron një **model për raportimin e progresit anti-korrupsion** nga shoqëria civile në EJL.

## GJETJET KRYESORE

### Vlerësimi i përgjithshëm

Përkundër disa arritjeve – kryesisht në stabilitetin e institucioneve demokratike, adoptimin e ligjeve në fushat kyçe të anti-korrupsionit, uljen në ryshfet, dhe rritjen e jo-tolerancës publike ndaj korrupsionit – reformat e qeverisjes dhe anti-korrupsion nuk janë konsoliduar, korrupsioni tek politikanët e zgjedhur dhe gjyqtarët është në rritje si dhe zbatimi i legjislaturës anti-korrupsion është jo i rregullt. Politikant anti-korrupsion dhe institucionet në rajon do të përfitojnë shumë nga adoptimi i anketave bazuar në “viktimizim”, të cilat janë të sakta dhe të rregullta, për të matur korrupsionin dhe nivelin e progresit në qeverisje të mirë, ngjashëm me Euro-barometrin për anti-korrupsion, UNODC EJL monitorimin e korrupsionit dhe krimin të organizuar, si dhe Sistemin e Monitorimit të Korrupsionit që përdoret në këtë raport.

### Përhapja e korrupsionit në Evropën Juglindore

Përvoja me korrupsionin – me fjalë të tjera, përfshirja e publikut në afera të korrupsionit – në EJL është shumë e lartë. Edhe në Turqi dhe Kroaci, ku niveli i korrupsionit administrativ është më i ulët në rajon, rreth 8-9% e popullsisë raporton të kenë dhënë ryshfet në vitin e fundit. Nivele të tilla të përvojës me korrupsionin janë përtej niveleve mesatare të regjistruara nga sondazhet e Euro-barometrit në BE.<sup>2</sup> Kjo tregon se korrupsioni

<sup>1</sup> (SELDI, 2002).

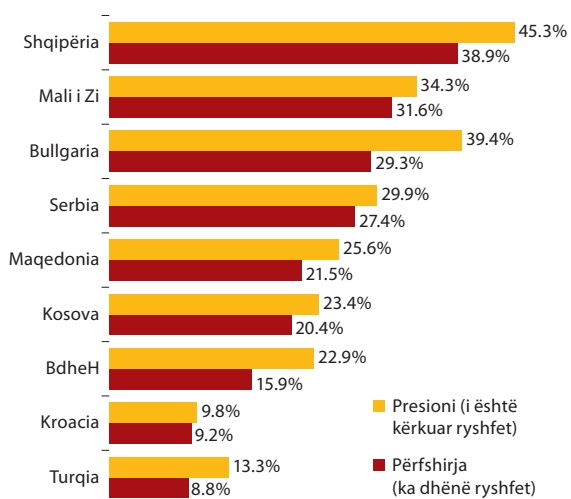
<sup>2</sup> Treguesit për përvojën me korrupsionin të përdorur në anketat e Euro-barometrit kanë përmbytur pak më ndryshe pasi i referohen eksperiencës së drejtpërdrejt dhe rasteve kur përgjegjësit kanë parë raste të ryshfetit. Për më shumë detaje, referohu në (TNS Opinion & Social, Shkurt 2014).

administrativ është një **fenomen i gjerë** dhe nuk mund të kufizohet vetëm në rastet e zyrtarëve të korruptuar.

Dallime të dukshme në mes të shteteve me histori të njëjtë tregojnë se rrugë të ndryshme të zhvillimit shoqëror, ekonomik, dhe institucional, japin rezultate të ndryshme. Në përgjithësi, përveç Bullgarisë, dallimet nga diagnostikat SMK (CMS) të rundeve të mëhershme të SELDI (2001 dhe 2002) për të gjitha shtetet është pozitiv; progresi, sidoqoftë, ka qenë i ngadaltë dhe i pabarabartë.

### Presioni dhe përfshirja në korrupsion

(% e popullatës 18+ të cilëve u është kërkuar dhe kanë dhënë ryshfet (para, favore, apo dhuratë) në vitin e fundit)

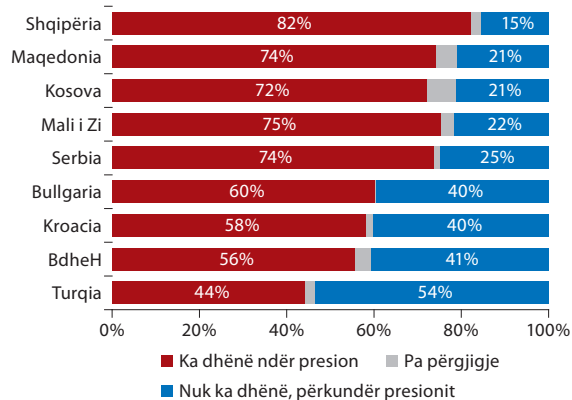


Burimi: SELDI/CSD Sistemi i Monitorimit të Korrupsionit, 2014.

Presioni për korrupsion nga zyrtarët ka qenë faktori kryesor që statistikisht ndikon në nivelin e përfshirjes. Shumica e shteteve ku përfshirja dhe presioni janë të larta karakterizohen me **kundërshtim** të dobët ndaj presionit për korrupsion (shumica e të anketuarve të cilëve u është kërkuar ryshfet kanë dhënë). Edhe pse kundërshtimi nuk mund të konsiderohet faktor kyç për të ulur korrupsionin, reflekton qëndrimin shoqëror për integritet dhe është në masë të madhe rezultat i përpjekjeve të shoqërisë civile dhe autoriteteve për ngritjen e vetëdijes për anti-korrupsion. Në këtë aspekt roli i shoqërisë civile është kyç pasi është në pozitë për të vlerësuar rezultatet dhe të udhëheq presionin publik për ndryshim.

### Kundërshtimi ndaj presionit për korrupsion

(ndër ata që kanë pasur presion për korrupsion)



Burimi: SELDI/CSD Sistemi i Monitorimit të Korrupsionit, 2014.

## Politikat dhe legjislacioni anti-korrupsion

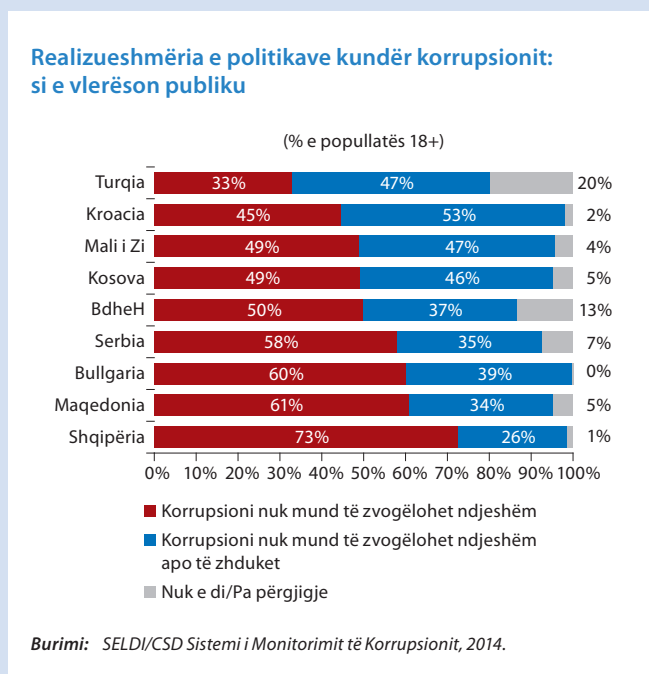
Në përgjithësi, shtetet e SELDI kanë adoptuar pjesën më të mirë – me më rëndësi qasjen dhe logjikën – e standardeve ndërkombëtare të anti-korrupsionit në legjislaturën e tyre. Kualiteti i implementimit, sidoqoftë, vazhdon të jetë problem. Ndryshime të shpeshta dhe jo konsistence të ligjeve kanë rezultuar në kompleksitet ligjor dhe procedural si dhe interpretime kontradiktore nga gjykatat.

Të gjitha shtetet kanë adoptuar ndonjë dokument strategjik që shpjegon qasjen e tyre për ta luftuar korrupsionin. Edhe pse ka dallime në mes shteteve, implementimi i këtyre dokumenteve është i kufizuar nga resurset jo të mjaftueshme dhe përkushtimi i dobët i zyrtarëve të lartë shtetëror. Një problem tjetër në tërë regjionin ka qenë krijimi i strategjisë në një mënyrë që adreson të gjitha aspektet e korrupsionit. Në vend të vënies së prioriteteve, këto dokumente janë bërë gjithë përfshirëse; sa i përket korrupsionit, “strategji” duket se nënkupton thjeshtë “shteruese”.

Sa i përket prioriteteve të politikave, kanë ndodhur dy ndryshime të rëndësishme në qasjen ndaj anti-korrupsionit – bartje e vëmendjes nga ryshfeti i vogël (si ai i policisë së trafikut apo mjekëve publik) në atë të madh (të anëtarëve të parlamentit apo ministrave) si dhe abuzime më të gjëra të posteve publike. Arritja e efektit në ndëshkimin e korrupsionit mbetet e limituar, në rastin më të mirë. Sfidat kryesore të politikave anti-korrupsion

në regjion është implementimi, dhe të përcillen ndryshimet në format e korrupsionit duke mbajtur stabilitet rregullues dhe duke evituar mbi ngarkesën e gjykatave me ndryshime të shpeshta.

Gjetjet e SELDI theksojnë **rëndësinë e përkrahjes publike për suksesin e politikave anti-korrupsion**. Besimi i publikut në qeverinë dhe efektiviteti politikave bashkohen në një rreth virtuoze: nivel më i madh i optimizmit realizueshmërisë të masave anti-korrupsion ndërlidhet me nivel më të ulët të korrupsionit. Në të kundërtën, nivel më i madh i pesimizmit të suksesit të masave anti-korrupsion ndërlidhet me nivel më të lartë të korrupsionit



## Praktikat institucionale dhe zbatim i ligjit

Në Evropën Juglindore, theksi i mëhershëm ka qenë harmonizimi i legjislaturës kombëtare me standarde ndërkombëtare në anti-korrupsion, por gradualisht theksi po kalohet tek zbatim i ligjit ndër presion të vazhdueshëm të BE dhe shoqërisë civile lokale.

Një mangësi e shpeshtë tek të gjitha shtetet partnere të SELDI është autonomia e komprometuar e trupave mbikëqyrës dhe të përforcimit të ligjit. Një shkallë e interferencës nga politikanët e zgjedhur – anëtarët e parlamentit dhe ministrat e qeverisë – në punën e shërbimit civil është normë. Për më tepër, asnjë nga shtetet anëtare të SELDI nuk ka një mekanizëm të menaxhimit të ankesave funksional në administratë

publike. Shumica kanë themeluar një trup anti-korrupsion që pritet të pranojë ankesa nga publiku. Një mangësi tjetër e përbashkët është mungesa e të dhënave të cilat janë të besueshme dhe të përdorshme rreth punës së institucioneve qeveritare, sidomos ato që lidhen me anti-korrupsionin. Informatat dhe statistikat ose nuk mblidhen, ose nuk janë të përdorshme, ose mblidhen aq rëndom sa nuk mundësojnë monitorim dhe analizë.

Një prej çështjeve kyç lidhur me krijimin e institucioneve të specializuara kombëtare për anti-korrupsion në rajon është **si të kombinojmë funksione parandaluese dhe represive**. Në rastin tipik, shtetet e SELDI janë munduar që ti shtojnë **institucionet anti-korrupsion** ti bëjnë të dyja, edhe pse represioni mbërthen një pjesë të vogël të punës së tyre. Shumica e punës së këtyre trupave lidhet me ndonjë formë të mbikëqyrjes dhe kontrollit, kryesisht e strategjisë kombëtare anti-korrupsion dhe ka pak dëshmi që ato kanë pasur ndonjë ndikim të rëndësishëm në agjendën legjislativ të qeverisë. Krijimi dhe funksionimi i këtyre institucioneve është rënduar nga këto vështirësi:

- Sado lartë që korrupsioni të ketë qenë në agjendën qeveritare, nuk ka qenë e realizueshme krijimi i institucioneve me fuqi të jashtëzakonshme që disi do ta prekte bilancin e krijuar të fuqive. Kompromisi tipik është që këto agjensione të lidhen me ekzekutivin dhe të kenë rol mbikëqyrës që, sidoqoftë, janë të limituar të kërkojnë agjensione tjera qeveritare të raportojnë në zbatimin e punëve anti-korrupsion me të cilat janë ngarkuar.
- Këto agjensione është dashur të jenë të kujdesshme mos të shkelin në përgjegjësitë e trupave tjerë mbikëqyrës (p.sh. institucionet kombëtare të auditimit ose agjensione të zbatimit të ligjit).
- Shumica kanë marr kapacitet të limituar institucional – buxhet, personel – edhe pse ka qëllime të deklaruar në kundërtën.

Sa i përket legjislaturës, parlamentet në regjion nuk vlerësohen lartë në besimin publik dhe ky pozicionim i paevitueshëm nuk është pa arsye. Kodet e sjelljes etike janë të rralla dhe të pa zbatuara; rregullimet e lobimit janë edhe më të rralla; vetëm rishtazi procedurat për heqjen e imunitetit nga prokuroria janë krijuar, megjithëse jo në plotësi; kurdo që ekziston një trup anti-korrupsion në parlament, kjo ndodh kryesisht për të mbikëqyr ndonjë agjension tjetër, e jo për tu marr me korrupsionin e anëtarëve. Një çështje e rëndësishme së veçantë në shtetet e SELDI është financimi i partive politike dhe kampanjave elektorale. Shumica e shteteve

kanë zbatuar rekomandimet GRECO në financimin e partive por një numër i problemeve – si donacionet anonime, blerja e votës (ose ryshfeti për votë), kapaciteti jo adekuat për të audituar financat e partive dhe fuqia e limituar për zbatimin e sanksioneve, etj. – vazhdojnë.

Gjendja e tanishme e shërbimit civil korrespondon me natyrën e tranzicionit të shteteve të EJL si dhe mungesa e traditave ligjore dhe institucionale së bashku me mungesën kronike të fondeve. Përkundër disa diferencave në mes të shteteve, nevoja për të lehtësuar zhvillimin menaxherial dhe organizativ brenda shërbimit civil ekziston tek shumica. Kultura e “kontrollit” të administratës në vend të menaxhimit të punës së saj përmes motivimit është çfarë pengon profesionalizmin dhe uljen e korrupsionit. Një prej gjetjeve kryesore të raportit është **përforcimi i ndërsjellët i kompetencës dhe integritetit**. Zakonisht, kur vihen në pikëpyetje kredencialet për anti-korrupsion të një departamenti qeveritar, vërehet po ashtu se ka mungesë edhe të kapaciteteve institucionale. Në të kundërtën, çdo rritje në profesionalizëm po ashtu krijon rritje në integritet. Kështu, sfida në rajon është si të bëhet transparenca dhe llogaridhënia karakteristika esenciale të shërbimit civil dhe në të njëjtën kohë të përmirësohet profesionalizmi. Shumë shpesh, është menaxhimi i dobët, kritere të paqarta si dhe ndarja e fuqisë dhe përgjegjësi që pengojnë reformat dhe ulin autoritetin qeveritar.

Roli anti-korrupsion i **agjensioneve të zbatimit të ligjit** në rajon duhet të analizohet duke kuptuar praktikën në rritje konstante të lidhura me korrupsionin, që rrezikon kanalizimin e një numri të tepruar të rasteve tek zbatuesit e ligjit dhe prokuroria. Roli anti-korrupsion i agjensioneve të zbatimit të ligjit në Evropën Juglindore komprometohet nga mundësia e prekjes të tyre nga korrupsioni, sidomos nga krimi i organizuar. Masat policore në shumicën e shteteve të SELDI kanë njësi të specializuara kundër operimeve të krimit të organizuar; këto njësi parashihet të punojnë edhe në masat anti-korrupsion. Mbërthimi i këtyre dy funksioneve në një trup të vetëm rezultojnë në kryesisht për shkak të përdorimit të korrupsionit nga krimi i organizuar por edhe nga nevoja për metoda të veçanta hetuese në zbulimin e skemave të sofistikuar të korrupsionit – ekspertizë kjo kryesisht e veshur në departamentet kundër krimit të organizuar. Këto njësi janë, sidoqoftë, të mbërthyera në forcën policore apo ministritë e brendshme të cilat ju cenojnë autonominë institucionale që është e nevojshme për një institucion të specializuar anti-korrupsion.

## Gjyqësori në anti-korrupsion

Në Evropën Juglindore, fokusi i lartë në sigurimin e pavarësisë së gjyqësorit është balancuar nga kërkesa po aq të forta për përgjegjshmëri. Duke mos pasur kontroll dhe bilance të fuqive adekuat, vet-qeverisja e gjyqësorit ka dalë jashtë kontrollit, dhe është shndërruar në “korporatizëm” me të gjithë rrezikun që e përcjell atë. Dhënia tepër rëndësi pavarësisë formale elektorale është shembull i një ilaçi të shndërruar në sëmundje – në vend se të balancoj fuqinë e ekzekutivit, vet-qeverisja krijoi relacione “klienteliste” në mes të gjyqtarëve dhe interesave speciale. Sot, gjyqësori në EJL është kapur njësoj sikur degët tjera të pushtetit. Pasi lirohet nga vështrimi publik dhe faktorët që kanë krijuar këtë aranzhim, sot ka shumë pak kontroll në mit marrje nga gjyqtarët.

Nuk është befasi që publiku nuk e vlerëson shumë gjyqësorin. Sistemi i Monitorimit të Korrupsionit i SELDI gjen që gjyqtarët konsiderohen ndër zyrtarë publik më të korruptuar në rajon; mungesa e transparencës dhe përgjegjshmërisë mund të argumentohet të jetë faktor i rëndësishëm i këtyre vlerësimeve. Në të gjitha shtetet e SELDI ka pasur **rënie të prekshme të vlerësimit dhe përhapjes së korrupsionit ndër gjyqtarë** prej 2001.

Kapaciteti i gjyqësorit në rajon për të zbatuar ligjet anti-korrupsion, sidomos korrupsionin politik, është zbehur nga një numër problemesh që bashkërisht kanë pasur ndikim:

- Çështjet kushtetuese, kryesisht ato lidhur me rivendosjen e bilancit në mes të pavarësisë dhe përgjegjshmërisë së gjyqësorit;
- Kompleksiteti i ndjekjes penale të kryerësve të veprave penale të korrupsionit, veçanërisht në nivelin politik;
- Kapaciteti në përgjithësi i pamjaftueshëm si dhe çështjet që lidhen e profesionalizëm të ulët, ngarkesën e punës të tepruar, që rezultojnë në grumbullimin e rasteve, menaxhimin e rasteve, pajisjet, etj.

Gjetje e rëndësishme e këtij rundi të monitorimit të korrupsionit nga SELDI e që është relevante për rolin e gjyqësorit në anti-korrupsion është **mungesa e mekanizmave të vlerësimit** që u lejon publikut dhe politikë-bërësve të vlerësojnë integritetin e gjyqësorit si dhe efektivitetin e aplikimit të ligjeve kriminale anti-korrupsion. Në asnjë nga shtetet e EJL nuk ekziston një mekanizëm i besueshëm, sistematik dhe gjithëpërfshirës për mbledhjen, shqyrtimin, dhe

bërjen publike të statistikave në punën e gjykatave dhe prokurorisë, sidomos në rastet e korrupsionit.

## Korrupsioni dhe ekonomia

Në Evropën Juglindore, përfshirja tejet e konsiderueshme e qeverisë në ekonomi sjell numër të pikave të mundshme të konfliktit në mes të institucioneve publike dhe bizneseve; rrjedhimisht, kjo krijon rrezik për raste të korrupsionit. Rreziku është sidomos i lartë në fushën e privatizimit dhe në prokurim publik dhe koncesionet e industrive të rënda si energji dhe mjekësi. Për më tepër, rregullim i tepërt i biznesit – sidomos në regjistrim, licensim, dhe leje-marrje – vazhdon të krijoj barriera për hyrje në treg si dhe kosto më të larta të të bërit biznes edhe pse disa shtete në rajon kanë bërë progres të konsiderueshëm në trajtimin e barrierave të biznesit. Prapë, administrata për mbikëqyrje dhe përputhshmëri ligjore e prish tregun duke vënë kontrollë dhe penallti pa vlerësim të mirëfilltë të rrezikut dhe analizës kosto-përfitim. Kjo është sidomos e vërtet për administratat kufitare përgjatë regjionit, të cilat ende shihen mjet efektiv për presion në bizneset. Kjo ose i shtyn ndërmarrësit në sektorin jo-formal ose i shtyn drejt ryshfetit. Në një spirale negative, kjo arsyeton pastaj më shumë rregullime dhe barriera administrative.

Shumëllojshmëria e rrethanave që krijojnë korrupsion në marrëdhëniet mes biznesit dhe zyrtarëve publik pasqyron vështirësinë që politikant anti-korrupsion ballafaqohen pasi që duhet të marrin parasysh një numër faktorësh në konsideratë. Kur fillohen nga bizneset, praktikant e korrupsionit mund të ndahen në dy kategori – mënjanimi i kostove shtesë dhe fitimi i avantazhit jo të drejtë. Në grupin e parë janë ryshfetet të bëra të nevojshme nga rregullime të dobëta apo të tepërta, pa aftësia individuale ose institucionale, etj.; në të dytën janë llojet e ndryshme të mashtrimit – evazioni fiskal, mashtrimi me TVSH, kontrabanda, mos-përputhshmëria me standarde të sigurisë dhe shëndetit, etj.

Në Evropën Juglindore, prokurimi qeveritar është një nga kanalet përmes të cilit më së shumti korrupsioni e prek ekonominë. Rreziku i korrupsionit në këtë fushë lidhet me një numër të madh mangësish: procedura jo-mjaftueshëm transparente, përqindje e madhe e procedurave jo-konkurrese, mbikëqyrje e dobët dhe shqyrtim jo-efektiv gjyqësor (duke marr parasysh korrupsionin në gjyqësor), etj. Edhe pse para një dekadë studimi i SELDI gjeti që shtetet në rajon kanë bërë progres në përforcimin e kornizës ligjore të procesit

dhe harmonizimit të tij me *EU acquis*, prokurimi publik vazhdon të jetë ndër aspektet më të dobëta të qeverisjes publike. Realiteti nuk ka ndryshuar shumë prej atëherë pasi rregullat e menduara mirë janë tejkaluar nga politikanët të korruptuar dhe biznesmen me lidhje të forta. Ndarja institucionale nuk lejon implementimin efektiv të rregullave të prokurimit publik.

## Shoqëria civile në anti-korrupsion

Organizatat jo-qeveritare në Evropën Juglindore janë ndër forcat shtytëse më të rëndësishme për anti-korrupsion. Ato janë, sidoqoftë, larg nga kanalizimi i kërkesave të publikut në avokim efektiv për politika dhe për ta luftuar korrupsionin për shkak të disa mangësive. Kontributi i tyre varet në masë të madhe nga të shërbyerit si “rojtari” dhe përfshirjen e qeverisë në reformat anti-korrupsion. Sidoqoftë, ka mungesë të mekanizmit formal për të përfshirë shoqërinë civile nga qeveritë kombëtare në regjion, si dhe mungesë të kapacitetit administrativ dhe vizionit të qartë për kuptimin e potencialit të OJQ-ve në fushën e anti-korrupsionit. Mbështetja e tepërt në financa ndërkombëtare, duke përfshirë financimin Evropian, si dhe mungesën e politikave për ushqimin një sektori civil aktiv në Evropën Juglindore, komprometojnë efektin e qëndrueshëm të aktivistëve lokal të anti-korrupsionit.

Edhe pse OJQ-të në fushën e SELDI kanë menaxhuar të krijojnë disa partneritete publiko-privatendërkombëtare, këto nuk janë transformuar në partneritete efektive po ashtu me institucionet qeveritare kombëtare. Qelës i të bërit partneritete të suksesshme ka qenë kapaciteti i hyrjes në disa marrëdhënie me institucione shtetërore, të dyja, komplementare dhe konfrontuese. Një mënyre, për shembull, të bashkërendimit me funksionin e “rojtarit”, ka qenë përmirësimi i profesionalizmit të monitorimit nga OJQ-të të korrupsionit dhe politikave anti-korrupsion.

Efektiviteti i OJQ-ve në adresimin e çështjeve të qeverisjes së mirë publike në shtetet e SELDI varet në masë të madhe nga kapaciteti i tyre të mbajnë qeverisjes e tyre mirë. Rreziku i kapjes së OJQ-ve nga interesat e veçanta dhe zyrtarët publik të korruptuar ose politikanët e zgjedhur vjen nga mundësia e shfrytëzimit të disa dobësive të sektorit pa-profit në rajon:

- mungesa e procedurave të detyrueshme për transparencë;
- kontroll jo-efektiv i përputhshmërisë me rregullimet financiare;



- mungesa e kulturës të auditimit;
- nivel i ulët i vet-rregullimit dhe koordinim i përpjekjeve.

Evitimi i kapjes së shoqërisë civile si pjesë e përpjekjeve anti-korrupsion në Evropën Juglindore duhet të jetë në majë të agjendës reformuese në rajon.

## Bashkëpunimi ndërkombëtar

Institucionet ndërkombëtare dhe shtetet e jashtme partnere kanë luajtur një rol të rëndësishëm në zhvillimet anti-korrupsion në Evropën Juglindore. Duke marr parasysh besnikëritë partiake në politikën e brendshme, zotimet ndërkombëtare lehtësojnë adoptimin e politikave reformuese që në kundërt do të ishin shmangur nga politikanët kombëtar. Raportet e progresit nga Komisioni Evropian, financimi nga BE për reformat dhe marrëveshjet e binjakëzimit janë ndikime thelbësore ndërkombëtare në agjendat kombëtare anti-korrupsion në shumicën e shteteve të EJL. Edhe pse anti-korrupsioni është një nga elementet kryesor të raportit të progresit nga BE, ato pranohen ndryshe në vend – shtetet me vizion të qartë të integritimit u japin më shumë vëmendje të gjeturave të raportit, përderisa në Turqi, për shembull, raportet marrin më pak vëmendje.

Përfshirja ndërkombëtare, sidoqoftë, po ashtu ka sjellë me vete rrezikun e pritjeve jo realiste për ndreqje të shpejta të cilat në fakt mund të sjellin adoptimin e masave sipërfaqësore ad hoc. Kushtëzimi dhe shumica e stimujve ndikojnë kryesisht në agjensionet e krahut ekzekutiv, përderisa gjyqësori, parlamenti, dhe institucionet tjera relevante publike dhe private, nuk përfshihen sa duhet. Qëndrueshmëria e angazhimeve ndërkombëtare është forcuar nga zgjerimi i një varg akterësh lokal që përfshinë shoqërinë civile, media, asociacionet profesionale, bashkësitë e tregtisë, etj. Ky zgjerim i bashkëbiseduesve lokalë partnerëve ndërkombëtar ka pasur efektin e fuqizimit të politikanëve të izoluar reformist apo grupeve politike por gjithashtu disa akterë jo-qeveritar, dhe inkurajimin e kërkesës publike për reformë. Vazhdimi dhe ndërtimi në këtë drejtim do të ishte thelbësor për rolin e BE në rajon. Që kjo të ndodh, një lidhje qeveri-Bruksel nuk mjafton. Angazhimi i partnerëve ndërkombëtar i politikanëve dhe partive reformist duhet të mbështetet – dhe verifikuar – nga shoqëria civile në një bashkëpunim trelateral.

## REKOMANDIMET KYÇE

Përvoja e shteteve të SELDI-t në luftimin e korrupsionit prej vitit 2001, tregon që zgjidhja e sfidës së korrupsionit në rajon do të kërkonte përpjekje të qëndrueshme në shumë fronte, duke përfshirë pjesëmarrjen e të gjithë grupeve lokale dhe ndërkombëtare në periudhë afatgjate. Raporti aktual, sjell një numër rekomandimesh në mënyrë që të arrihet progres i mëtutjeshëm në kufizimin e korrupsionit. Mes tyre, tri zonave kyçe duhen tu jepet prioritet nga shtetet në rajon dhe në nivel Evropian, në mënyrë që të ketë sukses në periudhën afat-mesme:

**Ndjekja penale efektive e politikanëve dhe shërbyesve civil të nivelit të lartë të korrumpuar**, është mënyra e vetme që të dërgohet një mesazh i fortë dhe i menjëhershëm që korrupsioni nuk do të tolerohet. Për shembull, sjellja e politikanëve të korrumpuar para drejtësisë ka dëshmuar të jetë shumë efektive në fuqizimin e masave anti-korrupsion në Kroaci dhe Slloveni. Në mënyrë që të ketë sukses në këtë drejtim, do të kërkohej po ashtu mbështetja ndërkombëtare, duke përfshirë pjesëmarrjen e shteteve anëtare të BE-se dhe fuqizimin e ligjit.

Një **mekanizëm monitorues dhe i pavarur anti-korrupsion**, duhet futur në nivel kombëtar dhe rajonal në mënyrë që të ofrohen të dhëna dhe analizë e fuqishme dhe të integrohen të dy: **diagnostikimi i korrupsionit** dhe **politika vlerësuese anti-korrupsion**. Mekanizmi duhet të zbatohet përmes organizatave kombëtare dhe/ose organizatave dhe rrjeteve rajonale të shoqërisë civile, dhe duhet të jetë i pavarur nga financimi direkt kombëtar qeveritar. Duhet të shërbejë si një makinë për hapjen e të dhënave administrative dhe rritjen e qasjes publike në informata. Në dispozicion publik, në formë të bazës të dhënave duhet të mundësohen/ofrohen të dhëna që lejojnë ndjekjen nga prokurimi publik, koncesionet, fuqizimi i legjislaturës ndaj konfliktit të interesit, ndihma shtetërore, transfere buxhetore, raporte vjetore të përmbushjes dhe mbikëqyrjes së agjensioneve të pajtueshmërisë, etj., të cilat mundësojnë një analizë të gjerë të dhënash dhe përdorimin e mjeteve monitoruese.

**Sektorët kritik me rreziqe të larta korrupsioni dhe kapje të shtetit, si sektori energjetik, duhen të adresohen me prioritet.** Masat tjera me prioritet përfshijnë:

- ngritja e konkurrencës në prokurimin publik;
- përmirësimi i qeverisjes korporative të ndërmarrjeve shtetërore;

- menaxhim transparent i projekteve të mëdha për nga shkalla e investimit;
- rritjen e llogaridhënies dhe pavarësimin e autoriteve rregullatore të energjisë.

**Partnerët ndërkombëtar, fillimisht Komisioni Evropian, duhet të angazhojnë organizatat e shoqërisë civile në rajon, në formë të drejtpërdrejt.** Kjo është e domosdoshme për disa arsye: a) në mënyrë që reformat e mbështetura ndërkombëtarisht të bëhen të qëndrueshme, atyre ju nevojitet që të fitojnë pranueshmëri të gjerë publike, dhe OJQ-të janë të domosdoshme që kjo të ndodhë; b) përfshirja e OJQ-ve është një mënyrë e garantimit që llogaridhënia e qeverive tek donatorët dhe organizatat ndërkombëtare nuk bëhet precedent për llogaridhënien në zonat lokale zgjedhore; c) efektiviteti i ndihmës ndërkombëtare do të rritej nëse shfrytëzon monitorimin, aftësitë analitike dhe aftësitë avokuese të OJQ-ve; d) një angazhim direkt do të kishte përfitimin e shtuar të parandalimit të kapjes së shoqërisë civile prej rrjeteve klienteliste të administratave publike të pa reformuara dhe shpesh të korruptuara.

## REKOMANDIME SPECIFIKE

### Politikat dhe legjislatura

- Të përcaktohen përpjekjet anti-korrupsion në kushte të politikave të ndërlidhura me qëllime të matshme dhe momente të rëndësishme, sesa thjeshtë me matje ose legjislacion. Kjo mënyrë do të sillte vendosjen e caqeve specifike që do duhej të arriheshin dhe përzgjedhjen e metodave të përshtatshme të intervenimit. Këto caqe do të përcaktohen në mënyrë sa më të realizueshme.
- Tu jepet prioritet sektorëve të caktuar, metoda të intervenimit dhe forma të korrupsionit, dhe të provohen qasje të ndryshme para se të ndërmerren masa të plota. Korrupsioni është një koncept i gjerë, i lidhur me forma të ndryshme të mashtrimit të cilat nuk mund të adresohen në të njëjtën kohë në mënyrë efektive.
- Politikat duhet të bazohen në informacion. Përderisa janë bërë disa përpjekje në strategjitë kombëtare anti-korrupsion që të maten rezultatet paraprake, asnjëra nga shtetet e SELDI, nuk ka mekanizëm të qëndrueshëm për vlerësimin e politikave anti-korrupsion. Së fundmi, kjo kërkon: a) statistika të rregullta dhe të besueshme për përpjekjet

anti-korrupsion (hetime, ndjekje penale, masa administrative, etj.); b) monitorim i rregullt dhe analizë e shpërndarjes së formave të korrupsionit në sektorë të ndryshëm publik. Monitorimi duhet të jetë i pavarur dhe/ose i jashtëm për shtetin, të përfshijë shoqërinë civile dhe të gjithë përbërësit elementar të sistemit monitorues jo-administrativ të korrupsionit, si SMK i SELDI.

### Institucionet anti-korrupsion dhe zbatimi i ligjit

- Të futet një mekanizëm që sjell reagimet për zbatimin e politikave anti-korrupsion. Mekanizmi duhet të jetë i bazuar në instrumente të reja, krijuese, të dala në dispozicion rishtas, si *Doracaku i Integruar për Monitorimin e Zbatimit Anti-Korrupsion*, i zhvilluar nga Qendra për Studimin e Demokracisë (CSD) dhe Universiteti i Trento-së. Doracaku, ju mundëson hartuesve të politikave që të vlerësojnë rreziqet e korrupsionit në një institucion të caktuar qeveritar dhe efektin e politikës përkatëse anti-korrupsion, duke identifikuar zgjidhjet me ndikimin më të madh.
- Kapaciteti institucional i trupave relevant qeveritar – në veçanti organizatat e specializuara anti-korrupsion dhe organizatat mbikëqyrëse si institucionet kombëtare të auditimit – duke përfshirë buxhetet e tyre, objektet dhe personelin, duhet të barazohen me përgjegjësitë të cilat i bartin këto institucione. Si alternativë, ato duhet të krijojnë më shumë programe të ngushta vjetore ose afatmesme, të cilat ju japin prioritet intervenimeve.
- Institucionet kombëtare të auditimit duhet po ashtu të fuqizojnë epërsinë, duke përfshirë fuqinë për të vendosur sanksione të ashpra. Të dy auditorët dhe parlamentet kombëtare duhet të obligohen të përcjellin raportet e këtyre institucioneve. Institucionet kombëtare të auditimit duhet po ashtu të mandatohen që të auditojnë menaxhimin e fondeve të BE-se, të cilat administrohen nga autoritetet kombëtare. Pasi që rezultati i punës së auditimit është në fazën fillestare, ata duhet të zhvillojnë kapacitete që të bartin edhe më shumë.
- Masa të mëtutjeshme janë të nevojshme në mënyrë që të sigurohet që rekrutimi i stafit civil është i bazuar në meritë, dhe jo i varur nga përkatësia e partisë politike.
- Puna anti-korrupsion duhet të ndahet në mënyrë më të barabartë mes organeve qeveritare. Zgjerimi i shtrirjes për inkriminim statutor duhet të jetë i balancuar nga një kapacitet i zgjeruar në të gjitha organet publike, që të adresojnë korrupsionin në radhët e tyre përmes mjeteve administrative, në

vend të “kalimit të përgjegjësive” tek policia apo prokuroria. Organet e përgjithshme publike të administrimit duhet të veprojnë si portier të sistemit kriminal të drejtësisë duke u përballur me aq raste të korrupsionit sa ju lejon fuqia e tyre administrative. Në fund, kjo përfshin krijimin e një mekanizmi efikas për menaxhimin e ankesave.

- Konfiskimi i pasurisë së fituar në mënyrë të jashtëligjshme në raste të korrupsionit, është një mjet anti-korrupsion, aplikimi i të cilit duhet zgjeruar. Përderisa duhet të kihet kujdes i veçantë për të balancuar të drejtat e të akuzuarit me interesat e të mirave publike – sidomos në një mjedis me administrata shpesh të korruptuara – konfiskimi i pasurisë, i pasur me dënime penale, është një dënim i rëndësishëm i cili ende përdoret pak në EJL.

### Gjyqësori

- Shtetet në të cilat shumica e organeve gjyqësore vetëqeverisëse nuk zgjedhën nga gjyqtarët, duhet të adaptojnë reforma që rrisin fuqinë votuese të tyre. Shtetet të cilat nuk e kanë bërë këtë, duhet të adaptojnë parimin “një gjyqtar – një votë”.
- Duhet të sigurojnë që përzgjedhja e kuotës gjyqësore është sa më përfaqësuese, duke përfshirë gjyqtarë nga gjykatat e shkallës së parë. Të shqyrtojnë me kujdes, dhe nëse nevojitet të konsiderojnë sërish pajtueshmërinë e pozitës së kryetarit të gjykatës, me anëtarësimin e organeve vetë-qeverisëse gjyqësore.
- Në shtetet ku të dy prokuroria dhe gjykatat qeverisen nga i njëjti trup, dy kolegje – për prokurorë dhe gjyqtarë – duhet të ndahen në këtë organ. Prokurorët dhe gjyqtarët përkatësisht, do të përzgjidheshin vetëm nga këta kolegje.
- Të shfuqizohet ose të zvogëlohet në minimum roli i ministrave qeveritar (të drejtësisë) në trupa gjyqësor vet-qeverisës, sidomos sa i përket vendimeve në procedura disiplinore.
- Gjyqtarëve duhet tu jepet prioritet në mekanizmin për verifikimin e pasurisë së deklaruar.
- Pavarësia dhe kapaciteti i inspektorëve gjyqësorë duhet të fuqizohet, të ju mundësojë atyre të shpejtojnë inspektimet.
- Të futet një mekanizëm që sjell reagimet për zbatimin e politikave anti-korrupsion në lidhje me gjyqtarët. Këta mekanizma janë ndjeshëm deficitar ose praktikisht mungojnë në të gjitha shtetet e SELDI; mungesa e tyre saboton aspektin e shtypjes së politikave anti-korrupsion dhe e bën inkriminim e mëtutjeshëm të korrupsionit të pa dobishëm. Një praktikë e mirë që mund të përsëritet – edhe pse është ende e pazhvilluar – është Platforma Statistikore e Kosovës për Anti-korrupsion, e dizajnuar nga një OJQ. Një mekanizëm i tillë duhet të përfshijë informata të rregullta për: masa disiplinore, administrative, dhe kriminale në sektorin publik dhe gjyqësor; aspektet e ndryshme të ndjekjes penale, duke përfshirë aktakuzat dhe dënimet/shfajësimin, dënimet nga llojet e ndryshme të korrupsionit.

### Korrupsioni dhe ekonomia

- Të zvogëlohen deri në minimum dhe të rishikohen politikat vjetore të ndihmës shtetërore, pasi që ato krijojnë rreziqe të konsiderueshme për korrupsion. Të bëhet paraprakisht zbatimi i rreptë i rregullave të ndihmave shtetërore të BE-së, dhe të zhvillohet kapaciteti i rregullatorëve të ndihmave shtetërore të pavarura kombëtare, për të zbatuar rregullat.
- Të përmirësohet zbatimi i legjislaturës anti-monopol, në mënyrë që të promovohet ndërmarrësia e lirë dhe konkurrenca. Të aplikohet kujdes i veçantë dhe të shqyrtohet rregullisht përqendrimi në sektorë që janë të rregulluar rëndë, dhe që përballen me licencim dhe kufizime tjera, duke krijuar një rrezik të marrëveshjeve të fshehta në mes të konkurrentëve të mëdhenj dhe politikanëve.
- Shtetet të cilat e kanë bërë ende, duhet të krijojnë lidhje institucionale mes menaxhimit të pasurisë dhe borxheve të të gjitha financave publike, duke përfshirë ndërmarrjet në pronësi shtetërore, në mënyrë që të zvogëlojë rreziqet financiare dhe të rrisin besueshmërinë në menaxhimin e financave publike nga qeveria. Ndërmarrjet në pronësi shtetërore, duhet të plotësojnë kërkesat e rrepta të qeverisjes korporative dhe të raportimit (p.sh. rregullat e OECD-së), në të njëjtin nivel me kompanitë publike tregtare. Këto ndërmarrje duhet të publikojnë në internet raporte tremujore.
- Të futen detyrime dhe sanksione për autoritetet kontraktuese të cilat në vazhdimësi dështojnë ti dorëzojnë raportet për prokurim publik, raporte këto për shkeljet e rregulloreve anti-korrupsion ose kur dorëzojnë të dhëna të pasakta ose të mangëta.
- Përcaktimi i një kornize ligjore, institucionale, për menaxhimin dhe kontrollimin e kontratave të dala nga partneriteti publiko-privat.
- Të përmirësohet mbikëqyrja e prokurimit nga prokuror të mëdhenj publik (ndërmarrje në pronë shtetërore dhe kompanitë e shërbimeve) në mënyrë që të maksimizohet efikasiteti dhe të zvogëlohen parregullsitë.
- Të adoptohen politika që reduktojnë pjesën e interesit të prokurimit publik në tenderë vetëm me

ofertues, dhe që rrisin konkurrencën. Të publikohet në internet i gjithë dokumentacioni për njoftimet paraprake të prokurimit publik, njoftimet, ofertimet, kontratat, dhe çdo shtojcë tjetër, që mund të gjenden në formë të dhënash (data-bazës).

- Shtetet kandidatë të BE-se të cilat nuk kanë sistem të decentralizuar implementimi për fondet e BE-së, duhet të themelojnë një sistem të tillë në mënyrë që fondet e BE-së të ofrojnë kornizën e duhur ligjore dhe administrative për bartjen e përgjegjësive për implementimin e programeve të financuara nga BE-ja. Mbikëqyrja duhet të mbetet e centralizuar dhe e pavarur nga organet zbatuese.
- Të futet koncepti i vlerës-së-parasë në vlerësimin e kontratave të prokurimit publik.

### Shoqëria Civile

- Rritja e kapacitetit të organizatave të shoqërisë civile për monitorimin dhe raportimin e korrupsionit dhe anti-korrupsionit, duke përfshirë aftësinë për të mbledhur dhe sistemuar informata primare mbi funksionimin e institucioneve qeveritare, aftësitë për matjen e përhapjes aktuale të korrupsionit dhe në analizën e të dhënave, vlerësimin institucional dhe shkrimin e raporteve.
- Legjislatura mbi konfliktin e interesit duhet të përfshijë institucionet jo-për-përfitim, sidomos ato të cilat financohen nga programet e administruara qeveritare, si buxheti kombëtar, fondet e BE-së, etj.
- Rregullat dhe rregulloret për financimin publik – organizatat jo-qeveritare duhet të jenë të pastra dhe transparente – nga qeveritë lokale dhe qendrore. Vetëm OJQ-të e regjistruara, ato me përfitim publik, duhet të lejohen të marrin fonde publike, dhe duhet të ju përmbahen rreptësishtë kërkesave për hapje dhe raportim.
- Bashkimi Evropian dhe organizatat tjera të donatorëve duhet të konsiderojnë një pjesë më të madhe të financimit të dedikuara për programe për qeverisje të mirë, të zbatuara në bashkëpunim mes organizatave të shoqërisë civile dhe institucioneve publike. Këto programe duhet të kenë kërkesa të qarta kundër kapjes së OJQ-ve nga grupe të interesit. Duhet të theksohet se arritja e ndikimit, kërkon përkushtim të qëndrueshëm në periudhë afatgjatë (10 vite e më shumë).
- Sektori i shoqërisë civile duhet të sigurojë për vet-rregullim. Më së paku, kjo përfshin adoptimin e udhëzimeve për sjellje me standarde të larta. Ata po

ashtu duhet të gjejnë mënyra më të shumta dhe më të mira për organizimin e koalicioneve të interesit.

- OJQ-të duhet të kuptojnë më mirë nevojën për të qenë transparent dhe llogaridhënës. Kjo përfshin nënshkrimin ndaj auditimit të rregullt, hapjen e pasqyrave financiare, procedura të qarta dhe transparente për qeverisjen e korporatave, dhe masa kundër kapjes nga grupet e veçanta interesi.
- Shtetet jo-anëtare të BE-së, të EJK-së, duhet të këshillohen që të mësojnë prej organit të njohurisë dhe ekspertizës, i përfshirë në raportin anti-korrupsion të BE-së. Kjo do të sillte atyre njohuri shumë të vlefshme në lidhje me vlerësimin e shpërndarjes së korrupsionit dhe hartimit të politikave anti-korrupsion.

### Bashkëpunimi Ndërkombëtar

- Programet e ndihmës së jashtme duhet të reflektojnë më mirë të gjeturat e vlerësimeve ndërkombëtare dhe atyre të pavarura vendore. Në mënyrë që kjo të arrihet, programet e ndihmave duhet të jenë më reaktive dhe me fleksibilitet, duke përfshirë një periudhë më të shkurtë kohore mes hartimit dhe ofrimit.
- Ndihmesa ndërkombëtare anti-korrupsion për qeveritë shtetërore duhet të parasheh një rol më të fuqishëm për shoqërinë civile. Kjo përfshin pjesëmarrjen e OJQ-ve si partner zbatues, monitorues dhe organizues të resurseve, sidomos gjatë vlerësimit të ndikimit të projekteve ndihmuese.
- Efikasiteti i ndihmës duhet të vlerësohet periodikisht përmes metodave vlerësuese të ndikimit. Përveç sigurimit të matjes së vlerës-për-para – sidomos kur ka pasur financa publike të përfshira – kjo mënyrë do të mundësonte programeve të suksesshme të jenë të qëndrueshme, përderisa atyre të pasuksesshme të ndërpriten. Është e domosdoshme që ky vlerësim të jetë i pavarur dhe të fut në përdorim ekspertizën e organizatave të shoqërisë civile.
- Ndihmesa duhet të inkurajojë programet ndër-shtetërore në çështje të përbashkëta, si p.sh. krimi ndërkufitar. Përgjatë rajonit duhet të vihet në përdorim përvoja Bullgare në bashkëpunimin publiko-privat, gjatë analizës së lidhjeve të krimit të organizuar dhe korrupsionit.
- Përgatitja e raporteve dhe të gjeturave të rregullta të Komisionit Evropian duhet të futet më mirë në hartimin e politikave lokale duke nxjerrë më shumë nga shoqëria civile lokale dhe komuniteti i biznesit.

## MACEDONIA

### ИЗВРШНО РЕЗИМЕ

Корупцијата во Југоисточна Европа е во вестите, во фокусот на јавната дебата и на агендата на националните и меѓународните институции толку често и толку долго што навистина не треба да се дава оправдување зошто толку се истражува. Токму затоа што се покажало дека е толку нерешливо прашање, оправдани се иновативните пристапи за нејзино разбирање и намалување. Изгледите за пристап кон ЕУ на земјите во регионот, иако далечни, обезбедуваат овозможувачка рамка за дејствување, но засегнатите страни на локално ниво и особено граѓанското општество се оние кои може да направат одржлив напредок во борбата против корупцијата. Еден од главните приоритети на Водството за развој и интегритет во Југоисточна Европа (СЕЛДИ) беше да се направи длабинско дијагностицирање и разбирање на корупцијата и празнините кои постојат во владеењето во регионот како потребен предуслов за застапување на **антикорупциски политики кои се базираат на знаење**. Овој извештај на СЕЛДИ се вклопува во рамката за развој и спроведување на новата регионална антикорупциска политика и инфраструктура како што е наведено во Столбот за владеење во Стратегијата на ЈИЕ2020 спроведуван од Регионалната антикорупциска иницијатива.

Како резултат на соработката во рамките на СЕЛДИ, овој извештај е иновативен и во поглед на користените методи и во поглед на процесот. Тој е резултат на примената на систем развиен од страна на СЕЛДИ во почетокот на 2000-те за проценка **и на корупцијата и на антикорупцијата**, прилагоден на социјалното и институционалното опкружување на Југоисточна Европа.<sup>1</sup> Пристапот за виктимизација базиран на истражување што го применува *Системот за следење на корупцијата* користен во овој извештај дава единствена проценка врз основа на податоци за напредокот во борбата против корупцијата во регионот уште од 2001 година. Процената извршена во периодот 2013-2014, чии главни наоди се сумирани во овој извештај, е редок случај во меѓународната практика на следење каде **истите**

**прашања и истиот регион се истражуваат во период нешто малку подолг од една деценија**. Во процената се прави споредба на националното законодавство и институционалната практика во голем број области кои се клучни во напорите за борба против корупцијата: регулаторна и законска рамка, институционални предуслови, корупција во економијата, улогата на граѓанското општество и меѓународната соработка. Извештајот дава **процена на гледиштето и политиката на граѓанското општество**, додека главните наоди и препораките се дадени во консултација со националните и регионалните јавни институции.

Процената на националните институционални и законски аспекти кои ја прават корупцијата во регионот можна не се смета за сеопфатен инвентар на регулативите и практиките во сите земји, туку напротив се става акцент на некои од приоритетните прашања кои се релевантни за потенцијалните напори кои потекнуваат од заедничките извори на корупција во Југоисточна Европа (ЈИЕ). Извештајот дава **модел за известување за напредокот во борбата против корупцијата** од страна на граѓанското општество во ЈИЕ.

## ГЛАВНИ НАОДИ

### Генерална оценка

И покрај одредени важни постигнувања, главно во однос на стабилизација на демократските институции, усвојување на закони во клучните области за борба против корупцијата, намалување на ситното подмитување и растечката нетолеранција на јавноста кон корупцијата, антикорупциските и реформите за добро владеење не се консолидирани, корупцијата меѓу политичарите и судиите се чини дека се зголемува, а спроведувањето на антикорупциското законодавство не е систематско. Антикорупциските политики и институции во регионот може да имаат огромна корист од примената на редовна и прецизна алатка базирана на истражувањето за виктимизација за мерење на корупцијата и стапката на напредок во доброто владеење, слично на специјалниот Евробарометар за антикорупција, Следењето на корупцијата и организираниот криминал во ЈИЕ од страна на УНОДЦ и *Системот за следење на корупцијата (ССК)*, применет во овој извештај.

<sup>1</sup> (SELDI, 2002).

## Распространетост на корупцијата во Југоисточна Европа

Искуството со корупцијата, со други зборови вклученоста на службените лица во коруптивни трансакции, е многу високо во ЈИЕ. Дури и во Турција и Хрватска, каде нивоата на административна корупција се најниски во регионот, околу 8-9% од населението изјавува дека дало мито во последната година. Таквите нивоа на искуство со корупцијата се многу над просечните нивоа регистрирани во истражувањата на Евробарометарот во ЕУ.<sup>2</sup> Ова покажува дека административната корупција е **масовен феномен** и не може да се поврзе со индивидуални случаи на корумпирани функционери.

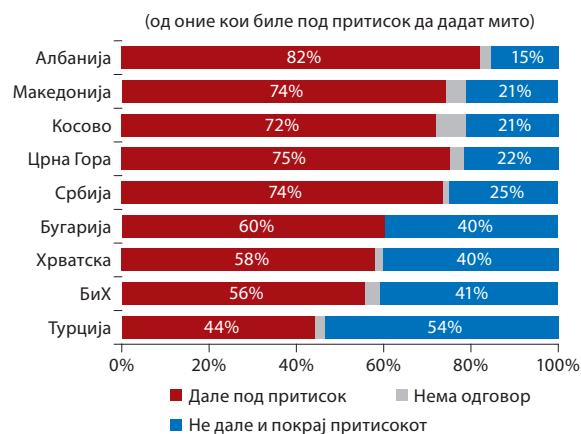
Значителните разлики меѓу земјите со слична историска позадина покажуваат дека различните патеки на социјален, економски и институционален развој даваат различни резултати. Генерално, освен во Бугарија, промените од претходните процени на СЕЛДИ со дијагностиката на ССК (2001 и 2002), во сите земји се позитивни; напредокот меѓутоа е бавен и нерамножен.



<sup>2</sup> Индикаторите за искуствата со корупцијата користени во истражувањата на Евробарометарот имаат малку поразлична содржина бидејќи тие се однесуваат на директното искуство и случаи кога испитаниците биле сведоци на подмитување. За повеќе детали, погледнете: (TNS Opinion & Social, February 2014).

Коруптивниот притисок од функционерите е главниот фактор што статистички влијае врз нивото на вклученост. Повеќето од земјите каде и вклученоста и притисокот се високи исто така се карактеризираат и со ниска **отпорност** на коруптивниот притисок (повеќето испитаници на кои им било побарано дале мито). Иако отпорноста не би можела да се смета како главен фактор за да се намали корупцијата, таа е одраз на доминантните социјални ставови кон интегритетот и во голема мера се резултат на напорите на граѓанското општество и властите за зголемување на антикорупциската свесност. Во оваа насока, улогата на граѓанското општество е клучна, зошто е во позиција да ги оцени резултатите и да биде предводник во вршење притисок од страна на јавноста за промена.

### Отпорност на коруптивен притисок



## Антикорупциски политики и законодавство

Генерално, земјите од СЕЛДИ го имаат усвоено поголемиот дел, и што е поважно логиката и пристапот, од меѓународните антикорупциски стандарди во нивните национални законодавства. Квалитетот на законите, меѓутоа, продолжува да биде проблем. Честите и недоследни промени во законите резултирале во процедурална и законодавна сложеност и контрадикторно толкување од страна на судовите.

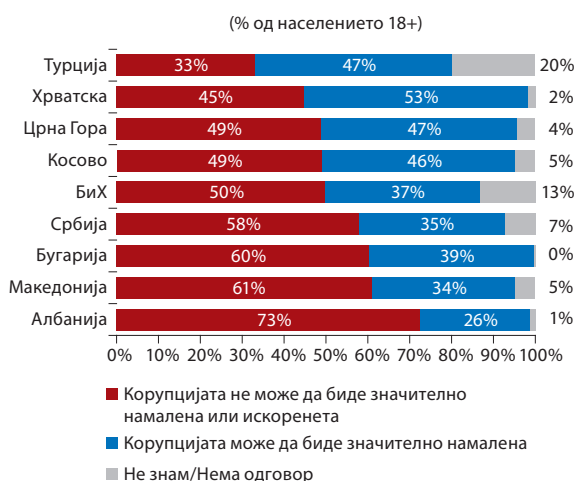
Сите земји имаат усвоено некаков стратешки документ во кој е содржан нивниот генерален пристап за справување со корупцијата. Иако постојат одредени разлики меѓу земјите, спроведувањето на овие документи генерално е отежнато заради недоволни ресурси и заложба од повисоко владино ниво. Друг

проблем во регионот е изработката на стратегии на начин да се адресираат сите можни аспекти на корупцијата. Наместо да се ставаат приоритети, овие документи стануваат сеопфатни; во однос на антикорупцијата, она што треба да биде стратешко почнува да значи опсежно.

Во однос на приоритетите во политиката, направени се две значајни промени во пристапот кон антикорупцијата, промена на фокусот од ситна корупција (како во сообраќајната полиција или лекарите од јавниот сектор) кон крупна (онаа на пратениците или министрите) и криминализиција на поширока лепеза на злоупотреби на јавната служба. Во однос на казнувањето на крупната корупција, успехот во најдобар случај, е ограничен. Клучниот предизвик за антикорупциските политики во регионот е да се затвори јазот во спроведувањето и да се продолжи со следење на менливите манифестации на корупција, додека истовремено се одржува регулаторната стабилност, како и да се избегнат чести промени во судството.

Наодите од следењето на СЕЛДИ ја нагласуваат **значајноста на јавната поддршка за успехот на антикорупциските политики**. Довербата од страна на јавноста во владата и ефективноста на политиката се како во некој вид на магичен круг: поголем дел од луѓето кои се оптимисти во однос на успехот во антикорупцијата се поврзуваат со помали нивоа на корупција. Спротивно на ова, пораспространетата корупција оди рака под рака со зголемениот песимизам за изгледите на антикорупцијата.

#### Колку е остварлива политиката за борба против корупцијата: оценка од јавноста



Извор: СЕЛДИ/ЦПД Систем за следење корупцијата, 2014.

## Институционална практика и спроведување на законите

Во Југоисточна Европа, акцентот што порано бил ставен врз усогласување на националното законодавство со меѓународните антикорупциски стандарди постепено му отстапува место на фокусот за спроведување преку зголемување на притисокот од страна на ЕУ и локалното граѓанско општество.

Заеднички недостаток на сите земји од СЕЛДИ е компромитираната автономија на различните тела за надзор и спроведување на законите. Типично е да постои одреден степен на мешање од страна на политичарите, пратениците или министрите во владата, во работата на државната служба. Понатаму, ниту една од земјите во СЕЛДИ немаат соодветни функционални механизми за управување со поплаките во јавната администрација. Повеќето имаат формирано антикорупциско тело од кое се очекува дека ќе ги прима поплаките од јавноста. Друг заеднички недостаток е немањето веродостојни и јавно достапни податоци за работата на владините институции, особено што се однесува до антикорупцијата. Информациите и статистичките податоци не се собираат или не се достапни за јавноста или се собираат спорадично и не овозможуваат следење и анализа.

Едно од клучните прашања поврзани со креирањето на специјализирани национални антикорупциски институции во регионот е **како да се комбинираат превентивните и репресивните функции**. Типично, во земјите од СЕЛДИ се обиделе нивните антикорупциски институции да ги вршат обете функции, иако репресијата е далеку помал аспект од нивната работа. Поголемиот дел од задачите на овие тела се поврзани со одредена форма на надзор и контрола, обично на националните антикорупциски стратегии и нема многу докази дека тие имале какво било значајно влијание врз владината законодавна агенда. Формирањето и функционирањето на таквите институции се соочува со бројни потешкотии:

- Колку и да е ставена корупцијата високо на владините агенди, не било можно да се формираат институции со огромна моќ што на некој начин би влијаеле врз веќе утврдениот баланс на моќ. Типичен компромис е овие агенции да бидат приврзани со извршната власт и со дадените овластувања за надзор, кои се обично ограничени на тоа да бараат од другите владини агенции да известуваат за спроведувањето на антикорупциските задачи кои им се доделени.

- Таквите агенции треба да бидат внимателни да не ги дуплираат овластувањата кои веќе им се доделени на други надзорни тела (пр. националните ревизорски институции или агенциите за спроведување на законот).
- Поголемиот дел од нив имаат ограничен институционален капацитет, буџет, персонал, и покрај нивните декларативни намери.

Што се однесува до **законодавната власт**, парламентите во регионот не се високо рангирани во однос на довербата од јавноста и постојат причини за оваа незавидна позиција. Кодексите на етичко однесување се ретки и не се спроведуваат; регулативата за лобирање е уште поретка; иако срамежливо дури неодамна започнаа да се воведуваат процедури за отстранување на некажливоста од кривично гонење; каде и да постои антикорупциско тело во собранието, типично е дека врши надзор над некоја извршна агенција, наместо да се занимава со корупцијата меѓу пратениците. Прашање од значајна загриженост во земјите од СЕЛДИ е финансирањето на политичките партии и изборни кампањи. Повеќето земји ги имаат спроведени ГРЕКО препораките за финансирање на партиите, но остануваат голем број проблеми, како анонимни донации, купување гласови (или подмитување на гласачите), недоволен капацитет за ревизија на партиските финансии и ограничено овластување да се спроведуваат санкциите, итн.

Моменталната состојба на **државната служба** одговара на транзициската природа на ЈИЕ земјите и недостатокот од соодветни законски и институционални традиции како и хроничен недостаток на средства. И покрај разликите меѓу земјите, потребата за менаџерски и организациски развој на државната служба е заедничка за повеќето. Културата на „контрола“ на администрацијата наместо на управување со нејзината работа преку мотивација е она што попречува да се зголеми професионализмот и да се намали корупцијата. Еден од главните наоди во извештајот е **меѓусебното зајакнување меѓу компетенцијата и интегритетот**. Типично, кога и да се доведуваат во прашање антикорупцискиот кредибилитет на дадено владино одделение, исто така се доаѓа до сознание дека е потребно развивање на институционалниот капацитет. Спротивно на ова, секој напредок во професионализмот, исто така довело до подобрување во интегритетот. Затоа, предизвикот во регионот е како да се направат транспарентноста и отчетноста суштински карактеристики на државната служба, а истовремено да се

зголеми професионализмот. Многу често, слабото раководење, нејасните критериуми и несоодветната поделба на овластувања и одговорности се тие што ги попречуваат реформите и го поткопуваат авторитетот на власта.

Антикорупциската улога на **агенциите за спроведување на законот** во регионот треба да се сфатат во контекст на постојано зголемувачкиот опсег на инкриминирани практики поврзани со корупција, со што се ризикува да се канализираат непропорционален број на случаи за полицијата и обвинителството. Антикорупциската улога на агенциите за спроведување на законот во Југоисточна Европа е понатаму компромитирана од високата ранливост на корупцијата, особено од организираниот криминал. Полициските сили во повеќето СЕЛДИ земји имаат единици кои се специјализирани за борба со организираниот криминал; од овие единици се очекува да работат на антикорупција. Сместувањето на овие две функции во едно тело се оправдува најчесто со користењето на корупцијата од страна на организираниот криминал, но исто така и од потребата за специјални истражни методи за откривање на софистицирани коруптивни шеми, експертиза која најчесто се дава на одделенијата за борба против организираниот криминал. Овие единици меѓутоа се типично дел од поголемите полициски сили или министерствата за внатрешни работи кои им ја одземаат институционалната автономија што е потребна за специјализираната антикорупциска институција.

## Судството и антикорупцијата

Во Југоисточна Европа, силниот фокус ставен врз судската независност не бил следен со подеднакво силни барања за отчетност. Без соодветни проверки и балансирање, судската самоуправа излегла надвор од контрола и се претворила во корпорација вклучувајќи ги и сите придружни коруптивните ризици. Преголемото нагласување на формалната изборна независност стана типичен пример за тоа како лекот се претвора во болест, наместо да се обезбеди рамнотежа на извршната власт, самоуправувањето ги задржа клиентелските односи меѓу судиите и специјалните интереси. Денес, правосудството во ЈИЕ е ефективно зафатено од корупција како и другите гранки на власт. Откога се ослободи од јавното испитување и политичките фактори што довеле до такво уредување, денес има помалку проверки на тоа како судиите стекнуваат корист.



Не е изненадувачки што јавноста нема високо мислење за судството. Системот за следење на корупцијата на СЕЛДИ откри дека судиите се сметаат за најкорумпирани службени лица во регионот; отсуството на транспарентност и отчетност е веројатно значаен фактор за таквите оценки. Во сите земји од СЕЛДИ има видливо **влошување во оцената за распространетост на корупцијата меѓу судиите** од 2001 година.

Капацитетот на судството во регионот за спроведување на антикорупциското законодавство, особено во однос на политичката корупција, е поткопан од голем број проблеми што кумулативно го имале влијание:

- Уставни прашања, првенствено поврзани со враќање на рамнотежата меѓу независноста и отчетноста на судството;
- Сложеноста на кривичното гонење на извршителите на кривичното дело корупција, особено на политичко ниво;
- Генерално недоволниот капацитет и ниската професионалност, претераниот обем на работа, што резултира во натрупување на случаи, неможност за справување со случаите, немање механизми, итн.

Важен наод во овој круг на следење на корупцијата на СЕЛДИ што е релевантен за улогата на судството во антикорупцијата е **недостатокот од механизми за повратна информација** што овозможува јавноста и креаторите на политики да го евалуираат и интегритетот на судството и неговата ефективност во спроведувањето на кривичните антикорупциски закони. Во ниту една од ЈИЕ земјите нема веродостоен, систематски и сеопфатен механизам за собирање, обработка и објавување на статистичките податоци за работата на судовите и обвинителството, особено за корупциските случаи.

## Корупција и економијата

Во Југоисточна Европа, извонредно значајното вклучување на владите во економијата создава бројни точки на потенцијален конфликт меѓу јавните институции и бизнисот; за возврат, тоа создава корупциски ризик. Ризикот е особено висок во областа на приватизацијата и во јавните набавки и концесиите во тешките индустрии, како енергетскиот и здравствениот сектор. Понатаму преголемата регулација на бизнисот, главно во однос на режимот

за регистрирање, лиценцирање и добивање дозволи, создава различни бариери за оние кои влегуваат на пазарот и повисоки бизнис трошоци, иако некои земји во регионот направиле значаен напредок во справувањето со бизнис пречките. Сепак, надзорот и усогласувањето сè уште ги искривуваат пазарите преку претерано фокусирање на контролата и казните без оцена на вистинскиот ризик и исплатливоста. Ова е особено вистинито за царинските управи низ целиот регион, кои сè уште се гледаат како ефективни средства за притисок врз бизнисите. Ова ги води претприемачите или во неформалниот сектор или ги принудува да прибегнат кон подмитување. Потоа по принципот на опаѓачка спирала со ова се оправдуваат дополнителните регулативи и административни бариери.

Различните околности што даваат повод за корупција во интеракциите меѓу бизнисот и службените лица ја илустрираат тешкотијата со која се соочуваат антикорупциските политики бидејќи мора да се земат превид мноштво фактори. Кога се иницирани од бизнисот, коруптивните практики може да бидат поделени во две главни категории, избегнување на дополнителните трошоци и стекнување неправедна предност. Во првата група е митото потребно заради слабата или претераната регулација, индивидуална или институционална некомпетентност, итн.; во втората се различни видови на измама, затајување данок, измама со ДДВ, шверц, непочитување на здравствените и безбедносните стандарди, итн.

Во Југоисточна Европа, јавните набавки на владата се еден од главните канали преку кои корупцијата влијае на економијата. Корупцискиот ризик во оваа област е поврзан со бројни недостатоци: недоволно транспарентни процедури, голем дел на неконкурентни процедури, слаб надзор и неефикасна правосудна ревизија (во случај на правосудна корупција), итн. Иако, пред повеќе од една деценија студијата на СЕЛДИ откри дека земјите во областа направиле напредок во зајакнување на законската рамка на процесот и нејзино усогласување со законодавството на ЕУ, јавните набавки и понатаму се меѓу најслабите аспекти на јавното владеење. Реалноста не се променила многу оттогаш бидејќи добро направените правила се заобиколуваат од страна на корумпираните политичари и добро поврзани бизниси. Институционалната фрагментација не дозволува ефективно спроведување на правилата за јавни набавки.

## Граѓанското општество во антикорупцијата

Невладините организации во Југоисточна Европа се меѓу најважната движечка сила во антикорупцијата. Сепак, тие се далеку од преточување на јавните барања во ефективно застапување на политики и спротивставување на корупцијата заради бројни слабости. Нивниот придонес зависи во голема мерка од тоа колку се способни **да служат и како куче чувар и за ангажирање на владата** во антикорупциските реформи. Сепак, постои недостаток од формални механизми за ангажирање на граѓанското општество од страна на националните влади во регионот, како и недоволен административен капацитет и јасна визија и сфаќање на потенцијалните ГОи во полето на антикорупцијата. Претераната зависност од меѓународните, вклучувајќи го и финансирањето од ЕУ и недостатокот на национални политики за негување на жив граѓански сектор во Југоисточна Европа го компромитираат одржливото влијание врз локалните лидери во антикорупцијата.

Иако ГОи во СЕЛДИ успеале да утврдат некои меѓународни јавно-приватни партнерства, тие не се трансформирале во ефективни партнерства со националните владини институции. Клучот за успешност на овие партнерства е капацитетот да се стапи во различни односи со државните институции, и комплементарни и конфронтирачки. На пример, еден начин за помирување на соработката со извршување на функцијата на куче-чувар, е да се зајакне на професионализмот на НВО за следење на корупцијата и антикорупциските политики.

Ефективноста на НВОи во решавање на прашањата со доброто јавно владеење во СЕЛДИ земјите зависи во голем степен од нивниот капацитет да се доведе в ред нивното сопствено владеење. Ризикот НВОи да бидат зафатени од специјалните интереси и под влијание на корумпираните службени лица или политичари потекнува од можноста за искористување на бројните ранливости на непрофитниот сектор во регионот:

- Отсуство на задолжителни процедури за транспарентност;
- Неэффективна контрола на усогласувањето со финансиските регулативи;
- Недостаток на култура за ревизија;
- Ниско ниво на саморегулација и координација на напорите.

Спротивставувањето на тоа граѓанското општество да биде зафатено од корупција како дел од националните антикорупциски напори во Југоисточна Европа треба да биде на врвот на агендата за реформи во регионот.

## Меѓународна соработка

Меѓународните институции и странски партнерски држави одиграле важна улога во развојот на антикорупцијата во Југоисточна Европа. Земајќи ја предвид екстремната партизираност во домашната политика, меѓународните заложби го олеснуваат усвојувањето на реформски политики што инаку би биле избегнати од националните политичари. Извештаите за напредокот на Европската комисија, финансиите од ЕУ за реформи и твининг програмите се клучни меѓународни влијанија врз националните антикорупциски агенции во повеќето ЈИЕ земји. Иако антикорупцијата е една од главните елементи во извештаите за напредокот на ЕК, нивниот прием на локално ниво е различен, земјите со појасни изгледи за пристапување посветуваат многу поголемо и подетално внимание на наодите од извештаите, додека во Турција, на пример, овие извештаи добиваат помало внимание.

Меѓународната вклученост, меѓутоа, со себе исто така го носи ризикот од нереални очекувања за брзо поправање на ситуацијата што за возврат би можело да предизвика усвојување на површни и ад хок мерки. Условеноста и поголемиот дел од стимулациите влијаат првенствено на агенциите од извршната власт, додека судството, собранието и другите засегнати јавни и приватни институции не се доволно вклучени. Одржливоста на меѓународната вклученост беше зајакната со проширувањето на опсегот на вклучени локални засегнати страни, односно граѓанското општество, медиумите, еснафските здруженија, синдикатите, итн. Ова проширување на домашните соработници на меѓународните партнери имало за ефект зајакнување на изолираните реформистички политичари или политички групи, но и различни невладини актери и охрабрување на јавното барање за реформи. Клучно за влијанието на ЕУ во регионот ќе биде продолжувањето и надградувањето на овој ангажман. За да се случи ова, не е доволна само поврзаност на владата со Брисел. Ангажманот на меѓународните партнери на реформистичките политичари и партии треба да бидат подржани и верифицирани од граѓанското општество во некој вид на трилатерална соработка.

## КЛУЧНИ ПРЕПОРАКИ

Искуството на земјите од СЕЛДИ во борбата против корупцијата од 2001 година покажува дека решавањето на предизвикот со корупцијата во регионот ќе бара одржливи напори на многу фронтови како и вклучување на сите локални и меѓународни заинтересирани страни на подолги патеки. Овој извештај дава неколку препораки за да се постигне понатамошен напредок во ограничувањето на корупцијата. Од нив, три клучни области треба да бидат приоритет на земјите во регионот и на европско ниво, со цел да се постигне напредок на среден рок:

**Ефикасно гонење на корумпираните високи политичари и високи државни службеници** е единствениот начин да се испрати силна и непосредна порака дека корупцијата нема да биде толерирана. Изведувањето на корумпираните политичари пред лицето на правдата се покажа како многу ефикасно во зајакнување на антикорупциските мерки во Хрватска и Словенија, на пример. Успехот во оваа насока, исто така, ќе бара меѓународна поддршка, вклучувајќи го и учеството на земјите членки на ЕУ во спроведување на законот.

**Независен механизам за следење и на корупцијата и на антикорупцијата** треба да се воведат на национално и регионално ниво со цел да се обезбедат цврсти податоци и нивна анализа и да се интегрира и дијагностицирање на корупцијата и евалуација на антикорупциската политика. Механизмот треба да се спроведува преку национални и / или регионални граѓански организации и мрежи, и треба да биде независна од директно национално финансирање на владата. Треба да служи како средство за отворање на административните податоци и зголемување на јавниот пристап до информации. Податоците што овозможуваат следење на јавните набавки, концесиите, спроведување на законодавството за конфликт на интерес, државна помош, трансфери од буџетот, годишните извештаи за работата на агенциите за надзор и усогласеност, итн, треба да бидат јавно достапни во формат на база на податоци, со што ќе се овозможува широка анализа на податоците и употреба на алатки за следење.

**Критичните сектори со висок ризик за корупција и вклучување на државата, како енергетскиот сектор, треба да бидат приоритет.** Други приоритетни мерки се:

- Зголемување на конкуренцијата во јавните набавки;
- Подобрување на корпоративното владеење на претпријатијата во државна сопственост;
- Транспарентно управување со инвестициски проекти од голем обем;
- Зголемување на отчетноста и независноста на властите кои го регулираат енергетскиот сектор.

**Меѓународните партнери, и пред сè Европската комисија, треба директно да ги ангажираат граѓанските организации во регионот.** Ова е од суштинско значење заради неколку причини: а) за меѓународно поддржаните реформи да станат одржливи, тие треба да бидат прифатени од пошироката јавност, а граѓанските организации се неопходни за ова да се случи; б) учеството на граѓанските организации е начин за гарантирање дека одговорноста на владите кон донаторите и меѓународните организации нема да имаат предност во однос на одговорноста кон локалното гласачко тело; в) ефективностата на меѓународната помош ќе биде зголемена, ако тоа ги користи вештините за следење и анализа и можностите за застапување на граѓанските организации; г) директниот ангажман ќе има дополнителна корист од спречување граѓанското општество да биде зафатен од страна на клиентелистички мрежи на неререформираната и често корумпирана јавна администрација.

## КОНКРЕТНИ ПРЕПОРАКИ

### Политики и законодавство

- Дефинирање на националните антикорупциски напори во однос на политиката како мерливи цели и одредници, наместо едноставни мерки или закони. Ова ќе вклучува поставување на конкретни цели што треба да се постигнат и избор на соодветни методи за интервенција. Овие цели треба да бидат мерливи, но и достижни.
- Приоретизирање на одредени сектори, видови на корупција и методи на интервенција и пилотирање на различни пристапи пред целосно воведување на широки мерки. Корупцијата е широк концепт, поврзан со различни и менливи видови на измама кои не можат да се решат истовремено на ефективен начин.
- За дефинирање на политиките потребни се релевантни информации. Иако се направени не-

какви напори во националните антикорупциски стратегии за процена на претходните резултати, ниту една од земјите на СЕЛДИ нема одржлив механизам за евалуација на антикорупциските политики. Во најмала рака, за ова е потребно: а) веродостојни и редовни статистички податоци за антикорупциските напори (истраги, обвиненија, административни мерки, итн); б) редовно следење и анализа на ширењето и формите на корупција во различни јавни сектори. Следењето треба да биде независно и/или спроведувано од надворешни лица, со вклучување на граѓанското општество и вградување на основните компоненти на неадминистративните системи за следење на корупцијата, како што е ССК на СЕЛДИ.

### Антикорупциски институции и спроведување на законот

- Воведување на механизам за повратни информации за спроведување на антикорупциските политики. Механизмот може да се заснова на нови иновативни инструменти кои се достапни во последниве години, како што се *Интегрираната алатка за следење на спроведувањето на антикорупциското законодавство* развиен од страна на Центарот за проучување на демократијата и Универзитетот во Тренто. Таа им овозможува на креаторите на политиката да ги проценат ризиците за корупција во дадена владина институција и ефектот на соодветната антикорупциска политика, идентификувајќи ги решенијата со најголемо влијание.
- Институционалниот капацитет на релевантните владини тела – особено специјализираните антикорупциски агенции и агенциите за надзор, како што се националните ревизорски институции – вклучувајќи ги и нивните буџети, објекти и персонал треба да бидат усогласени со широката надлежност што им е дадена на овие институции. Алтернативно, тие треба да дизајнираат потесни годишни или среднорочни програми, кои им даваат приоритет на интервенциите.
- Националните ревизорски институции, исто така, треба да имаат зајакнат институционален капацитет, вклучувајќи и овластувања за воведување построги санкции. И оние кои се подложни на ревизија и националните парламенти треба да бидат обврзани да ги следат препораките во извештаите на овие институции. Националните ревизорски институции, исто така, треба да имаат мандат да вршат ревизија врз управувањето со фондовите на ЕУ, таму каде што овие

се администрираат од страна на националните власти. Бидејќи работата на ревизорските институции е во многу рана фаза, тие треба да го развијат нивниот капацитет за извршување на повеќе такви задачи.

- Потребни се дополнителни мерки за да обезбеди дека вработувањето во државната служба е врз основа на заслуги, а не врз основа на партиска припадност.
- Антикорупциската работа треба да биде рамномерно распределена меѓу повеќе владините тела. Проширувањето на палетата на законските инкриминации треба да се балансира со подобрување на капацитетот во сите јавни тела за справување со корупцијата во своите редови, преку административни алатки, наместо префрлање на одговорноста на полицијата и обвинителството. Општите органи на државната управа треба да дејствуваат како вратари на системот на кривичната правда, занимавајќи се со толку случаи на корупција колку што им дозволуваат нивните административни надлежности. Во најмала рака, ова подразбира создавање на механизми за ефективно справување со поплаките.
- Одземањето на незаконски стекнатиот имот во случаите на корупција е антикорупциска алатка чија примена треба да се прошири. Потребно е посебно внимание за да се балансираат правата на обвинетиот со интересите на општото добро, особено во услови на често корумпирана јавна администрација, конфискација на богатството по кривичните обвиненија е важен фактор за одвраќање кој сè уште е недоволно искористен во ЈИЕ.

### Правосудство

- Земјите каде што мнозинството судски самоуправни тела не се избрани од страна на судиите треба да усвојат реформи за зголемување на нивната гласачка моќ. Земјите кои не го сториле тоа, треба да го усвојат принципот „еден судија – еден глас“.
- Изборот на судската квота треба да е колку што е можно порепрезентативна, и треба да ги вклучува судиите од првостепените судови. Внимателно треба да се ревидира, и ако е потребно да се преиспита, компатибилноста на позицијата на претседател на суд со членство во судските самоуправни тела.
- Во земјите каде што и обвинителството и судовите се управувани од страна на истото тело, двата колегиуми, за обвинители и судии, треба да би-

дат одделени во рамките на ова тело. Обвинителите и судиите, соодветно, ќе бидат избрани само во овие колегииуми.

- Да се укине или намали на минимум улогата на владините министри (обично за правда) во судските самоуправни тела, особено во однос на одлуките за дисциплински постапки.
- Судиите треба да имаат приоритет во механизмот за верификација на анкетните листови.
- Независноста и капацитетот на судските инспектори треба да се зајакне, за да се овозможи засилување на инспекциите.
- Воведување на повратни механизми за спроведување на антикорупциските политики во однос на судиите. Овие механизми се суштински непотполни или практично недостасуваат во сите СЕЛДИ земји; нивното отсуство го саботира аспект за репресијата на антикорупциските политики и го прави понатамошното инкриминирање на корупцијата бескорисно. Можна добра практика што би можела да се реплицира, иако таа е сè уште недоволно развиена, е Платформата за антикорупциска статистика на Косово, дизајнирана од страна на една невладина организација. Таквиот механизам треба да вклучува редовно информирање за: дисциплински и административни и кривични мерки во јавната администрација и судството; различните аспекти на кривично гонење, вклучувајќи обвиненија и пресуди / ослободителни пресуди, казни за различни видови на корупциски дела.

### Корупција и економијата

- Да се сведат на минимум и да се ревидираат еднаш годишно политиките за доделување државна помош, затоа што тие создаваат значителен корупциски ризик. Однапред да се воведат строга примена на правилата за државна помош на ЕУ, како и развивање на капацитетите на националните независни регулатори на државна помош за спроведување на правилата.
- Подобрување на спроведувањето на антимонополското законодавство со цел да се промовира слободното претприемништво и конкуренција. Да се посвети посебно внимание и редовно да се ревидира концентрација во секторите кои се силно регулирани и се соочуваат со лиценцирање и други ограничувања, со што се создава ризик од судири меѓу поголемите конкуренти и политичарите.
- Земјите кои не го направиле тоа треба да воспостават институционални врски помеѓу уп-

равувањето со средствата и обврските на сите јавни финансии, вклучувајќи ги и државните претпријатија, со цел да се ублажат финансиските ризици и да се подобри кредибилитетот на владата за управување со јавните финансии. Претпријатијата во државна сопственост треба да ги исполнат строгите барања за корпоративно управување и известување (пр. правила на ОЕЦД), како и компаниите со кои јавно се тргува. Овие претпријатија треба електронски да ги објавуваат кварталните извештаи.

- Воведување на одговорност и санкции за организациите кои склучуваат договори кои нема континуирано да поднесат извештаи за јавните набавки, извештаи за повреди на антикорупциските прописи или ќе поднесат неточни или нецелосни податоци.
- Дефинирање на правна и институционална рамка за управување и контрола на склучените договори по пат на јавно-приватно партнерство.
- Подобрување на надзорот на јавните набавки од страна на големите јавни набавувачи (државните претпријатија и јавните претпријатија) за да се зголеми ефикасноста и да се намалат неправилностите.
- Усвојување политики за намалување на бројот на тендери за јавни набавки со само еден понудувач и подобрување на конкуренцијата. Онлајн објавување во формат на база на податоци низ која може да се пребарува комплетната документација за јавни набавки вклучувајќи најави, известувања, понуди, договори, и сите дополненија и измени.
- Земјите кандидати за ЕУ, кои немаат треба да воспостават децентрализираните системи за спроведување на фондовите на ЕУ за да се обезбеди соодветна правна и административна рамка за пренесување на одговорностите за спроведување на програмите финансирани од ЕУ. Надзорот треба да остане централизиран и независен од органите што ги спроведуваат.
- Воведување на концептот на исплатливост при евалуација на договорите за јавни набавки.

### Граѓанско општество

- Да се зголемат капацитетите на граѓанските организации за следење и известување за корупција и антикорупција, вклучувајќи ја и способноста за собирање и средување на основните информации за работата на владините институции, вештините за мерење на реалното ширење на корупцијата и анализа на податоците, институционална евалуација и пишување извештаи.

- Законодавството во врска со конфликт на интереси треба да ги вклучува непрофитните институции, особено онаму каде што се финансирани преку програми спроведувани од владата, како што се државниот буџет, ЕУ фондови, итн.
- Правила и прописи за јавно финансирање, и од централната и локалната власт, за непрофитните организации треба да бидат јасни и транспарентни. Само на невладините организации регистрирани за јавен интерес треба да им биде дозволено да добиваат јавни средства, и соодветно треба да ги исполнуваат построгите барања за известување и објавување на информации.
- Европската Унија и другите донаторски агенции треба да ја разгледаат можноста за поголемо финансирање на програми за добро владеење спроведени во соработка со граѓанските организации и јавните институции. Овие програми треба да имаат јасни одредби против тоа невладините организации да бидат зафатени од посебните интереси. Треба да се напомене дека за да се има влијание потребен е подолг рок (10 години и повеќе) и постојана заложба.
- Граѓанскиот сектор треба да обезбеди сопствена саморегулација. Во најмала рака, ова вклучува донесување кодекси на однесување со стандарди кон кои треба да се стремат. Тие, исто така, треба да се најдат повеќе и подобри начини за организирање на коалиции на интереси.
- НВО треба подобро да ја разберат потребата да бидат транспарентни и одговорни. Ова вклучува процес на редовна ревизија, објавување на финансиските извештаи, експлицитни и транспарентни процедури за корпоративно управување, и мерки против зафаќање од страна на посебни интереси.
- Во земјите кои не се членки на ЕУ од ЈИЕ им се препорачува да учат од знаењето и експертизата содржани во Извештајот на ЕУ за борба против корупцијата. Ова ќе им обезбеди со увид во од-

нос на проценката на ширењето на корупцијата и развивањето на политики за борба против корупцијата.

### Меѓународна соработка

- Програмите за надворешна помош треба подобро да ги одразуваат резултатите од меѓународните и домашните независни евалуации. За тоа да се постигне, програмите за помош треба да бидат пофлексибилни, вклучувајќи пократок рок помеѓу дизајнот и испораката.
- Меѓународната антикорупциска помош за националните влади треба да предвиди посилен улог на граѓанското општество. Ова вклучува и учество на невладините организации како партнери за спроведување, следење и ресурсни организации, особено во евалуацијата на влијанието на проектите за помош.
- Ефективноста на помошта треба периодично да се оценува преку методи за евалуација на влијанието. Во прилог на обезбедување на исплатлива мерка, особено се вклучени јавни финансии, ова ќе овозможи успешните програми да бидат одржливи, а неуспешните да се прекинат. Императив е оваа проценка да биде независна и да ја користи експертизата на граѓанските организации.
- Помошта треба да поттикне програми што ќе се спроведуваат во повеќе држави за заедничките прашања, како што е прекуграничниот криминал. Бугарското искуство во јавно-приватната соработка во анализа на врските на организираниот криминал и корупцијата треба да се искористи во регионот.
- Подготовката и наодите на редовните извештаи на Европската комисија треба да бидат подобро вградени во локалната политика преку потпирање во поголема мера врз локалното граѓанско општество и бизнис заедницата.

## MONTENEGRO

### REZIME

Korupcija u Jugoistočnoj Evropi je tako često i tako dugo u vijestima, u fokusu javne rasprave, i na političkoj agendi nacionalnih i međunarodnih institucija, ne traži pretjerano opravdanje. Razlog tome je upravo činjenica da se korupcija pokazala kao veoma složen problem, pa su savremeni pristupi njenom razumijevanju – a samim tim i smanjenju – svakako opravdani. Perspektiva ulaska u Evropsku Uniju za zemlje regiona, iako daleka, obezbjeđuje podsticajni okvir za djelovanje. Lokalni akteri procesa, a naročito civilno društvo su ti koji mogu ostvariti održivi napredak u borbi protiv korupcije. Liderstvo jugoistočne Evrope za razvoj i integritet (SELDI) je detaljnu dijagnozu i razumijevanje korupcije i nedostataka u upravljanju u regionu postavilo kao svoje glavne prioritete i kao nužni preduslov za zagovaranje **antikorupcijske politike zasnovane na znanju**.

Ovaj Izvještaj SELDI mreže uklapa se u razvojni i implementacioni okvir nastajućih regionalnih antikoruptionskih politika i infrastrukture, kao što je prikazano u SEE2020 Stubu Strategije Upravljanja koju vodi Regionalna antikoruptionska inicijativa.

Kao rezultat saradnje u okviru SELDI mreže, ovaj izvještaj je inovativan i u svojoj metodi i postupku. On je rezultat primjene sistema koji je razvio SELDI početkom 2000-ih za procjenu **korupcije i antikoruptionske**, a prilagođen je društvenom i institucionalnom okruženju zemalja jugoistočne Evrope.<sup>1</sup> Pristup koji se zasniva na istraživanju viktimizacije kojim se služi *Sistem za monitoring korupcije* upotrijebljen u Izvještaju pruža jedinstvenu vođenu podacima procjenu napretka u borbi protiv korupcije u regionu od 2001. godine. Runda ocjenjivanja za period 2013-2014. godine, koje je sažeto u ovom izvještaju, je rijedak slučaj u međunarodnoj praksi monitoringa gdje su **ista pitanja i isti region ponovo aktuelizovani nakon nešto više od jedne decenije**. Procjena je uporedila nacionalno zakonodavstvo i institucionalnu praksu u nizu oblasti ključnih za antikoruptionske napore: regulatorni i zakonski okvir, institucionalne pretpostavke, korupcija u ekonomiji, uloga civilnog društva i međunarodna

saradnja. Izvještaj daje **stanovište civilnog društva i procjenu javnih politika**, a po pitanju njegovih nalaza i preporuka konsultovane su nacionalne i regionalne javne institucije.

Procjena nacionalnih institucionalnih i pravnih aspekata koji omogućavaju korupciju u regionu nije namijenjena kao sveobuhvatan popis propisa i praksi u svim zemljama, već naglašava neka od prioriternih pitanja koja su relevantna za potencijalne napore zajedničkih izvora korupcije u Jugoistočnoj Evropi (JIE). Izvještaj daje **model za izvještavanje o napretku u borbi protiv korupcije** od strane civilnog društva u Jugoistočnoj Evropi.

### KLJUČNI NALAZI

#### Ukupna procjena

Bez obzira na određena važna dostignuća – najviše u odnosu na stabilizaciju demokratskih institucija, usvajanje zakona u ključnim oblastima borbe protiv korupcije, smanjenje sitne korupcije i sve veću javnu netrpeljivost prema korupciji – reforme u borbi protiv korupcije i dobrog upravljanja nijesu konsolidovane, čini se da je korupcija među izabranim političarima i sudijama sve veća, a da je sprovođenje antikoruptionskih zakona nasumično. Antikoruptionska politika i institucije u regionu će imati ogromne koristi od usvajanja redovnog i preciznog alata za mjerenje korupcije i stope napretka u oblasti dobrog upravljanja zasnovanog na istraživanju viktimizacije, slično posebnom Eurobarometru za borbu protiv korupcije, Monitoringu korupcije i organizovanog kriminala u Jugoistočnoj Evropi od strane Kancelarije Ujedinjenih nacija za pitanja droge i kriminala (UNODC), i *Sistemu za monitoring korupcije* koji je koristio ovaj izvještaj.

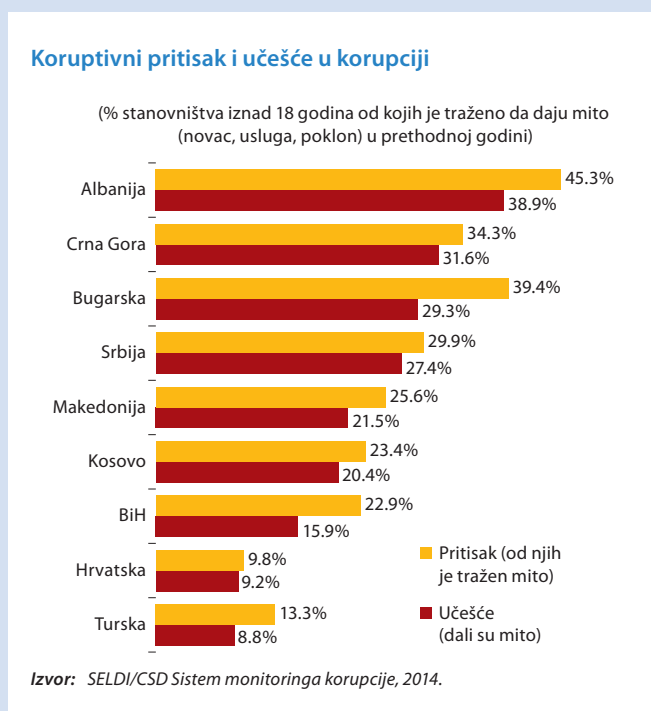
#### Rasprostranjenost korupcije u Jugoistočnoj Evropi

Iskustvo sa korupcijom, drugim riječima, učešće javnosti u koruptivnim transakcijama, u jugoistočnoj Evropi je veoma visoko. Čak u Turskoj i Hrvatskoj, gdje je nivo administrativne korupcije najniži u regionu, oko 8-9% stanovništva prijavljuje da je dalo mito u posljednjih godinu dana. Takav nivo iskustva sa korupcijom je daleko iznad prosječnog nivoa koji bilježi istraživanje

<sup>1</sup> (SELDI, 2002).

Eurobarometra u Evropskoj Uniji.<sup>2</sup> To pokazuje da je administrativna korupcija **masovna pojava** i ne može se ograničiti na pojedinačne slučajeve korumpiranih službenika.

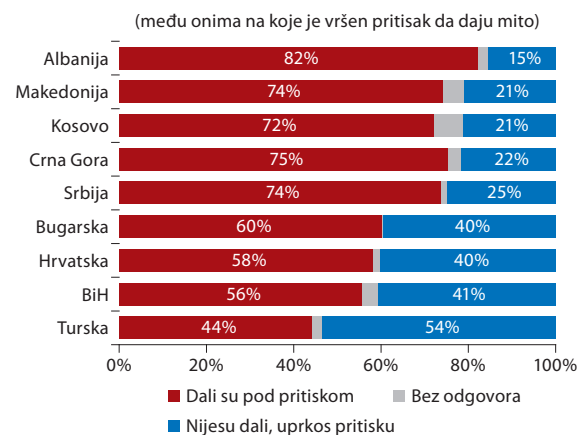
Značajne razlike između zemalja koje imaju zajedničku historijsku pozadinu pokazuju da različite putanje društvenog, ekonomskog i institucionalnog razvoja donose i različite rezultate. Sve u svemu, osim Bugarske, promjene u odnosu na prethodnu rundu SELDI CMS analize (2001. i 2002.god.) su pozitivne za sve zemlje; napredak je, međutim, bio spor i neujednačen.



Koruptivni pritisak od strane javnih službenika je glavni faktor koji statistički utiče na nivo učešća u korupciji. Većinu zemalja u kojima su i učešće i pritisak visoki karakteriše i niska **otpornost** na koruptivni pritisak (većina ispitanika od kojih je tražen mito su i dali mito). Iako se otpornost ne može smatrati glavnim faktorom za smanjenje korupcije, ona odražava preovladavajuće društvene stavove po pitanju integriteta i u velikoj je mjeri rezultat napora civilnog društva i vlasti u odnosu na unapređenje antikorupcijske svijesti. U tom smislu, uloga civilnog društva je od ključnog značaja jer je ono u poziciji da ocjenjuje rezultate i predvodi pritisak javnosti ka promjenama.

<sup>2</sup> Indikatori za iskustvo sa korupcijom koji se koriste u istraživanjima Eurobarometra imaju malo drugačiji sadržaj, jer se odnose na direktna iskustva i slučajeve u kojima su ispitanici bili svjedoci slučajeva mita. Za više detalja, molimo pogledajte (TNS Opinion & Social, februar 2014.).

### Otpornost na koruptivni pritisak



Izvor: SELDI/CSD Sistem monitoringa korupcije, 2014.

## Antikorupcijska politika i zakonodavstvo

Zemlje članice SELDI mreže su generalno usvojile bolji dio, i što je još važnije logiku i pristup, međunarodnih antikorupcijskih standarda u svojim nacionalnim zakonodavstvima. Kvalitet zakonodavstva, međutim, i dalje predstavlja problem. Česte i nedosljedne promjene zakona dovele su do proceduralnih i zakonskih zamršenosti i kontradiktornih tumačenja od strane sudova.

Sve zemlje su usvojile neku vrstu strateškog dokumenta koji sadrži njihov sveukupni pristup borbi protiv korupcije. Iako postoje određene razlike među zemljama, implementaciju ovih dokumenata uglavnom sputava nedovoljno resursa i predanosti na visokom državnom nivou. Dodatni problem u cijelom regionu je bila izrada strategija koje bi se bavile svim mogućim aspektima korupcije. Umjesto da postave prioritete, ovi dokumenti su postali sveobuhvatni; u smislu borbe protiv korupcije, strategije je poprimila značenje nečeg jednostavno iscrpljujućeg.

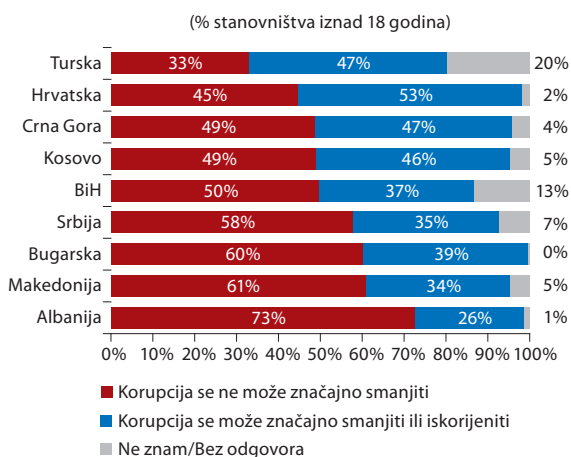
Što se tiče političkih prioriteta, došlo je do dvije značajne promjene u pristupu borbi protiv korupcije, pomjeranje pažnje sa sitne korupcije (među saobraćajnom policijom ili doktorima u javnom sektoru) na veliku (među članovima parlamenta ili ministrima) i kriminalizacije šireg niza zloupotreba javne funkcije. Međutim, ostvarivanje uticaja u smislu kažnjavanja velike korupcije u najboljem slučaju ostaje ograničeno. Ključni izazov za antikorupcijsku politiku u regionu je da se premosti implementacioni jaz i održi korak sa promjenljivim



manifestacijama i oblicima korupcije, istovremeno održavajući regulatornu stabilnost i izbjegavajući preplavlivanje pravosuđa čestim promjenama.

Nalazi SELDI monitoringa naglašavaju **značaj javne podrške za uspjeh antikorupcijske politike**. Povjerenje javnosti u vladu i djelotvornost politike spojeni su u nekoj vrsti moralnog kruga: veći udio ljudi koji su optimistični po pitanju vjerovatnoće uspjeha u borbi protiv korupcije je u korelaciji sa nižim nivoima korupcije. S druge strane, preovladavajuća korupcija ide ruku pod ruku s povećanim pesimizmom o izgledima u borbi protiv korupcije.

#### Izvodljivost odgovora javnih politika na korupciju: kako to javnost procjenjuje



Izvor: SELDI/CSD Sistem monitoringa korupcije, 2014.

## Institucionalna praksa i sprovođenje zakona

U Jugoistočnoj Evropi, raniji naglasak na usaglašavanje nacionalnog zakonodavstva s međunarodnim standardima u borbi protiv korupcije je postepeno prelazio u fokus na njegovo sprovođenje pod sve većim pritiskom Evropske Unije i lokalnog civilnog društva.

Nedostatak koji je zajednički za sve zemlje članice SELDI mreže je ugrožena autonomija različitih organa za nadzor i sprovođenje zakona. Određeni stepen uplitanja od strane izabраних političara – članova parlamenta ili vladinih ministara – u rad javne administracije je tipičan. Pored toga, nijedna od zemalja članica SELDI mreže nema mehanizam upravljanja pritužbama u javnoj upravi koji adekvatno funkcioniše. Većina zemalja je osnovala organ za borbu protiv korupcije od kojeg se očekuje da prima pritužbe javnosti. Još jedan

nedostatak, koji je zajednički, je nedostatak pouzdanih i javno dostupnih podataka o radu vladinih institucija, a naročito u odnosu na borbu protiv korupcije. Podaci i statistika se ili ne prikupljaju, ili nisu dostupni javnosti, ili se prikupljaju tako nasumično da onemogućavaju monitoring i analizu.

Jedno od ključnih pitanja vezanih za model specijalizovanih nacionalnih antikorupcijskih institucija u regionu je **kako kombinovati preventivnu i represivnu funkciju**. U pravilu, zemlje članice SELDI mreže su pokušale da se njihove institucije za borbu protiv korupcije bave i jednom i drugom funkcijom, iako je represija daleko manji aspekt njihovog rada. Većina zadataka ovih organa odnosi se na neki oblik nadzora i kontrole, obično nacionalnih strategija za borbu protiv korupcije, a malo je dokaza da su imali bilo kakav značajan uticaj na zakonodavnu agendu vlade. Uspostavljanje i funkcionisanje takvih institucija muče brojne poteškoće:

- Iako je korupcija postavljena visoko na vladinoj agendi, nije bilo moguće stvoriti institucije s vanrednim ovlašćenjima koje bi na neki način uticale na uspostavljenu ravnotežu moći. Tipičan kompromis je da se ove agencije pripoje izvršnoj vlasti i da im se daju nadzorna ovlašćenja koja su, međutim, obično ograničena na slanje zahtjeva drugim vladinim agencijama da izvještavaju o implementaciji antikorupcijskih zadataka koji su im dodijeljeni.
- Takvi organi morali bi biti oprezni da ne dupliraju ovlašćenja koja su već dodijeljena drugim nadzornim organima (npr. nacionalnih institucija za reviziju ili organa za sprovođenje zakona).
- Većina ih je ograničenih institucionalnih kapaciteta – budžet, osoblje – uprkos suprotno deklarisanim namjerama.

Što se tiče **zakonodavstva**, parlamenti u regionu nijesu visoko rangirani po pitanju povjerenja javnosti i taj nezavidan položaj nije bez razloga. Kodeksi etičkog ponašanja su rijetki i ne sprovode se; propisi koji se tiču lobiranja su još rjeđi; tek nedavno su počele da se uvode procedure za skidanje imuniteta zbog krivičnog gonjenja, premda bojažljivo; gdje god postoji organ za borbu protiv korupcije u parlamentu, on obično nadgleda neki izvršni organ, umjesto da se bavi korupcijom među svojim članovima. Pitanje od posebne brige u zemljama članicama SELDI mreže je finansiranje političkih partija i izbornih kampanja. Većina zemalja je implementiralo preporuke GRECO-a o finansiranju partija, ali brojni problemi – kao što su anonimne donacije, kupovina

glasova (ili podmićivanje birača), nedovoljni kapaciteti za reviziju finansija partija i ograničena ovlašćenja za uvođenje sankcija, itd. – i dalje postoje.

Postojeće stanje **državne uprave** odgovara tranzicijskoj prirodi zemalja Jugoistočne Evrope i nedostatku adekvatne zakonske i institucionalne tradicije kao i hroničnom nedostatku sredstava. Bez obzira na određene razlike među zemljama, ono što je zajedničko za većinu je potreba da se unaprijedi menadžerski i organizacijski razvoj u okviru državne uprave. Kultura „kontrolne“ administracije, umjesto upravljanja radom administracije kroz motivaciju, je ono što opstruira unaprijeđenje profesionalnosti i smanjenje korupcije. Jedan od glavnih zaključaka u izvještaju je **međusobno jačanje nadležnosti i integriteta**. Obično, kad god se osporavaju antikorupcijske kvalifikacije određene vladine institucije, utvrđuje se da postoji nedostatak institucionalnih kapaciteta. Nasuprot tome, svaki napredak u profesionalnosti vodi do unapređenja integriteta. Stoga, izazov u regionu je kako transparentnost i odgovornost učiniti bitnim karakteristikama državne službe, a istovremeno povećati profesionalizam. Vrlo često, loše upravljanje, nejasni kriterijumi i neadekvatna podjela ovlašćenja i odgovornosti je ono što ometa reforme i podriiva autoritet države.

Antikorupcijsku ulogu **organa za sprovođenje zakona** u regionu treba shvatiti u kontekstu stalnog proširivanja niza inkriminišućih koruptivnih praksi čime se rizikuje kanalisanje neproporcionalnog broja slučajeva prema policiji i tužilaštvu. Antikorupcijska uloga organa za sprovođenje zakona u Jugoistočnoj Evropi dodatno je ugrožena njihovom visokom osjetljivošću na korupciju, a posebno organizovanim kriminalom. Policijske snage u većini zemalja članica SELDI mreže imaju jedinice specijalizovane za borbu protiv djelovanja organizovanog kriminala; od ovih jedinica se takođe očekuje da rade na borbi protiv korupcije. Smještanje ove dvije funkcije u jedan organ uglavnom je opravdano time da se organizovani kriminal koristi korupcijom, ali i potrebom za specijalnim istražnim metodama u otkrivanju sofisticiranih koruptivnih šema – ekspertiza koja je obično povjerena odjeljenjima za borbu protiv organizovanog kriminala. Te jedinice su, međutim, obično smještene unutar većih policijskih snaga ili ministarstava unutrašnjih poslova, što ih lišava institucionalne autonomije koja je potrebna specijalizovanim institucijama za borbu protiv korupcije.

## Pravosuđe u borbi protiv korupcije

U Jugoistočnoj Evropi, snažan fokus na obezbjeđivanje nezavisnosti pravosuđa nije ujednačen sa jednako snažnim zahtjevima po pitanju odgovornosti. Bez adekvatne kontrole i ravnoteže autonomija sudstva je ispala iz kontrole, i pretvorila se u korporativizam sa svim povezanim rizicima od korupcije. Pretjerano naglašavanje formalne izborne nezavisnosti postalo je tipičan primjer lijeka koji je postao bolest – umjesto da obezbijedi ravnotežu izvršnoj vlasti, autonomnost je ovjekovječila klijentelističke odnose između sudija i posebnih interesa. Danas je pravosuđe u Jugoistočnoj Evropi efikasno zarobljeno kao i druge grane vlasti. Usled nedostatka javnog nadzora i političkih faktora koji su doveli do takvih aranžmana, danas je malo provjera lobiranja od strane sudija.

Ne iznenađuje činjenica da pravosuđe ne uživa naročito visoko poštovanje od strane javnosti. *Sistem za monitoring korupcije* SELDI mreže nalazi da se sudije smatraju među najkorumpiranijim javnim funkcionerima u regionu; nepostojanje transparentnosti i odgovornosti je nesumnjivo značajan faktor u takvim procjenama. U svim zemljama članicama SELDI mreže, došlo je do opipljivog **pogoršanja procjene širenja korupcije među sudijama** od 2001. godine.

Kapacitet pravosuđa u regionu da sprovodi antikorupcijske zakone, naročito vezano za političku korupciju, narušen je nizom problema koji su izvršili svoj uticaj kumulativno:

- Ustavna pitanja, prije svega u odnosu na obnavljanje ravnoteže između nezavisnosti i odgovornosti pravosuđa;
- Kompleksnost krivičnog gonjenja počilaca krivičnih djela korupcije, naročito na političkom nivou;
- Ukupno nedovoljni kapaciteti i povezana pitanja niskog profesionalizma, preopterećenosti u radu, i rezultirajući neriješeni predmeti, upravljanje predmetima, objekti, itd.

Važan nalaz ove runde SELDI monitoringa korupcije značajan za ulogu pravosuđa u borbi protiv korupcije je **nedostatak mehanizama povratnih informacija** koji omogućavaju javnosti i kreatorima politike da procijene i integritet pravosuđa i njegovu efikasnost u primjeni krivičnih antikorupcijskih zakona. Ni u jednoj od zemalja Jugoistočne Evrope ne postoji pouzdan, sistematski i sveobuhvatan mehanizam za prikupljanje, obradu i stvaranje javno dostupnih statističkih podataka

o radu sudova i tužilaštava, naročito o slučajevima korupcije.

## Korupcija i ekonomija

U Jugoistočnoj Evropi, izuzetno značajan angažman vlade u ekonomiji stvara brojne tačke potencijalnih sukoba između javnih institucija i biznisa; zauzvrat, to stvara rizik od korupcije. Rizik je posebno visok u području privatizacije i javnih nabavki i koncesija za teške industrije (kao što je energetika) i za zdravstvo. Osim toga, prenormiranost biznisa – uglavnom u odnosu na registraciju, licenciranje i režim izdavanja dozvola – nastavlja stvarati različite prepreke početnicima na tržištu i veće troškove poslovanja, iako su neke zemlje u regionu napravile značajan napredak u rješavanju biznis barijera. Ipak, organi za nadzor i izdavanje dozvola i dalje narušavaju tržište tako što se fokusiraju većinom na kontrolu i kazne bez odgovarajuće procjene rizika, koristi i troškova. Ovo se posebno odnosi na uprave carina u cijelom regionu, koje se još uvijek smatraju efikasnim sredstvom za vršenje pritiska na biznis. Ovo ili otjera preduzetnike u neformalni sektor ili ih primorava da pribjegavaju podmićivanju. U silaznoj spirali to onda opravdava dalje normiranje i administrativne barijere.

Raznolikost okolnosti koje stvaraju priliku za korupciju u interakcijama predstavnika biznisa i javnih službenika ilustruju poteškoće sa kojima se antikorupcijske politike suočavaju jer moraju uzeti mnoštvo faktora u razmatranje. Kad ih pokreću predstavnici biznisa, koruptivne prakse se mogu podijeliti u dvije glavne kategorije – izbjegavanje dodatnih troškova i sticanje nepravedne prednosti. U prvoj grupi je mito na koji primorava loša ili pretjerana normiranost, lične ili institucionalne nesposobnosti, itd.; u drugoj grupi su različite vrste prevara – utaja poreza, utaja PDV-a, krijumčarenje, nepridržavanje zdravstvenih i bezbjedonosnih standarda, itd.

U Jugoistočnoj Evropi, javne nabavke su jedan od glavnih kanala kroz koje korupcija utiče na ekonomiju. Rizik od korupcije u ovoj oblasti je povezan s nizom nedostataka: nedovoljno transparentne procedure, veliki udio nekonkurentnih postupaka, slab nadzor i neefikasna sudska revizija (s obzirom na korupciju u pravosuđu), itd. Iako je prije više od deset godina studija SELDI mreže pokazala da su zemlje u regionu ostvarile napredak u jačanju pravnog okvira procesa i njegovo usklađivanje s pravnom tekovinom EU, javne nabavke i dalje predstavljaju jedan od najslabijih aspekata javne

uprave. Stvarnost se od tada nije puno promijenila, jer dobro osmišljena pravila se zaobilaze od strane korumpiranih političara i dobro povezanih biznisa. Institucionalna rascjepkanost ne dozvoljava efikasno sprovođenje propisa o javnim nabavkama.

## Civilno društva u borbi protiv korupcije

Nevladine organizacije u Jugoistočnoj Evropi su među najvažnijim pokretačkim snagama u borbi protiv korupcije. One su, međutim, i dalje daleko od prevođenja javnih zahtjeva u efikasno zalaganje za javne politike, a i od ustajanja protiv korupcije zbog niza nedostataka. Njihov doprinos zavisi u velikoj mjeri od sposobnosti da služe kao jedna vrsta kontrole i da podtsaknu vladu na antikorupcijske reforme. Ipak, nedostaju formalni mehanizmi za uključivanje civilnog društva od strane nacionalnih vlada u regionu, kao i administrativni kapaciteti i jasne vizije i razumijevanje potencijala organizacija civilnog društva u oblasti borbe protiv korupcije. Pretjerano oslanjanje na međunarodne, uključujući i evropske izvore finansiranja i nedostatak nacionalne politike za održavanje vitalnog građanskog sektora u Jugoistočnoj Evropi, ugrožava održiv uticaj lokalnih antikorupcijskih šampiona.

Iako su nevladine organizacije na području SELDI mreže uspjele da uspostave neka međunarodna javno-privatna partnerstva, ona nisu pretvorena i u efikasna partnerstva s nacionalnim vladinim institucijama. Ključ za stvaranje uspješnog partnerstva je sposobnost da se uđe u različite odnose sa državnim institucijama, kako komplementarne tako i konfrontirajuće. Jedan od načina, na primjer, pomirenja saradnji uz obavljanje funkcije čuvara (en. watchdog), bio je da se unaprijedi profesionalnost monitoringa korupcije i antikorupcijske politike od strane nevladinih organizacija.

Efikasnost nevladinih organizacija u rješavanju pitanja dobre javne uprave u zemljama članicama SELDI mreže zavisi u velikoj mjeri od njihove sposobnosti da održe ispravnim sopstveno upravljanje. Rizik od zarobljavanja nevladinih organizacija posebnim interesima i korumpiranim javnim službenicima ili izabranim političarima proizlazi iz mogućnosti iskorišćavanja brojnih ranjivosti neprofitnog sektora u regionu:

- nepostojanje obavezne procedure za transparentnost;
- neefikasna kontrola usklađenosti sa finansijskim propisima;
- nepostojanje kulture revizije;
- nizak nivo samoregulacije i koordinacije napora.

Suprotstavljanje zarobljavanju civilnog društva kao dio nacionalnih napora za borbu protiv korupcije u Jugoistočnoj Evropi bi trebalo da bude u vrhu reformske agende u regionu.

## Međunarodna saradnja

Međunarodne institucije i strane partnerske zemlje odigrale su važnu ulogu u razvoju borbe protiv korupcije u Jugoistočnoj Evropi. S obzirom na ekstremni nepotizam u unutrašnjoj politici, međunarodne obaveze olakšavaju usvajanje reformskih politika kojih bi nacionalni političari inače klonili. Izvještaji Evropske komisije o napretku, finansiranje reformi od strane EU i twinning aranžmani su ključni međunarodni uticaji na nacionalne antikorupcijske planove u većini zemalja Jugoistočne Evrope. Iako je borba protiv korupcije jedan od glavnih elemenata Izvještaja Evropske Komisije o napretku, oni su lokalno prihvaćeni na različite načine – zemlje sa jasnijom perspektivom pristupanja obraćaju mnogo više pažnje i detalja na zaključke izvještaja, dok im se u Turskoj, na primjer, uglavnom posvećuje manje pažnje.

Međunarodni angažman, međutim, donio je sa sobom i rizik od nerealnih očekivanja za brza rješenja koja bi za uzvrat mogla podstaći usvajanje površnih i ad hoc mjera. Uslovljenost i većina inicijativa utiče prije svega na organe izvršne vlasti, dok pravosuđe, parlamenti i druge zainteresovane javne i privatne institucije nijesu bile dovoljno uključene. Održivost međunarodnog angažmana ojačana je proširenjem opsega uključenih lokalnih aktera da uključe civilno društvo, medije, profesionalna udruženja, sindikate, itd. Ovo proširenje domaćih sagovornika međunarodnim partnerima ima efekat osnaživanja izolovanih reformističkih političara ili političkih grupa, ali i raznih nevladinih aktera i podsticanje javne potražnje za reformama. Nastavljanje i nadograđivanje ovog angažmana će biti od presudnog značaja za uticaj koji EU ima u regionu. Da bi se to desilo, veza vlada – Brisel nije dovoljna. Angažman reformističkih političara i partija od strane međunarodnih partnera treba da bude podržan kao i verifikovan od strane civilnog društva u nekoj vrsti trilateralne saradnje.

## KLJUČNE PREPORUKE

Iskustva zemalja članica SELDI mreže u bavljenju korupcijom od 2001. godine pokazuju da bi rješavanje izazova korupcije u regionu zahtijevalo kontinuirane napore na mnogim frontovima i uključivanje svih lokalnih i međunarodnih aktera na dugi rok. Trenutni izvještaj daje niz preporuka za ostvarivanje daljeg napretka u ograničavanju korupcije. Među njima, tri ključne oblasti bi trebalo da budu prioriteta zemalja u regionu i na evropskom nivou kako bi se postigao napredak u srednjem roku:

**Uspješno procesuiranje korumpiranih političara na visokom nivou i viših državnih službenika** je jedini način da se pošalje snažna i neposredna poruka da se korupcija neće tolerisati. Dovođenje nepoštenih političara pred lice pravde pokazalo se vrlo efikasnim u jačanju antikorupcijskih mjera u Hrvatskoj i Sloveniji, na primjer. Uspjeh u ovom pravcu će zahtijevati i međunarodnu podršku, uključujući i uključivanje organa za sprovođenje zakona država članica Evropske Unije.

**Nezavisne mehanizme za monitoring korupcije i antikorupcije** bi trebalo uvesti na nacionalnom i regionalnom nivou u cilju pružanja čvrstih podataka i analize i uključivanja kako dijagnostike korupcije tako i evaluacije antikorupcijske politike. Mehanizam bi trebalo implementirati kroz nacionalne i/ili regionalne organizacije civilnog društva i mreže, i trebalo bi da bude nezavistan od direktnog finansiranja nacionalnih vlada. Ovaj mehanizam takođe trebalo bi da posluži kao sredstvo za otvaranje administrativnih podataka i unapređenje pristupa javnosti informacijama. Podaci koji omogućavaju praćenje javnih nabavki, koncesija, sprovođenja zakona o sukobu interesa, državne pomoći, budžetskih transfera, godišnjih izvještaja o radu organa za nadzor i izdavanje dozvola, itd., trebalo bi da budu dostupni javnosti u obliku baze podataka, omogućavajući time analizu velikih podataka i korištenje alata za monitoring.

**Kritične sektore s visokim rizikom od korupcije i zarobljavanja države, kao što je energetska sektor, treba prioritarno rješavati.** Druge prioritete mjere uključuju:

- povećanje konkurentnosti u oblasti javnih nabavki;
- unapređenje korporativnog upravljanja preduzećima u državnom vlasništvu;
- transparentno upravljanje investicionim projektima velikih razmjera;

- jačanje odgovornosti i nezavisnosti energetske regulatornih tijela.

**Međunarodni partneri, a prije svega Evropska komisija, bi trebalo direktno da angažuju organizacije civilnog društva u regionu.** Ovo je bitno iz nekoliko razloga: a) da bi reforme koje imaju međunarodnu podršku postale održive, potrebno je da steknu prihvatanje šire javnosti, a organizacije civilnog društva su neophodne da bi se to dogodilo; b) uključivanjem organizacija civilnog društva garantuje se da odgovornost vlade prema donatorima i međunarodnim organizacijama nema prednost u odnosu na odgovornost prema lokalnoj zajednici; c) efikasnost međunarodne pomoći će se povećati ako se koristi za vještine monitoringa i analize i sposobnosti zagovaranja organizacija civilnog društva; d) direktan angažman bi imao dodatnu korist u sprečavanju zarobljavanja građanskog društva od strane klijentelističke mreže nereformisane i često korumpirane javne uprave.

## SPECIFIČNE PREPORUKE

### Javne politike i zakonodavstvo

- Definisati nacionalne napore u borbi protiv korupcije u smislu politike koja se odnosi na mjerljive ciljeve i odrednice, a ne samo mjere ili zakonodavstvo. To bi značilo postavljanje specifičnih ciljeva koji se žele postići i odabir odgovarajuće metode intervencije. Ove ciljeve treba izraziti količinski koliko je to moguće.
- Postaviti pojedine sektore, vrste korupcije i metode intervencije kao prioritete, i uvesti različite pristupe prije postavljanja kompletnih mjera. Korupcija je širok pojam, koji se odnose na razne i različite vrste prevara koje se ne mogu rješavati istovremeno na efikasan način.
- Javne politike treba da budu zasnovane na provjerljivim i pouzdanim informacijama. Iako su određeni napori učinjeni u nacionalnim strategijama za borbu protiv korupcije na evaluaciji dosadašnjih rezultata, nijedna od zemalja članica SELDI mreže nema održiv mehanizam za evaluaciju antikorupcijske politike. U najmanju ruku, to zahtijeva: a) pouzdanu i redovnu statistiku o antikorupcijskim naporima (istrage, krivično gonjenje, administrativne mjere, itd.); b) redovni monitoring i analizu širenja i oblika korupcije u različitim javnim sektorima. Monitoring treba da bude nezavistan i/ili eksterni za zemlju, da uključuje civilno društvo i objedinjuje osnovne komponente neadministrativnih sistema monitoringa korupcije, kao što je CMS sistem SELDI mreže.

### Antikorupcijske institucije i sprovođenje zakona

- Uvesti mehanizam povratnih informacija za sprovođenje antikorupcijskih politika. Mehanizam može biti zasnovan na inovativnim novim instrumentima koji su učinjeni dostupnijim u posljednjih nekoliko godina, kao što su *Integrisani alat za monitoring sprovođenja antikorupcijskih politika* koji je razvijen od strane Centra za demokratske studije i Univerziteta Trento. To omogućuje kreatorima politike da procijene rizik od korupcije u datoj vladinoj instituciji i efekat odgovarajuće antikorupcijske politike, identifikujući rješenja sa najvećim uticajem.
- Institucionalni kapaciteti relevantnih državnih organa – naročito specijalizovanih organa za borbu protiv korupcije i nadzornih organa, kao što su državne revizorske institucije – uključujući i njihove budžete, objekte i osoblje se moraju uskladiti sa širokim nadležnostima koje su date ovim institucijama. Kao alternativu, trebalo bi osmisliti sažetije godišnje ili srednjoročne programe, koji za prioritet imaju intervencije.
- Institucionalne poluge državnih revizorskih institucija bi trebalo ojačati, kao i njihova ovlašćenja da izriču oštrije sankcije. I subjekti revizije i nacionalni parlamenti bi trebalo da budu u obavezi da isprate izvještaje ovih institucija. Državne revizorske institucije bi trebalo da imaju mandat za reviziju upravljanja sredstvima Evropske Unije, tamo gdje njima upravljaju nacionalne vlade. Budući da je rad na reviziji učinka u vrlo ranoj fazi, ove institucije treba da razvijaju svoje kapacitete za obavljanje više ovakih revizija.
- Potrebne su dodatne mjere kako bi se obezbijedilo da zapošljavanje u državnoj upravi bude zasnovano na zaslugama, a ne da zavisi od pripadnosti političkoj partiji.
- Rad u borbi protiv korupcije treba podijeliti na ravnomjerniji način između državnih organa. Proširenje opsega zakonskih inkriminacija treba izbalansirati unapređenjem kapaciteta u svim javnim organima za rješavanje korupcije u sopstvenim redovima kroz administrativne alate umjesto prebacivanja odgovornosti na policiju i tužilaštvo. Organi javne uprave bi trebalo da djeluju kao čuvari sistema krivičnog pravosuđa tako što će se baviti sa

onoliko slučajeva korupcije koliko im administrativna ovlaštenja omogućavaju. U najmanju ruku, to podrazumijeva stvaranje djelotvornih mehanizama za upravljanje pritužbama.

- Oduzimanje nezakonito stečene imovine u slučajevima korupcije je alat za borbu protiv korupcije čiju primjenu treba proširiti. Dok posebnu pažnju treba posvetiti balansiranju prava optuženog sa interesima javnog dobra – pogotovo u okruženju često korumpirane javne uprave – oduzimanje bogatstva nakon krivičnih presuda je značajno zastrašivanje koje se još uvijek ne koristi dovoljno u Jugoistočnoj Evropi.

### Pravosuđe

- Zemlje u kojima se većina autonomnih pravosudnih organa ne bira iz redova sudija bi trebalo da usvoje reforme kojima se povećava njihovo pravo glasa. Zemlje koje to nemaju, bi trebalo da usvoje princip „jedan sudija jedan glas“.
- Obezbijediti da kvote pri izboru pravosudnih funkcija budu što je moguće više reprezentativne, uključujući i sudije prvostepenih sudova. Pažljivo pregledati, a po potrebi preispitati, kompatibilnost položaja predsjedavajućeg suda sa članstvom u autonomnom pravosudnom organu.
- U zemljama u kojima tužilaštvom i sudovima upravlja isti organ, dva kolegijuma – za tužioce i sudije – moraju biti odvojena u ovom organu. Tužiocima i sudijama bi se birali samo u ove kolegijume.
- Ukinuti ili smanjiti na minimum ulogu vladinih ministara (obično pravde) u autonomnim pravosudnim organima, naročito vezano za odluke o disciplinskim postupcima.
- Sudije bi trebalo da budu prioritet u mehanizmu za provjeru prijavljivanja imovine.
- Nezavisnost i kapacitet pravosudnih inspekcija treba ojačati kako bi im se omogućilo da pojačaju inspekcije.
- Uvesti mehanizme povratnih informacija za sprovođenje antikorupcijskih politika u odnosu na sudije. Ovi mehanizmi su znatno oskudni ili ih praktično nema u svim zemljama članicama SELDI mreže; njihovo odsustvo sabotira represivni aspekt antikorupcijskih politika i čini dalju inkriminaciju korupcije beskorisnom. Moguća najbolje praksa koju treba kopirati – iako je još uvijek nedovoljno razvijena – je Platforma Kosova za antikorupcijsku statistiku, koju je izradila jedna nevladina organizacija. Takav mehanizam bi trebalo da uključuje redovne informacije o: disciplinskim i upravnim i krivičnim mjerama u javnoj službi i pravosuđu; različitim aspektima krivičnog gonjenja, uključujući i optužnice i presude/oslobađajuće presude, kazne po različitim vrstama krivičnih djela korupcije.

### Korupcija i ekonomija

- Smanjiti na minimum i pregledati na godišnjem nivou politiku državne pomoći jer ona stvara značajan rizik od korupcije. Uvesti unaprijed strogo sprovođenje pravila Evropske Unije o državnoj pomoći, i razviti kapacitete nacionalnih nezavisnih regulatora državne pomoći za sprovođenje pravila.
- Unaprijediti sprovođenje anti-monopolističkog zakonodavstva u cilju promocije slobodnog tržišta i konkurencije. Povesti posebnu brigu i redovno ispitivati zasićenje u sektorima koji su pretjerano normirani i suočavaju se sa izdavanjem dozvola i ostalim ograničenjima, stvarajući tako rizik od tajnih sporazuma između ponuđača i političara.
- Zemlje koje to nisu učinile bi trebalo da uspostave institucionalne veze između upravljanja imovinom i odgovornosti svih javnih finansija, uključujući i preduzeća u državnom vlasništvu, kako bi se ublažio finansijski rizik i poboljšao kredibilitet vlade u upravljanju javnim finansijama. Preduzeća u državnom vlasništvu bi trebalo da ispunjavaju stroge zahtjeve korporativnog upravljanja i izvještavanja (npr. pravila Organizacije za ekonomsku saradnju i razvoj – OECD), u rangu sa javnim dioničkim društvima. Ova preduzeća bi trebalo da objavljuju svoje kvartalne izvještaje onlajn.
- Uvesti odgovornost i sankcije za ugovorne organe koji ne podnose izvještaje o javnim nabavkama u kontinuitetu, izvještaje o kršenju antikorupcijskih propisa, ili dostavljaju pogrešne ili nepotpune podatke.
- Definisati pravni i institucionalni okvir za upravljanje i kontrolu nad ugovorima zaključenim u javno-privatnom partnerstvu.
- Unaprijediti nadzor nad nabavkama od strane velikih javnih nabavljača (državna preduzeća i komunalna društva) kako bi se povećala efikasnost i smanjile nepravilnosti.
- Usvojiti javne politike kako bi se smanjio udio tendera za javne nabavke sa samo jednim ponuđačem i unaprijedila konkurencija. Objaviti u bazi podataka u formatu koji je moguće pretraživati onlajn kompletnu dokumentaciju o predobavještenjima o javnim nabavkama, obavještenjima, ponudama, ugovorima, i priložima.
- Zemlje kandidati za članstvo u Evropsku Uniju koje to nemaju, bi trebalo da uspostave decentralizovani

sistem za implementaciju EU fondova kako bi se obezbijedio odgovarajući pravni i administrativni okvir za prenos odgovornosti za realizaciju programa koje finansira Evropska Unija. Nadzor bi trebalo da ostane centralizovan i nezavistan od organa za implementaciju.

- Uvesti koncept vrijednosti za novac u evaluaciji ugovora o javnim nabavkama.

### Civilno društvo

- Jačati kapacitete organizacija civilnog društva za vršenje monitoringa i izvještavanje o korupciji i borbi protiv korupcije, uključujući i sposobnost za prikupljanje i objedinjavanje primarnih informacije o radu vladinih institucija, vještine za mjerenje stvarnog širenja korupcije i analizu podataka, institucionalnu evaluaciju i pisanje izvještaja.
- Legislativa koja tretira sukob interesa bi trebalo da obuhvati neprofitne institucije, posebno kada se finansiraju preko programa kojima upravlja vlada, kao što je nacionalni budžet, EU fondovi, itd.
- Pravila i propisi o javnom finansiranju – kako od strane centralne tako i lokalne vlasti – neprofitnih organizacija bi trebalo da budu jasni i transparentni. Samo nevladinim organizacijama koje su registrovane za javnu korist treba omogućiti da dobiju javna sredstva, i trebalo bi u skladu s time da zadovolje strožije kriterijume u oblasti izvještavanja i objavljivanja informacija o radu.
- Evropska Unija i ostali donatori bi trebalo da uzmu u obzir veći udio finansiranja za programe dobrog upravljanja koji se sprovode u saradnji između organizacija civilnog društva i javnih institucija. Ovi programi bi trebalo da imaju eksplicitne zahtjeve protiv zarobljavanja nevladinih organizacija posebnim interesima. Treba napomenuti da ostvarivanje uticaja zahtijeva dugoročnu (10 i više godina) neprekidnu posvećenost.
- Sektor civilnog društva bi trebalo da obezbijedi sopstvenu samoregulaciju. U najmanju ruku, to uključuje usvajanje kodeksa ponašanja sa standardima kojima se teži. Trebalo bi takođe pronaći više i bolje načine organizovanja interesnih koalicija.
- Nevladine organizacije bi trebalo bolje da razumiju potrebu da budu transparentne i odgovorne. To uključuje prolaženje kroz redovne revizije, objavljivanje finansijskih izvještaja, eksplicitne i transparentne procedure upravljanja, kao i mjere protiv zarobljavanja posebnim interesima.
- Zemljama Jugoistočne Evrope koje nijesu članice Evropske Unije se preporučuje da se uče od organa znanja i stručnosti sadržanog u Izvještaju EU o za borbu protiv korupcije. To će im dati vrijedan uvid u odnosu na procjenu širenja korupcije i izradu antikorupcijske politike.

### Međunarodna saradnja

- Strani programi pomoći bi trebalo bolje da odražavaju nalaze međunarodne i nezavisne domaće procjene. Da bi se to moglo postići, programi pomoći treba da imaju više sluha i fleksibilnosti, kao i kraći vremenski period između izrade i isporuke.
- Međunarodna pomoć nacionalnim vladama u borbi protiv korupcije bi trebalo da predvidi jaču ulogu civilnog društva. To podrazumijeva uključivanje nevladinih organizacija kao partnera u implementaciji, kontrolora i resursnih organizacija, naročito u procjeni uticaja projekata pomoći.
- Djelotvornost pomoći bi trebalo periodično procjenjivati kroz metode procjene uticaja. Pored obezbjeđivanja mjere “vrijednost za novac” – posebno kada je uključeno i javno finansiranje – to bi omogućilo da se uspješni programi održe, a neuspješni prekinu. Imperativ je da ova procjena bude nezavisna i da koristi stručnost organizacija civilnog društva.
- Trebalo bi podsticati prekogranične programe o zajedničkim pitanjima, kao što je prekogranični kriminal. Bugarsko iskustvo u javno-privatnoj saradnji vezano za analizu povezanosti organizovanog kriminala i korupcije bi trebalo iskoristiti širom regiona.
- Pripremu i nalaze redovnih izvještaja Evropske komisije bi trebalo bolje ugraditi u lokalno kreiranje javnih politika jačim oslanjanjem na lokalno civilno društvo i poslovnu zajednicu.

## SERBIA

### REZIME

Korupcija u jugoistočnoj Evropi je već toliko često i toliko dugo u vestima, u središtu javne rasprave i na dnevnom redu nacionalnih i međunarodnih institucija, da za njeno praćenje nije potrebno posebno opravdanje. Razlog tome je upravo činjenica da se korupcija pokazala kao veoma složen problem, pa su savremeni pristupi njenom razumevanju – a samim tim i njenom smanjenju – svakako opravdani. Izgledi zemalja u regionu za pristupanje EU, iako daleki, predstavljaju moguću okviru za akciju, ali je na lokalnim akterima, a posebno na civilnom društvu, da dovedu do održivog napretka u borbi protiv korupcije. *Liderstvo jugoistočne Evrope za razvoj i integritet* (SELDI) je detaljnu dijagnozu i razumevanje korupcije i “nedostataka” u upravljanju u regionu postavilo kao jedan od svojih glavnih prioriteta i kao nužni preduslov za zagovaranje **antikorupcijske politike zasnovane na znanju**. Ovaj SELDI izveštaj uklapa se u razvojni i implementacijski okvir Regionalne antikorupcijske politike i infrastrukture u nastajanju, kao što je to prikazano u SEE2020 Stubu Strategije Upravljanja koju vodi Regionalna antikorupcijska inicijativa.

Kao rezultat saradnje u okviru SELDI ovaj izveštaj je inovativan, kako metodološki tako i po pitanju samog procesa. To je rezultat primene sistema razvijenog od strane SELDI ranih 2000-ih za procenu **korupcije i borbe protiv korupcije**, prilagođen društvenom i institucionalnom okruženju Jugoistočne Evrope.<sup>1</sup> Pristup zasnovan na istraživanju viktimizacije koji je *Sistem za monitoring korupcije* koristio pri izradi izveštaja pruža jedinstvenu analizu zasnovanu na podacima o antikorupcijskom napretku u regionu počevši od 2001 godine. Period analize 2013 – 2014 i zaključci te analize koji su sažeti u ovom izveštaju, redak su primer u međunarodnoj praksi da se **ista pitanja i isti region ponovo analiziraju nakon nešto više od jedne decenije**. Analiza poredi nacionalno zakonodavstvo i institucionalnu praksu u brojnim oblastima kritičnim za antikorupcijske napore: regulatornom i pravnom okviru, institucionalnim preduslovima, korupciji u privredi, ulozi civilnog društva i međunarodnoj saradnji. Izveštaj prikazuje

**stanovište civilnog društva i političku procenu**, dok su nalazi i preporuke koji se navode u izveštaju dati uz konsultovanje nacionalnih i regionalnih javnih institucija.

Procena nacionalnih institucionalnih i pravnih aspekata koji korupciju u regionu čine mogućom nije zamišljena kao sveobuhvatan popis propisa i prakse u svim zemljama, već naglašava neka od prioritarnih pitanja od značaja za potencijalne napore iznalaženja zajedničkih izvora korupcije u Jugoistočnoj Evropi (SEE). Izveštaj pruža **model za izveštavanje o napretku u borbi protiv korupcije** od strane civilnog društva u zemljama Jugoistočne Evrope.

### NAJVAŽNIJI NALAZI

#### Opšta ocena

Uprkos nekim značajnim dostignućima – uglavnom u vezi sa stabilizacijom demokratskih institucija, usvajanjem zakona u ključnim oblastima borbe protiv korupcije, smanjenjem sitnog podmićivanja i rastućom javnom netrpeljivošću prema korupciji – borba protiv korupcije i reforme u oblasti dobrog upravljanja nisu konsolidovane, korupcija među izabranim političarima i sudijama se po svemu sudeći povećava, a sprovođenje antikorupcijskih zakona je nasumično. Antikorupcijske politike i institucije u regionu će imati neizmerne koristi od usvajanja redovnog i preciznog, na istraživanju viktimizacije zasnovanog alata za merenje korupcije i stope napretka u dobrom upravljanju, slično specijalnom Eurobarometru za borbu protiv korupcije, UNODC-ovog nadzora korupcije i organizovanog kriminala u zemljama Jugoistočne Evrope, i *Sistema monitoringa korupcije* koji je upotrebljen u ovom izveštaju.

#### Rasprostranjenost korupcije u Jugoistočnoj Evropi

Iskustvo sa korupcijom – drugim rečima, umešanost javnih predstavnika u transakcije koruptivnog karaktera – u Jugoistočnoj Evropi je na veoma visokom nivou. Čak i u Turskoj i Hrvatskoj, gde su nivoi korupcije u administraciji najniži u regionu, oko 8-9 % stanovništva izjasnilo se da je dalo mito u poslednjih godinu dana. Takav nivo iskustva sa korupcijom znatno je iznad prosečnog nivoa registrovanog

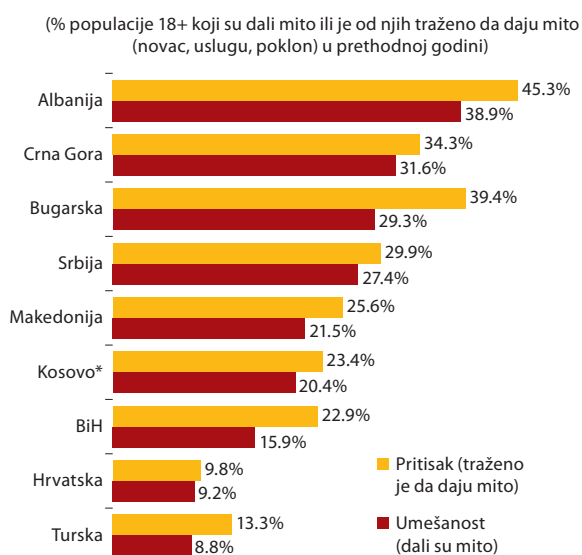
<sup>1</sup> (SELDI, 2002).



istraživanjima Evrobarometra u EU.<sup>2</sup> To pokazuje da je korupcija u administraciji masovna pojava i ne može se svesti samo na pojedinačne slučajeve korumpiranih zvaničnika.

Značajne razlike između zemalja sa zajedničkim istorijskim nasleđem pokazuju da različiti putevi društvenog, ekonomskog i institucionalnog razvoja donose različite rezultate. Sve u svemu, osim za Bugarsku, promene u odnosu na prethodnu SELDI rundu CMS dijagnostike (2001 i 2002) za sve zemlje su pozitivne; napredak je međutim bio spor i neujednačen.

### Koruptivni pritisak i umešanost u korupciju



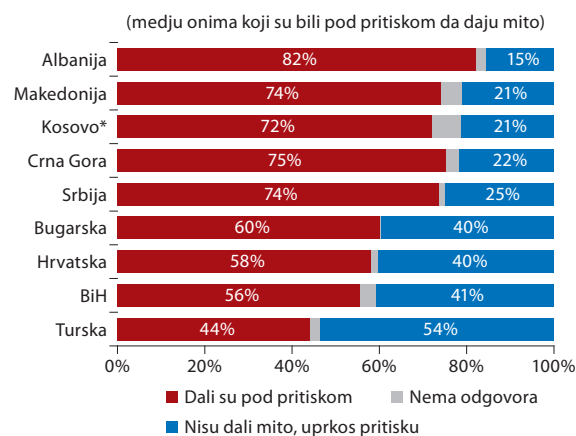
Izvor: SELDI/CSD Corruption Monitoring System, 2014.

Koruptivni pritisak od strane zvaničnika je statistički glavni faktor koji utiče na nivo umešanosti u korupciju. Većinu zemalja u kojima su i umešanost u korupciju i koruptivni pritisak visoki, takođe karakteriše niska otpornost na koruptivni pritisak (većina ispitanika od kojih je traženo da daju mito su ga i dali). Iako se otpornost na ovu vrstu pritiska ne može smatrati glavnim faktorom smanjenja korupcije, ona odražava preovlađujuće društvene stavove prema integritetu i uglavnom je rezultat napora civilnog društva i vlasti za povećanje antikoruptionske svesti. U tom pogledu uloga civilnog društva je od ključnog značaja jer je

<sup>2</sup> Indikatori za iskustvo sa korupcijom koji su korišćeni u istraživanjima Evrobarometra imaju nešto drugačiji značaj s obzirom da se odnose na direktno iskustvo sa korupcijom i slučajeve gde su ispitanici direktno svedočili slučajevima podmićivanja (TNS Opinion & Social, February 2014).

u poziciji da proceni rezultate i podstakne pritisak javnosti za promene.

### Otpornost prema koruptivnom pritisku



Izvor: SELDI/CSD Corruption Monitoring System, 2014.

## Antikoruptionske politike i zakonodavstvo

Uopšteno gledajući, SELDI zemlje su usvojile veći deo – što je najvažnije, logiku i pristup – međunarodnih antikoruptionskih standarda u svojim nacionalnim zakonodavstvima. Kvalitet zakona, međutim, i dalje predstavlja problem. Česte i nedosledne izmene zakona dovele su do složenosti procedura i zakonskih propisa, kao i kontradiktornih tumačenja od strane sudova.

Sve zemlje su usvojile neku vrstu strateškog dokumenta koji sadrži njihov opšti pristup borbi protiv korupcije. Iako postoje neke razlike među zemljama, primena ovih dokumenata je uglavnom otežana nedovoljnom količinom resursa i nedovoljnim zalaganjem viših nivoa vlasti. Dodatni problem u čitavom regionu je izrada strategije koja bi trebalo da obuhvati sve moguće aspekte korupcije. Umesto uspostavljanja prioriteta, ovi dokumenti su postali sveobuhvatni; u pogledu borbe protiv korupcije, strategija je poprimila značenje nečeg jednostavno iscrpljujućeg.

Što se tiče prioriteta politike, došlo je do dve značajne promene u pristupu borbi protiv korupcije – preusmeravanja pažnje sa sitnih koruptivnih dela (od strane saobraćajne policije ili lekara u javnom sektoru) na velika (od strane poslanika ili ministara) i kriminalizacije šireg niza zloupotreba službenog položaja. Učinak u pogledu kažnjavanja počinitelja većih koruptivnih dela, međutim i dalje ostaje u najboljem slučaju ograničen.

Ključni izazov za antikorupcijsku politiku u regionu je premošćavanje jaza na planu implementacije i držanje koraka sa promenljivim manifestacijama i oblicima korupcije, uz istovremeno očuvanje regulatorne stabilnosti i izbegavanje preopterećivanja pravosuđa zbog čestih promena.

Nalazi monitoringa koji je sproveo SELDI ističu **značaj podrške javnosti za uspeh antikorupcijskih politika**. Poverenje javnosti u vlast i efikasnost politike čine neku vrstu začaranog kruga: veći udeo ljudi koji su optimisti u pogledu postizanja uspeha u borbi protiv korupcije u korelaciji su sa nižim nivoima korupcije. I obrnuto, prevladavajuća korupcija ide ruku pod ruku sa povećanim pesimizmom u pogledu izgleda za uspeh u borbi protiv korupcije.



## Institucionalna praksa i primena zakona

U zemljama Jugoistočne Evrope, nekadašnji naglasak na usklađivanju nacionalnog zakonodavstva sa međunarodnim standardima u borbi protiv korupcije postepeno ustupa mesto usredsređivanju na primenu zakona pod sve većim pritiskom EU i lokalnog civilnog društva.

Nedostatak koji je zajednički za sve SELDI zemlje je ugrožena nezavisnost raznih nadzornih tela i organa nadležnih za primenu zakona. Odredjeni nivo mešanja izabranih političara – poslanika ili ministara – u rad državnih službi je tipičan. Osim toga, nijedna od SELDI zemalja nema adekvatan funkcionalni mehanizam za upravljanje prigovorima u javnoj upravi. Većina je

konstituisala tela za borbu protiv korupcije od kojih se očekuje da primaju sve prigovore javnosti. Još jedan zajednički nedostatak je nepostojanje pouzdanih i javno dostupnih podataka o delovanju državnih institucija, naročito u pogledu borbe protiv korupcije. Informacije i statistički podaci se ili ne prikupljaju, ili su nedostupni javnosti, ili se tako nasumično prikupljaju da ne omogućavaju praćenje i analizu.

Jedno od ključnih pitanja vezanih za formiranje specijalizovanih nacionalnih institucija za borbu protiv korupcije u regionu je **kako objediniti preventivnu i represivnu funkciju**. Tipično, SELDI zemlje su težile da njihove **institucije za borbu protiv korupcije** obavljaju obe funkcije, iako represija čini daleko manji aspekt njihovog delovanja. Većina zadataka ovih tela odnose se na neki oblik nadzora i kontrole, obično Nacionalne strategije za borbu protiv korupcije, i malo je dokaza da su one imale značajnijeg uticaja na zakonodavni program vlade. Uspostavljanje i funkcionisanje ovih institucija bilo je praćeno brojnim poteškoćama:

- Koliko god da je korupcija bila visoko na dnevnom redu vlada, nije bilo moguće stvoriti instituciju natprirodnih moći koja bi na neki način mogla uticati na postojeću ravnotežu moći. Tipičan kompromis je da ove agencije budu vezane za izvršnu vlast i da im se dodeli ovlašćenje da vrše nadzor, koje je najčešće, međutim, ograničeno time što se od drugih vladinih agencija zahteva da izveštavaju o sprovođenju antikorupcijskih zadataka koji su im dodeljeni.
- Takve agencije morale su da pazе da ne dupliraju ovlašćenja koja su već poverena drugim nadzornim telima (npr. nacionalnoj revizorskoj instituciji ili organima nadležnim za sprovođenje zakona).
- Većini je omogućen ograničeni institucionalni kapacitet – budžet, osoblje – uprkos deklarisanim namerama da se postigne suprotno.

Što se tiče **zakonodavstva**, parlamenti u regionu nisu visoko rangirani po pitanju poverenja javnosti i ta nezavidna pozicija nije bez razloga. Obrasci etičkog ponašanja su retki i ne sprovode se; pravila za lobiranje su još ređa; Ttek nedavno se počelo sa uvođenjem procedure za ukidanje imuniteta u slučaju krivičnog gonjenja, mada stidljivo; gde god postoji telo za borbu protiv korupcije u parlamentu, ono obično nadgleda neki izvršni organ vlasti, umesto da se bavi korupcijom među članovima parlamenta. Značajan problem u SELDI zemljama je finansiranje političkih partija i izbornih kampanja. Većina zemalja je sprovela preporuke GRECO-a po pitanju finansiranja stranaka,

ali brojni problemi – kao što su anonimne donacije, kupovine glasova birača (ili podmićivanje), nedovoljna sposobnost da se vrši revizija finansiranja političkih partija i ograničena ovlašćenja za izricanje sankcija, itd., – i dalje postoje.

Sadašnje stanje u državnoj službi odgovara tranzicionoj prirodi zemalja Jugoistočne Evrope i nedostatku adekvatnih zakonskih i institucionalnih tradicija, kao i hronično nedovoljnom finansiranju. Uprkos nekim razlikama između zemalja, potreba da se podstakne upravljački i organizacioni razvoj javnog sektora je zajednička za većinu. Kultura “kontrolne” administracije umesto da se njenim poslovanjem upravlja putem motivacija je ono što sprečava kako poboljšanje profesionalizma tako i smanjenje korupcije. Jedan od glavnih nalaza u izveštaju je **uzajamno jačanje kompetentnosti i integriteta**. Obično, kadgod se zalaganjenekog vladinog sektora u borbi protiv korupcije dovede u pitanje, utvrde se i njegove manjkavosti u smislu institucionalnog kapaciteta. Suprotno tome, svaki napredak u smislu profesionalizma vodio je poboljšanju integriteta. Dakle, glavni izazov u regionu je kako da transparentnost i odgovornost postanu ključne karakteristike javnog sektora, uz istovremeno unapređenje njegove profesionalnosti. Vrlo često, loše upravljanje, nejasno definisani kriterijumi i neadekvatna podela vlasti i odgovornosti su ti koji ometaju reforme i podrivaju autoritet vlade.

Ulogu **organa nadležnih za sprovođenje zakona** u borbi protiv korupcije u regionu treba razumeti imajući u vidu sve širi spektar inkriminatorne prakse u vezi sa korupcijom, što dovodi do rizika od prosleđivanja nesrazmernog broja predmeta izvršnim organima i tužilaštvu. Uloga organa za sprovođenje zakona u borbi protiv korupcije u Jugoistočnoj Evropi dodatno je ugrožena time što su veoma podložni korupciji, posebno od strane organizovanog kriminala. Policijske snage u većini zemalja SELDI imaju jedinice specijalizovane za borbu protiv organizovanog kriminala; od ovih jedinica se takođe očekuje da rade na borbi protiv korupcije. Sažimanje ove dve funkcije u jedno telo uglavnom se pravda povezanošću korupcije i organizovanog kriminala, ali i potrebom upotrebe specijalnih istražnih metoda u otkrivanju sofisticiranih oblika korupcije – stručnost koja je obično svojstvena odeljenjima za borbu protiv organizovanog kriminala. Te jedinice su, međutim, obično sastavni deo širih policijskih snaga ili ministarstava unutrašnjih poslova, čime su lišene institucionalne autonomije koja je neophodna specijalizovanim institucijama za borbu protiv korupcije.

## Pravosuđe u borbi protiv korupcije

U zemljama Jugoistočne Evrope, snažan akcenat na obezbeđivanju nezavisnosti pravosuđa nije usaglašen sa podjednako snažnim zahtevima za odgovornost. U odsustvu adekvatnih provera i ravnoteže, autonomija pravosuđa se otrgla kontroli i pretvorila u korporatizam sa svim rizicima korupcije koje to sa sobom nosi. Prenaglašena formalna izborna nezavisnost postala je tipičan primer “leka” koji se pretvario u “bolest” – umesto da postane ravnoteža izvršnoj vlasti, autonomija je omogućila klijentelistički odnos između nosilaca pravosudnih funkcija i posebnih interesnih sfera. Danas je pravosuđe u zemljama Jugoistočne Evrope podjednako efikasno zahvaćeno korupcijom kao i ostale grane vlasti. Pošto su oslobođeni od nadzora javnosti i političkih faktora koji su doprineli takvim aranžmanima, malo je danas kontrola kojima podležu nosioci pravosudnih funkcija.

Stoga, činjenica da pravosuđe nije posebno cenjeno u javnosti nije iznenađujuća. SELDI sistem nadzora korupcije utvrdio je da nosioci pravosudnih funkcija spadaju među najkorumpiranije javne funkcionere u regionu; odsustvo transparentnosti i odgovornosti je verovatno značajan faktor koji je doprineo takvim ocenama. U svim SELDI zemljama, došlo je do primetnog **pogoršanja u proceni širenja korupcije u pravosuđu** u odnosu na 2001 godinu.

Kapacitete pravosuđa u regionu da sprovede anti-korupcijske zakone, naročito kada je upitanju politička korupcija, podrivaju brojni problemi koji kumulativno deluju na njihov uticaj:

- Ustavna pitanja, pre svega ona koja se odnose na ponovno uspostavljanje ravnoteže između nezavisnosti i odgovornosti pravosuđa;
- Kompleksnost krivičnog gonjenja počinitelja krivičnih dela korupcije, posebno na političkom nivou;
- Nedovoljan ukupan kapacitet praćen odgovarajućim niskim nivom profesionalizma, prekomerno opterećenje poslom što dovodi do zaostajanja u predmetima, neadekvatno upravljanje predmetima, neodgovarajući prostor, itd

Važan nalaz ove runde SELDI nadzora korupcije koji je značajan za ulogu pravosuđa u borbi protiv korupcije je **nedostatak mehanizama za dobijanje povratnih informacija** koji bi omogućili javnosti i kreatorima javne politike da ocene kako integritet sudstva tako i njegovu efikasnost u primeni krivičnih antikorupcijskih zakona.

Ni u jednoj od zemalja Jugoistočne Evrope ne postoji pouzdan, sistematski i sveobuhvatni mehanizam za prikupljanje, obradu i stavljanje na uvid javnosti statističkih podataka o radu sudova i tužilaštva, a posebno o slučajevima korupcije .

## Korupcija i ekonomija

U Jugoistočnoj Evropi, izuzetno značajno uplitanje vlada u privredu otvara brojne mogućnosti za potencijalni konflikt između javnih institucija i privrede; s druge strane, to stvara rizik za nastanak korupcije. Rizik je posebno visok u oblastima privatizacije, javnih nabavki, koncesija, teške industrije kao što je energetika, kao i u zdravstvu. Pored toga, preterana administrativna regulativa – uglavnom po pitanju registracije, režima izdavanja dozvola i licenci- nastavlja da stvara različite prepreke za učesnike na tržištu kao i veće troškove poslovanja, mada su neke od zemalja u regionu značajano napredovale u otklanjanju ove vrste prepreka za poslovanje. Ipak, organi nadležni za nadzor i poštovanje propisa i dalje utiču na distorziju tržišta time što se pretežno fokusiraju na kontrolu i kazne, bez odgovarajuće procene rizika i isplativosti. To se posebno odnosi na carinsku administraciju u zemljama u regionu, koja se još uvek smatra efikasnim sredstvom za pritisak na preduzeća. Takva situacija ili navodi preduzetnike da predju u sivu zonu poslovanja ili ih primorava da pribegnu podmićivanju. To zatim opravdava uvođenje dodatne regulacije i povećava administrativnih barijere.

Raznovrsnost okolnosti koje pogoduju nastanku korupcije u interakciji privrede i javnih funkcionera ukazuje na teškoće sa kojima se suočava politika borbe protiv korupcije, s obzirom da je potrebno uzeti mnoštvo faktora u razmatranje. Kada je inicirana od strane privrede, koruptivna praksa može se podeliti u dve glavne grupe – izbegavanje dodatnih troškova i nepravedno sticanje prednosti. U prvoj grupi je podmićivane uslovljeno lošom ili preteranom regulacijom, nekompetentnošću pojedinaca ili institucija, itd; u drugu spadaju razne vrste prevara – utaja poreza, PDV prevara, krijumčarenje, neusklađenost sa standardima zdravlja i bezbednosti, itd.

U zemljama Jugoistočne Evrope, javne nabavke su jedan od glavnih kanala preko kojih korupcija utiče na ekonomiju. Rizik od nastanka korupcije u ovoj oblasti je povezan sa brojnim nedostacima: nedovoljno transparentnim procedurama, velikim udelom nekonkurentnih procedura, slabim nadzorom

i neefikasnom sudskom revizijom (s obzirom na postojanje korupcije u pravosuđu), itd. Iako je pre više od jedne decenije SELDI studija utvrdila da su zemlje u okruženju nedavno ostvarile napredak u jačanju pravnog okvira za ovaj proces i njegovom usklađivanju sa pravnim tekovinama EU, javne nabavke su i dalje među najslabijim oblastima javne uprave. Realna situacija se nije mnogo promenila s obzirom da korumpirani političari i dobro povezana preduzeća i dalje uspešno zaobilaze dobro osmišljena pravila. Usitnjenost institucija ne dozvoljavaja efektivnu primenu pravila u oblasti javnih nabavki.

## Civilno društvo u borbi protiv korupcije

Nevladine organizacije u Jugoistočnoj Evropi su među najvažnijim pokretačkim snagama u borbi protiv korupcije. One su, međutim, i dalje veoma daleko od mogućnosti efikasne artikulacije zahteva javnosti u efikasno zagovaranje politike, i od suprodstavljanja korupciji zbog mnogih nedostataka. Njihov doprinos u velikoj meri zavisi od sposobnosti da istovremeno nadziru rad vlasti i uključe vlast u antikoruptionske reforme. Ipak, neki formalni mehanizam za angažovanje organizacija civilnog društva od strane nacionalnih vlada u regionu ne postoje, kao ni administrativni kapacitet i jasna vizija i razumevanje potencijala organizacija civilnog društva u oblasti borbe protiv korupcije. Preveliko oslanjanje na međunarodno, uključujući i Evropsko finansiranje, kao i nedostatak nacionalnih politika za negovanje živog građanskog sektora u Jugoistočnoj Evropi, dovodi u pitanje održivost uticaja lokalnih predvodnika u borbi protiv korupcije.

Iako su nevladine organizacije u oblasti koju obuhvata SELDI uspele da uspostave neka međunarodna javno – privatna partnerstva, ona se nisu transformisala i u efikasna partnerstva sa nacionalnim javnim institucijama. Ključ za uspešno partnerstvo je sposobnost uspostavljanja različitih odnosa sa državnim institucijama, kako komplementarnih tako suprotstavljenih. Jedan od načina da se, primera radi, pomiri saradnja i nadzorna funkcija organizacija civilnog društva, je da se poboljša profesionalizam u praćenju korupcije i antikoruptionske politike od strane nevladinih organizacija.

Efikasnost nevladinih organizacija u rešavanju pitanja dobrog javnog upravljanja u zemljama SELDI zavisi u velikoj meri od njihove sposobnosti da dobro upravljaju sopstvenim radom. Rizik da nevladine organizacije

potpadnu pod uticaj posebnih interesnih grupa i korumpiranih javnih službenika ili izabranih političara proizlazi iz mogućnosti da se iskoristi ranjivost neprofitnog sektora u regionu:

- nepostojanje obaveznih procedura za transparentnost;
- nedelotvorna kontrola usaglašenosti sa finansijskim propisima;
- nepostojanje kulture revizije;
- nizak nivo samoregulacije i koordinacije napora.

Borba protiv mogućnosti pojave korupcije u organizacijama civilnog društva treba da bude na vrhu dnevnog reda reformi u regionu, kao deo nacionalnih antikorupcijskih napora u Jugoistočnoj Evropi.

## Medjunarodna saradnja

Medjunarodne institucije i strane zemlje partneri odigrale su značajnu ulogu u razvoju borbe protiv korupcije na prostoru Jugoistočne Evrope. S obzirom na snažan uticaj stranaka na domaću politiku, medjunarodne obaveze potpomažu usvajanje politika reformi koje bi inače mogle biti odbačene od strane domaćih političara. Izveštaji o napretku Evropske Komisije, finansiranje reformi od strane EU i *twinning* projekti predstavljaju ključne medjunarodne uticaje na nacionalne antikorupcijske programe većine zemalja Jugoistočne Evrope. Iako borba protiv korupcije čini jedan od glavnih elemenata Izveštaja o napretku Evropske Komisije, na lokalnom nivou ti izveštaji se različito prihvataju – zemlje sa izglednijom perspektivom priključenja detaljno i sa mnogo više pažnje razmatraju nalaze koji su u njima sadržani, dok se na primer u Turskoj tim izveštajima poklanja manje pažnje.

Medjunarodno uplitanje, međutim, sa sobom nosi i rizik od nerealnog očekivanja brzih rešenja, što bi sa svoje strane moglo podstaći usvajanje površnih i *ad hoc* mera. Uslovljavanje i većina podsticaja utiču prevashodno na izvršne organe vlasti, dok pravosudje, parlamenti i druge zainteresovane javne i private institucije nisu dovoljno uključene. Održivost medjunarodnog angažovanja potpomognuto je širenjem spektra lokalnih aktera uz uključivanje civilnog društva, medija, profesionalnih udruženja, sindikata itd. To umnožavanje domaćih sagovornika medjunarodnih partnera imalo je za posledicu osnaživanje reformskih političara ili političkih grupa, ali takodje i raznih aktera iz nevladinog sektora I podstaklo je javnu tražnju za reformama. Dalji nastavak

i jačanje takvog angažovanja bili bi od presudnog značaja za uticaj koji Evropska Unija ima u regionu. Da bi se to dogodilo, nije dovoljna samo veza između vlade i Brisela. Uključivanje reformski orijentisanih političara i partija od strane medjunarodnih partnera treba da podrži – i verifikuje – civilno društvo kroz neki vid trilateralne saradnje.

## KLJUČNE PREPORUKE

Iskustva zemalja SELDI u borbi protiv korupcije od 2001. godine do danas pokazuju da hvatanje u koštac sa izazovom korupcije u regionu zahteva neprekidno ulaganje napora na više frontova, kao i dugoročno uključivanje svih lokalnih i medjunarodnih aktera. Ovaj izveštaj sadrži nekoliko preporuka za postizanje daljeg napretka u suzbijanju korupcije. Među njima, tri ključne oblasti treba da budu prioritetne za zemlje regiona i za Evropu da bi se mogao ostvariti suštinski napredak u srednjeročnom period:

**Efikasno sudsko gonjenje korumpiranih visoko pozicioniranih političara i rukovodilaca na čelu javnih službi** je jedini način da se odmah pošalje snažna poruka da se korupcija neće tolerisati. Privodjenje korumpiranih političara pravdi pokazalo se veoma efikasnim za jačanje antikorupcijskih mera, na primer, u Hrvatskoj i Sloveniji. Uspeh u tom smislu bi takodje zahtevao medjunarodnu podršku, uključujući i angažovanje policijskih snaga zemalja članica EU.

Potrebno je uvesti jedan **nezavisni mehanizam za praćenje i kontrolu korupcije i borbe protiv korupcije** na nacionalnom i regionalnom nivou kako bi se obezbedilo prikupljanje i analiza obilja podataka i integrisalo dijagnostifikovanje korupcije sa evaluacijom antikorupcijske politike. Taj mehanizam bi trebalo sprovoditi kroz nacionalne i/ili regionalne organizacije i mreže civilnog društva i on bi morao biti nezavistan od direktnog finansiranja sredstvima nacionalnih vlada. Takodje, trebalo bi da doprinese otvaranju administrativnih podataka i olakša javni pristup informacijama. Podaci koji omogućavaju uvid u javne nabavke i koncesije, primenu propisa za spečavanje sukoba interesa, državnu pomoć, budžetske transfere, godišnje izveštaje agencija za nadzor i sprovođenje zakona, itd. moraju biti dostupni javnosti u vidu baza podataka, kako bi se omogućila analiza velike količine podataka i primena odgovarajućih alata za monitoring.

**Kritičnim sektorima sa visokim stepenom rizika od korupcije na državnom nivou, kao što je sektor energetike,** trebalo bi se baviti prioritetno. Ostale prioritetne mere uključuju:

- jačanje konkurencije u javnim nabavkama
- bolje korporativno upravljanje preduzećima u državnom vlasništvu
- transparentno upravljanje velikim investicionim projektima
- jačanje odgovornosti i nezavisnosti regulatornih tela u oblasti energetike

**Medjunarodni partneri, a pre svega Evropska Komisija, trebalo bi da neposredno angažuju organizacije civilnog društva u regionu.** To je od suštinske važnosti iz više razloga: a) da bi reforme koje podržava medjunarodna zajednica bile održive, potrebno je da budu šire prihvaćene u javnosti, a organizacije civilnog društva su neophodne da bi se to ostvarilo; b) uključivanje organizacija civilnog društva je garancija da odgovornost vlada prema donatorima i medjunarodnim organizacijama neće imati prevlast nad odgovornošću prema lokalnim biračima; c) efikasnost medjunarodne pomoći bi bila veća ako bi se mogle koristiti monitoring i analitičke veštine, kao i sposobnost zagovaranja interesa od strane organizacija civilnog društva; d) direktno angažovanje bi imalo i dodatnu prednost jer bi sprečilo da civilno društvo postane plen klijentelističkih mreža nereformisanih i često korumpiranih javnih uprava.

## KONKRETNE PREPORUKE

### Politike i zakonodavstvo

- Definisati nacionalne napore za borbu protiv korupcije kao politiku vezanu za merljive rezultate i ciljeve a ne samo kao mere ili zakonske propise. To podrazumeva postavljanje konkretnih ciljeva koje treba ostvariti i izbor odgovarajućih metoda za intervenisanje. Ti ciljevi treba da budu kvantifikovani i izvodljivi.
- Dati prioritet određenim sektorima, tipovima korupcije i metodama intervencije, i isprobati različite pristupe pre nego što se krene sa primenom usvojenih mera. Korupcija je širok pojam, povezan sa različitim i promenljivim tipovima prestupa koje je nemoguće istovremeno rešavati na efikasan način.
- Politike treba da budu promišljene. Mada su u nacionalnim antikorupcijskim strategijama učinjeni izvesni napori u smislu procene prethodno ostvarenih rezultata, nijedna od SELDI zemalja nema održiv mehanizam za evaluaciju antikorupcijske politike. To, u najmanjem slučaju, zahteva: a) redovne i pouzdane statističke podatke o antikorupcijskim naporima (istrage, sudsko gonjenje, administrativne mere, itd.); b) redovni monitoring i analizu raširenosti i oblika korupcije u raznim delovima javnog sektora. Monitoring treba da bude nezavisan i/ili da se obavlja van zemlje, da uključuje civilno društvo i da sadrži osnovne komponente neadministrativnih sistema za praćenje i kontrolu korupcije, kao što su SELDI-CMS.

### Institucije za borbu protiv korupcije i sprovođenje zakona

- Uvesti povratni mehanizam za sprovođenje antikorupcijskih politika. Taj mehanizam se može zasnovati na novim inovativnim instrumentima koji su poslednjih godina postali dostupniji, kao što je *Integrated Anticorruption Enforcement Monitoring Toolkit* koji je razvio Centar za proučavanje demokratije pri Univerzitetu u Trentu. On omogućava nadležnima za usvajanje politike da procene rizike od korupcije u datoj državnoj instituciji, kao i efekte antikorupcijske politike i tako identifikuju najefikasnija rešenja.
- Institucionalni kapacitet relevantnih državnih organa – naročito specijalizovanih agencija za borbu protiv korupcije i nadzornih tela, kao što su nacionalne revizorske institucije – uključujući njihove budžete, objekte i osoblje kojima raspolažu, treba uskladiti sa širokim nadležnostima koje su tim institucijama poverene. Alternativno, trebalo bi predvideti uže godišnje ili srednjeročne programe sa utvrđivanjem prioriternih intervencija.
- Nacionalne revizorske institucije bi takodje trebalo da imaju snažnija institucionalna ovlašćenja, uključujući i pravo da nameću oštrije sankcije. Kako organe koji su predmet revizije tako i parlamente trebalo bi obavezati da postupaju na osnovu izveštaja tih institucija. Nacionalne revizorske institucije bi takodje morale obavezno da vrše reviziju upravljanja fiovima Evropske Unije kada je administrativno upravljanje tim sredstvima povereno nacionalnim organima. Pošto je rad na reviziji učinka još uvek u početnoj fazi, revizorske institucije bi trebalo da razvijaju svoje kapacitete kako bi mogle obavljati veći broj takvih revizija.
- Potrebno je preduzeti dodatne mere kako bi se obezbedilo da se zapošljavanje u državnim službama

vrši na osnovu zasluga a ne da zavisi od članstva u političkim partijama.

- Rad na suzbijanju korupcije treba ravnomernije rasporediti tako da uključuje više državnih organa. Propisivanje šireg spektra krivičnih dela treba da bude uravnoteženo sa jačanjem kapaciteta svih državnih organa da se administrativnim sredstvima bore sa korupcijom u svojim redovima, umesto da samo "prenose" odgovornost na policiju i tužilaštvo. Organi javne uprave treba da deluju kao branioci pravosudnog sistema tako što će sami rešavati onoliko broj slučajeva korupcije koliko im to njihova administrativna moć dopušta. U najmanjem slučaju, to podrazumeva stvaranje efikasnih mehanizama za upravljanje pritužbama.
- Oduzimanje nezakonito stečene imovine zbog koruptivnih dela je sredstvo za borbu protiv korupcije čiju primenu treba proširiti. Mada treba postupati sa posebnom pažnjom kako bi se poštovala prava okrivljenih, koja treba da budu usklađena sa zaštitom javnog interesa – naročito u sredinama sa često korumpiranim javnom upravom – oduzimanje nezakonitostečenog bogatstva na osnovu osudjujućih presuda predstavlja važno sredstvo za odvratanje od takvog ponašanja, koje se u Jugoistočnoj Evropi još uvek nedovoljno koristi.

### Pravosuđe

- Zemlje u kojima većina autonominih pravosudnih tela nije izabrana od strane nosilaca pravosudnih funkcija trebalo bi da usvoje reforme koje bi povećale njihovu glasačku moć. Zemlje koje to do sada nisu učinile, svakako bi trebalo da usvoje princip "jedan sudija – jedan glas".
- Osigurati da sudijska izborna kvota bude što reprezentativnija uključivanjem sudija iz prvostepenih sudova. Pažljivo preispitati, i ako je potrebno, ponovo razmotriti kompatibilnost položaja predsednika suda sa članstvom u samoupravnim sudskim telima.
- U zemljama gde i tužilaštvom i sudstvom upravlja isto telo, trebalo bi to razdvojiti uvođenjem dva posebna saveta – za tužioce i za sudije – u okviru tog tela. Tužiocima i sudijama, bi dakle bili birani samo u ove savete.
- Ukinuti ili smanjiti na minimum ulogu vladinih ministara (posebno ministra pravde) u pravosudnim samoupravnim organima, naročito u pogledu odlučivanja o disciplinskim postupcima.
- Nosiocima pravosudnih funkcija trebalo bi da budu prvi u postupku provere prijavljene imovine.
- Nezavisnost i kapacitet pravosudnih inspekcija treba

ojačati kako bi im se dozvolile učestalije kontrole.

- Uvesti mehanizme povratnih informacija u sprovođenju antikorupcijskih politika kada su u pitanju nosioci pravosudnih funkcija. Ovi mehanizmi su suštinski manjkavi ili praktično nepostojeći u svim SELDI zemljama; njihovo odsustvo otežava represivni aspekt antikorupcijskih politika i čini dalje optuživanje za korupciju beskorisnim. Verovatno najbolja praksa koju je moguće usvojiti – iako i dalje nedovoljno razvijena – jeste Kosovska platforma za statistiku borbe protiv korupcije, koju je osmislilo nevladin sektor. Takav mehanizam bi trebalo da sadrži redovne podatke o: disciplinskim i administrativnim i krivičnim merama u javnim službama i pravosuđu; različitim aspektima krivičnog gonjenja, uključujući optužnice i osuđujuće/ oslobađajuće presude i izrečene kazne za različite vrste koruptivnih krivičnih dela.

### Korupcija i ekonomija

- Smanjiti na minimum i na godišnjem nivou preispitivati politike državne pomoći, jer su one značajan izvor rizika za nastanak korupcije. Unapred uvesti striktno sprovođenje pravila EU o državnoj pomoći, i razviti kapacitete nacionalnih nezavisnih regulatora državne pomoći za primenu tih pravila.
- Poboljšati sprovođenje antimonopolskog zakonodavstva u cilju promovisanja slobodnog preduzetništva i konkurencije. Posebno voditi računa i vršiti redovan pregled koncentracije u sektorima koji su u velikoj meri regulisani i suočavaju se sa licenciranjem i drugim ograničenjima, stvarajući tako rizik od dosluha između većih konkurenata i političara.
- Zemlje koje to nisu već učinile treba da uspostave institucionalnu povezanost između upravljanja imovinom i obavezama svih javnih finansija, uključujući i preduzeća u državnom vlasništvu, u cilju ublažavanja potencijalnih finansijskih rizika i povećanja kredibiliteta Vlade u upravljanju javnim finansijama. Preduzeća u državnom vlasništvu treba da ispune stroge zahteve u pogledu korporativnog upravljanja i izveštavanja (npr. pravila OECD), na isti način kao kompanije koje posluju na tržištu. Ova preduzeća bi trebalo da objavljuju kvartalne izveštaje o poslovanju na svojim internet sajtovima.
- Uvesti odgovornost i sankcije za ugovorne strane/naručioce koji ne podnose redovne izveštaje o javnim nabavkama, izveštaje o kršenju antikorupcijskih propisa ili koji dostave netačne ili nepotpune podatke.
- Definisati pravni i institucionalni okvir za upravljanje i kontrolu ugovora zaključenih u okviru

javno-privatnog partnerstva.

- Poboľšati nadzor nabavki od strane velikih javnih nabavljača (državnih i komunalnih preduzeća) kako bi se povećala efikasnost i smanjile neregularnosti
- Usvojiti politike koje će imati za cilj da smanje udeo javnih nabavki sa samo jednim ponuđačem i poboljšaju konkurentnost. Objaviti u formatu onlajn baze za pretraživanje podataka kompletnu dokumentaciju o najavama, obavještenjima, ponudama, ugovorima, i bilo kojoj dodatnoj dokumentaciji o javnim nabavkama.
- Zemlje kandidati za priključivanje EU trebalo bi, ukoliko to već nije slučaj, da uspostave decentralizovane sisteme upravljanja fondovima EU i da obezbede odgovarajući pravni i administrativni okvir za prenos odgovornosti za implementaciju programa koje finansira EU. Nadzor treba da ostane centralizovan i nezavistan od tela zaduženih za implementaciju.
- Uvesti koncept *odgovarajuće vrednosti za dati novac* u proces evaluacije ponuda za javne nabavke.

### Civilno društvo

- Unaprediti kapacitete organizacija civilnog društva za praćenje i izveštavanje o korupciji i borbi protiv korupcije, uključujući i sposobnost prikupljanja i sređivanja primarnih informacija o radu državnih institucija, veštinu merenja stvarnog širenja korupcije i analize podataka, institucionalnu procenu i pisanje izveštaja.
- Zakon o sukobu interesa trebalo bi da uključuje i neprofitne institucije, posebno one koje se finansiraju preko programa kojima upravlja Vlada, kao što su nacionalni budžet, fondovi EU, itd.
- Pravila i propisi za javno finansiranje neprofitnih organizacija – kako od strane centralne tako i od strane lokalnih vlasti – treba da budu jasni i transparentni. Samo nevladinim organizacijama registrovanim za obavljanje delatnosti u javnom interesu treba da bude omogućeno da primaju javna sredstva, i one bi stoga trebalo da zadovolje znatno strožije zahteve izveštavanja i obelodanjivanja podataka.
- Evropska Unija i druge donatorske agencije/institucije trebalo bi da razmotre odvajanje većeg dela sredstava za programe dobrog upravljanja koji se realizuju u saradnji između organizacija civilnog društva i javnih institucija. Ovi programi treba da imaju eksplicitne zahteve kojima se osigurava nezavisnost delovanja organizacija civilnog društva. Treba napomenuti da je postizanje rezultata zahteva dugoročnu posvećenost (10 godina i više).
- Sektor civilnog društva trebalo bi da obezbedi sopstveni sistem samoregulacije. U najmanju ruku, to podrazumeva usvajanje kodeksa ponašanja sa standardima za buduće delovanje. Takođe bi trebalo da pronađu više i bolje načine organizovanja interesnih koalicija.
- Neophodno je bolje razumevanje nevladinih organizacija za potrebe transparentnosti rada i odgovornosti. Ovo uključuje redovno sprovođenje revizije, objavljivanje finansijskih izveštaja, jasne i transparentne procedure korporativnog upravljanja, kao i mere protiv mogućnosti potpadanja pod tuđe interese.
- Zemaljama jugoistočne Evrope koje nisu članice EU savetuje se da uče iz celine objedinjenih znanja i stručnosti sadržanih u izveštaju EU za borbu protiv korupcije. To im može pružiti dragoceni uvid u procenu širenja korupcije i kreiranja politika za borbu protiv korupcije.

### Međunarodna saradnja

- Programi inostrane pomoći bi trebalo bolje da odražavaju nalaze međunarodnih i domaćih nezavisnih procena. Da bi se to postiglo, programi pomoći bi morali da pružaju više odgovora i budu fleksibilniji, uključujući kraći vremenski period između kreiranja i realizacije.
- Međunarodna pomoć nacionalnim Vladama u borbi protiv korupcije trebalo bi da predvidi snažniju ulogu civilnog društva. To podrazumeva učešće nevladinih organizacija kao partnera u implementaciji, kao nadzornih tela i resursnih organizacija, posebno u proceni uticaja projekata pomoći.
- Efektivnost pomoći trebalo bi periodično ocenjivati putem metode procene uticaja. Pored obezbeđivanja najveće vrednosti za dati novac – posebno kada je uključeno javno finansiranje – to bi omogućilo i održivost uspešnih programa i okončanje neuspešnih. Imperativ je da ova procena bude nezavisna i da koristi stručnost organizacija civilnog društva.
- Pomoć bi trebalo da podstakne međudržavne programe o zajedničkim pitanjima, kao što je prekogranični kriminal. Bugarsko iskustvo u javno-privatnoj saradnji u analizi veza između organizovanog kriminala i korupcije treba da se koristi u celom regionu.
- Priprema i nalazi iz redovnih izveštaja Evropske komisije trebalo bi da budu bolje iskorišćeni za donošenje odluka na lokalnom nivou uključujući u većoj meri lokalne organizacije civilnog društva i poslovnu zajednicu.



## TURKEY

### YÖNETİCİ ÖZETİ

Güneydoğu Avrupa'daki yolsuzluk sorunu, üzerine sıkça haber yapılan, toplumsal tartışmaların odağında yer etmiş olan, hem ulusal hem de uluslararası kurumların sürekli ve uzun süredir siyasa gündeminde bulunan, sorunsallığı kanıksanmış bir meseledir. Yolsuzluğun bu kadar yaygın ve kolay kontrol edilemeyen bir sorun olmasından dolayı, meseleyi anlamaya ve dolayısı ile de azaltmaya yönelik yenilikçi yaklaşımlara gerek duyulmaktadır. Avrupa Birliği'ne katılım beklentisi, bölge ülkelerinin harekete geçmesi için gereken hukuki çerçeveyi sağlıyor olsa da, yolsuzlukla mücadelede sürdürülebilir bir gelişimin sağlanmasında yerel siyasetteki menfaat sahiplerinin ve özellikle de sivil toplumun oynayacağı rol öne çıkmaktadır. Kalkınma ve Entegrasyon için Güneydoğu Avrupa Liderliği (SELDI) ağı, **bilgi temelli yolsuzlukla mücadele amacı** kapsamında, yolsuzluk ile bölgedeki yönetsel eksiklikleri tanımlama ve anlamaya yönelik araştırmalara öncelik vermiştir. Elinizdeki bu SELDI raporu, Bölgesel Yolsuzluk ile Mücadele Girişimi tarafından yürütülen SEE (Güneydoğu Avrupa) 2020 Stratejisi Yönetim Prensipleri ile örneklenen bölgesel yolsuzluk ile mücadele siyasetinin kalkınma ve uygulama konusu çerçevesinde hazırlanmıştır.

SELDI ile yapılmış olan işbirliği sonucunda hazırlanan bu rapor, hem metodolojik olarak hem de süreci ele alış açısından yenilikçi bir özellik taşımaktadır. Bu rapor, SELDI tarafından 2000li yılların başlarında geliştirilmiş, Güneydoğu Avrupa'nın sosyal ile kurumsal özelliklerini göz önüne alarak tasarlanmış ve **hem yolsuzluk hem de yolsuzluk ile mücadeleyi** değerlendirme özelliği olan bir sistemin uygulanması sonucunda hazırlanmıştır.<sup>1</sup> Bu raporda kullanılan *Yolsuzluk Denetleme Sistemi (YDS)* mağduriyet anketi temelli bir yaklaşım kullanmakta ve bölgede 2001'den bugüne yolsuzluk ile mücadele konusunda nasıl bir gelişim olduğuna dair önemli, veri temelli bir değerlendirme sunmaktadır. Sonuçları bu raporda paylaşılmış olan 2013-2014 döneminin değerlendirmesi **aynı bölgede aynı konuların 10 yıldan biraz fazla bir süre sonra** tekrar ele alınıyor olması açısından uluslararası izleme çalışmaları arasında ender bir örnek teşkil etmektedir. Değerlendirme,

mevzuata ve hukuki çerçeveye; kurumsal gerekliliklere; ekonomideki yolsuzluğa değinmekte; sivil toplumun rolü ve uluslararası iş birliği gibi yolsuzluk ile mücadelede önemli bir yere sahip olan konularda ulusal yasa ve mevzuatlar ile kurumsal uygulamaları karşılaştırmalı olarak ele almaktadır. Rapor **sivil toplumun perspektifi ve siyasa değerlendirmesi sunmanın yanında** ulusal ve bölgesel kamu kuruluşları ile görüş alışverişinde bulunarak geliştirilen bulgu ve öneriler paylaşmaktadır.

Bölgede yolsuzluğu mümkün kılan ulusal kurumsal ve hukuki şartların değerlendirilmesi, tüm ülkelerdeki mevzuat ve uygulamalara dair kapsamlı bir döküm almak amacı ile değil, Güneydoğu Avrupa (GDA)'daki yolsuzluğun yaygın kaynaklarını belirleme çerçevesinde yapılan potansiyel çalışmalar ile ilişkili önemli konuları vurgulamasından dolayı yapılmıştır. Bu rapor, GDA'daki sivil topluma **yolsuzluk ile mücadelenin gelişmesinin nasıl raporlanması gerektiğine dair bir model** sağlamaktadır.

### ANA BULGULAR

#### Genel Değerlendirme

Demokratik kurumların istikrarı, öne çıkan yolsuzlukla mücadele alanlarında yasalarının kabul edilmesi, küçük çaplı rüşvetçiliğin azalması ve halk arasında yolsuzluğa dair toleransın giderek azalması gibi önemli kazanımlara rağmen, yolsuzlukla mücadele ve iyi yönetim reformları hala tam olarak konsolide edilmemiş; seçilmiş siyasetçi ve yargı mensupları arasında yolsuzluğun arttığı gözlemlenmekte, yolsuzlukla mücadele yasalarının uygulanması gelişigüzel bir şekilde yapılmaktadır. Düzenli ve hatasız uygulanan ve yolsuzluğu ve iyi yönetim alanındaki iyileşme oranını ölçebilen araçların kullanılması bölgedeki yolsuzlukla mücadele politikaları ve kurumlarına önemli katkıda bulunacaktır. Yolsuzlukla mücadele hakkındaki Eurobarometer, Birleşmiş Milletler Uyuşturucu ve Suç Ofisi'nin GDA (Güneydoğu Avrupa) yolsuzluk ve organize suç izleme sistemi ve bu raporda kullanılan Yolsuzluk Denetleme Sistemi benzeri çalışmalardan faydalanılması elzemdir.

<sup>1</sup> (SELDI, 2002).

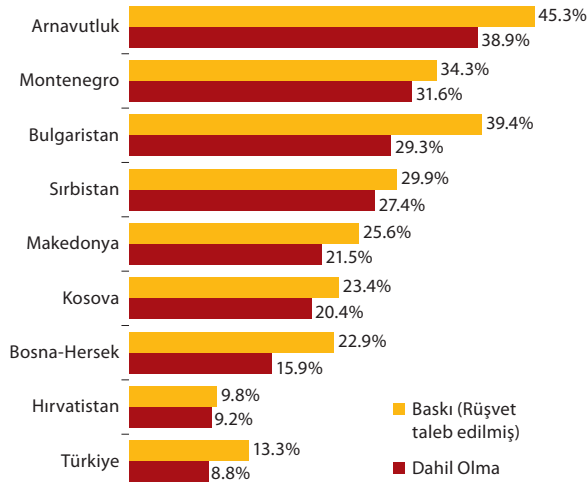
## Güneydoğu Avrupa'da Yolsuzluğun Yaygınlığı

Yolsuzluk deneyimi, diğer bir deyişle halkın yolsuzluk işlemlerine karışmış olması durumu, GDA'da çok yüksektir. Bölgede idari yolsuzluğun en düşük olduğu Türkiye ve Hırvatistan'da bile, nüfusun yaklaşık %8-9'u geçen yıl içinde en az bir kere rüşvet verdiğini belirtmiştir. Bu seviyedeki bir yolsuzluk deneyimi, Eurobarometer tarafından AB'de yapılan anketlerde ortaya çıkan ortalama rakamın oldukça üzerindedir.<sup>2</sup> Bu veriler, idari yolsuzluğun münferit olaylara indirgenemeyecek ölçekte **kitlesel bir olgu** olduğunu göstermektedir.

Ortak tarihi bir geçmişe sahip olan ülkeler arasındaki azımsanamayacak farklılıklar, farklı sosyal, ekonomik ve kurumsal gelişimlerin değişik sonuçlara sebebiyet verdiğini göstermektedir. 2013-14 çalışmasından bir önceki YDS araştırmaları (2001 ve 2002)<sup>3</sup> Bulgaristan dışındaki tüm ülkelerde değişikliklerin genel olarak olumlu yönde olduğunu; yalnız gelişimin yavaş ve düzensiz bir rota izlediğini göstermiştir.

### Yolsuzluk Baskısı ve Yolsuzluğa Dâhil Olma

Geçen sene rüşvet talebi (hediye, para, iltimas etme) ile karşı karşıya kalmış ve rüşvet vermiş 18 yaş üzeri olanların yüzdesi



Kaynak: SELDI/CSD Yolsuzluk Denetimi Sistemi, 2014.

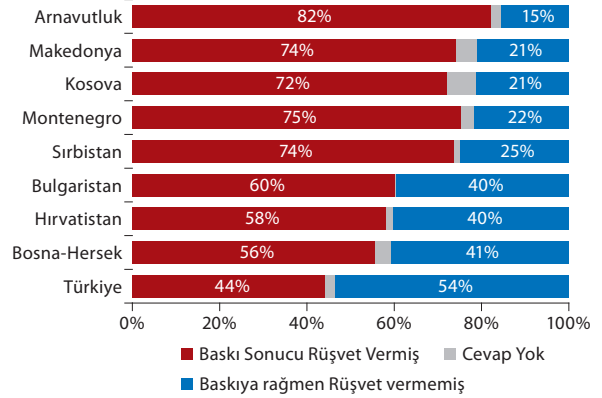
<sup>2</sup> Eurobarometer anketlerindeki yolsuzluk deneyimine dair göstergelerin içeriğinin bazı noktalarda farklılıklar göstermesinin sebebi, bu içeriklerin katılımcıların rüşvet içeren durumlara tanıklık etmesi durumuna göre tanımlanmış olmasından kaynaklanmaktadır. Daha fazla detay için, lütfen (TNS Opinion & Social, February 2014) dosyasına başvurunuz.

<sup>3</sup> 2001-2 yıllarında Türkiye bu araştırmalara dahil edilmemiştir.

İstatistiki olarak, resmi görevlilerden kaynaklanan yolsuzluk baskısı yolsuzluğa dâhil olma seviyesini etkileyen ana faktördür. Hem dâhil olmanın hem de yolsuzluk baskısının yüksek olduğu ülkeler, yolsuzluk baskısına karşı olan **direncin** de en düşük olduğu yerler olarak göze çarpmıştır (kendisinden rüşvet talep edilen çoğu katılımcı rüşvet vermeyi kabul etmiştir). Her ne kadar direncin yolsuzluğun düşürülmesini sağlayacak ana faktör olarak nitelendirilemezse de, doğruluk/dürüstlük açısından yaygın sosyal davranışları yansıtmakta ve çoğunlukla sivil toplum ile yetkili kurumların yolsuzluk ile mücadele alanında yapmış oldukları farkındalık çalışmalarının bir sonucu olarak karşımıza çıkmaktadır. Bu bağlamda, bulunduğu konum itibarıyla sonuçları değerlendirme ve değişim için toplumsal baskıya yön verme kapasitesi bulunan sivil toplumun rolü önemlidir.

### Yolsuzluk Baskısına Karşı Direncin

(rüşvet verme baskısı altında kalanlar içinden)



Kaynak: SELDI/CSD Yolsuzluk Denetimi Sistemi, 2014.

## Yolsuzlukla Mücadele Politikaları ve Mevzuatı

Genel olarak bakıldığında, SELDI ülkeleri uluslararası yolsuzlukla mücadele standartlarının önemli olan bölümlerini, özellikle de bu standartların mantık ve yaklaşımını, ulusal mevzuatlarında yürürlüğe koymuşlardır. Bununla birlikte, yasal uygulamalardaki kalitenin süregelen bir problem olduğu göze çarpmaktadır. Yasalarda yapılan sık ve istikrarsız değişiklikler, usul ve yasal açıdan karmaşıklık yaratırken, mahkemelerin çelişkili yorumlamalarına sebebiyet vermiştir.

Bölgedeki tüm ülkeler, yolsuzlukla mücadele açısından genel yaklaşımını içeren bir tür stratejik dokü-

manı benimsemişlerdir. Her ne kadar ülkeler arasında bazı farklar olsa da, bu dokümanların hayata geçirilmesi genel olarak yetersiz kaynaklar ve üst düzey hükümet yetkilileri seviyesindeki ilgisizlik dolayısı ile aksaklığa uğramıştır. Bölgede karşılaşılan diğer bir sorun ise, yolsuzluğun tüm boyutları ile mücadele etmeyi amaçlayan stratejilerin oluşturulması olmuştur. Öncelikleri belirlemek yerine, bu dokümanlar tümü kapsayıcı bir şekilde hazırlanmış, yolsuzlukla mücadele açısından strateji sadece etraflı bir yaklaşım olarak geliştirilmiştir.

Siyasa öncelikleri hususunda, yolsuzluk ile mücadele yaklaşımında iki önemli değişiklik olmuştur: odağın küçük çaplı yolsuzluklardan (trafik polisinin ya da kamuda çalışan doktorların yaptığı) büyük çaplı yolsuzluklara (milletvekillerinin ya da bakanların yaptığı) kaymış olması ve devlet görevini kötüye kullanmanın daha geniş bir yelpazede değerlendirilip suç olarak sayılması. Büyük çaplı yolsuzlukların cezalandırılması hususunda sınırlı adımlar atılmış, büyük bir etkiye henüz ulaşılamamıştır. Bölgedeki yolsuzlukla mücadele konusunda karşılaşılan esas zorluk uygulama eksikliğini kapatmak; yolsuzluk tezahür ve şekillerinin sürekli değişmesine ayak uydururken mevzuata ilişkin sürekliliği korumak ve yargı sisteminde sıkça değişiklikler yapmaktan kaçınmaktır.

SELDI izleme çalışmasının bulguları, **yolsuzlukla mücadele politikalarının başarısında kamuoyu desteğinin önemini** vurgulamaktadır. Halkın hükümete olan güveni ve etkili siyasa uygulamaları bir nevi verimli bir döngü halinde birbirini tamamlamaktadır: yolsuz-

lukla mücadelenin uygulanabilir olduğu konusunda halkın iyimserliği, düşük yolsuzluk seviyeleri ile doğru orantıdadır. Buna karşın, daha yaygınlaşmış yolsuzluk, yolsuzlukla mücadele hakkındaki yüksek karamsarlık ile el ele yürümektedir.

## Kurumsal Uygulamalar ve Yasanın Uygulanması

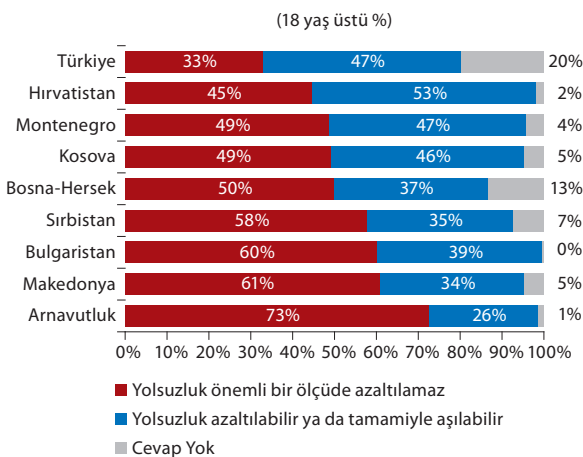
Güneydoğu Avrupa'da yolsuzlukla mücadelede konusunda ulusal mevzuatı uluslararası standartlar ile uyumlu hale getirme gerekliliği vurgusu, son zamanlarda yerini AB ve yerel sivil toplumun baskısı ile uygulamanın hayata geçirilmesi konusuna kaymıştır.

Tüm SELDI ülkelerinde ortak eksiklik, pek çok gözetim ve kanun uygulayıcı kurumun özerkliklerinden verilen taviz olarak öne çıkmaktadır. Milletvekilleri ya da bakanlar gibi seçilmiş siyasetçilerin bir dereceye kadar kamu hizmetlerine karışmaları tipik bir özellik olduğu görülmektedir. Ayrıca, hiçbir SELDI ülkesinde sorunsuz çalışan kamusal bir şikâyet yönetimi mekanizması bulunmamaktadır. Çoğu ülke halk şikâyetlerini toplamak üzere yolsuzlukla mücadele alanında çalışan bir kurum oluşturmamıştır. Diğer ortak bir noksan ise, devlet kurumlarının performansına, özellikle de yolsuzlukla mücadeleye dair, güvenilir ve halk tarafından ulaşılabilir verilerin eksikliğidir. Bilgi ve istatistikler ya toplanmamakta, ya halka açılmamakta ya da oldukça özensiz toplandığından ötürü denetim ve analizi imkânsız kılmaktadır.

Bölgedeki yetkili ulusal yolsuzlukla mücadele kurumlarının yapısına dair önemli kilit konulardan biri de **önleyici ve baskılayıcı işlevlerin nasıl birleştirileceğidir**. Baskılayıcı işlevler görevlerinin ufak bir kısmını oluştursa da, genellikle SELDI ülkelerindeki bu kurumlar her iki işlevi de gerçekleştirmek üzere kurulmuştur. Bu kurumların görevleri büyük oranda ulusal yolsuzlukla mücadele stratejilerinin denetleme ve kontrol işleri ile ilgili olup, hükümetlerin yasama gündemlerine etkileri azdır. Bu kurumların kuruluş ve işleyiş süreçlerinde, birtakım zorluklardan ötürü sürekli sorunlar yaşanmıştır:

- Yolsuzluk her ne kadar hükümetlerin gündemlerinde olsa da, var olan güç dengesini değiştirecek ölçüde güçlü ve yetkili kurumların yaratılması mümkün olmamıştır. Bu husustaki genel yaklaşım, bu kurumları yürütme organına bağlamak, denetleme yetkileri vermek; fakat bu yetkileri yolsuzlukla mücadele görevi taşıyan diğer kamu kurum-

### Yolsuzlukla mücadele politikalarının etkisi: Halkın tahmini nedir?



Kaynak: SELDI/CSD Yolsuzluk Denetimi Sistemi, 2014.

larından rapor almak ile sınırlandırmak şeklinde olmuştur.

- Bu kurumların, diğer gözetim kurumlarına (ulusal hesap denetim kurumları, kanun uygulayıcı kuruluşlar) verilmiş olan yetki alanlarını ihlal etmemek için dikkatli olmaları gerekmektedir.
- Tersine getirilen hedeflerin aksine, çoğu kurum sınırlı kurumsal kapasite (bütçe ve personel) ile çalışmak zorunda bırakılmıştır.

**Yasama organı** hususunda, bölge ülkelerinin parlamentoları halkın kendilerine duyduğu güven konusunda üst sıralarda yer almamakta ve bunun geçerli nedenleri olduğu gözlemlenmektedir. Etik davranış kuralları nadiren bulunmakta ve uygulanmakta; regülasyona dair lobicilik faaliyetleri neredeyse hiç yapılmamakta; dokunulmazlığın sınırlı olarak kaldırılması konusu yeni yeni dile getirilmektedir. Parlamentoda ne zaman yolsuzlukla mücadele konusunda yetkili bir komisyon görevlendirilse, bu komisyon milletvekillerinin yapmış olabileceği yolsuzluklar ile ilgilenmekten çok, yürütme organının bir kolunu denetlemek amacı ile görevini yapmaktadır. SELDI ülkelerindeki önemli kaygılardan bir diğeri de siyasi partilerin ve seçim kampanyalarının nasıl finanse edildiği meselesidir. Çoğu ülke GRECO'nun<sup>4</sup> partilerin finanse edilmesine yönelik önerilerini kabul etmiş olsa da; isimsiz bağışlar, oyların satın alınması (ya da oy için rüşvet verilmesi), partinin finansal kayıtlarının kapasite eksikliğinden dolayı düzgün denetlenememesi ve yaptırımların uygulanmasındaki sorunlar vb. meseleler devam etmektedir.

Kamu hizmetlerinin şu anki durumu, GDA ülkelerinin içinde bulunduğu geçiş dönemine, uygun yasal ve kurumsal geleneklerin eksikliğine ve kronikleşmiş finansal kaynak sorunlarına işaret etmektedir. Ülkeler arasında birtakım farklılıklar olmasına rağmen, kamu hizmetlerinde idari ve organizasyonla alakalı kalkınmaya olan ihtiyaç çoğu ülkede ortaya çıkmaktadır. İdari yönetimi motive ederek sağlamak yerine kültüre yerleşmiş olan "kontrol" yaklaşımı kullanıldığından, hem profesyonelliğin güçlenmesi hem de yolsuzluğun azalması başarılamamaktadır. Raporun ana bulgularından bir tanesi, **yetkinlik ve manevi sağlamlığın birbirini karşılıklı olarak kuvvetlendirdiğine** işaret etmektedir. Genel olarak, ne zaman herhangi bir devlet kurumunun yolsuzluk sicili sorgulansa, aynı zamanda kurumsal kapasitesi de mercek altına alınmaktadır. Diğer yandan, profesyonellikteki her türlü gelişme, kurumsal

etik değerlerde de bir artışa yol açmıştır. Bu bağlamda, bölgede çözülmesi gereken temel sorun bir yandan şeffaflık ve hesap sorulabilirliği kamu hizmetinin temel özelliklerinden biri haline getirirken, diğer yandan da profesyonelliği sağlamlaştırmaktır. Çoğu zaman başarısız yönetim, belirsiz kriterler ve eksik görev ve güçler ayrılığı, reformun önüne geçmekte ve devlet otoritesini zayıflatmaktadır.

Bölgedeki **yasa uygulayıcı kurumların** yolsuzlukla mücadele rolünü değerlendirirken, yolsuzlukla ilgili suçlamaların yelpazesinin devamlı genişliyor olmasının, yasa uygulayan kurumlara ve yargıya orantısız sayıda dava yönlendirilmesine sebep olduğunu göz önüne almak gerekir. Bu kurumlar, Güneydoğu Avrupa ülkelerinin, özellikle organize suç alanında, yolsuzluğa açık olmalarından dolayı daha da büyük bir zorluk yaşamaktadırlar. Çoğu SELDI ülkesindeki polis güçleri organize suç ile mücadele için uzmanlaşmış birimlerden oluşmaktadır; bu birimlerin aynı zamanda yolsuzluk ile mücadele etmesi de beklenmektedir. Bu iki görevin tek bir çatı altında toplanmasının sebebi, yolsuzluğun organize suçta kullanılan bir araç olması kadar yolsuzluğu ortaya çıkaracak karmaşık araştırma metodlarının organize suçlar ile mücadele birimleri tarafından iyi bilinmesidir. Bununla beraber, bu birimler genellikle polis kuvveti veya içişleri bakanlıklarına bağlı olduklarından, uzmanlaşmış bir yolsuzlukla mücadele kurumunun sahip olması gereken kurumsal bağımsızlıktan yoksundurlar.

## Yolsuzlukla Mücadelede Yargı

Güneydoğu Avrupa'da, yargı bağımsızlığını güvence altına almaya atfedilen önem, hesap verme alanında aynı şekilde güçlü şartlar ile dengelenmemiştir. Sorunsuz işleyen bir kuvvetler ayrılığı mekanizması olmadığından, kendi kendini yöneten yargı sistemi kontrolden çıkmış ve yolsuzluk riskleri ile dolu korporatist bir sisteme dönüşmüştür. Resmi seçimlerin bağımsızlığına yapılan aşırı vurgu, maalesef çözümü problemin bir parçası haline getirmiştir. Bu durum, yürütme erkini dengeleyecek bir yapı olarak çalışmak yerine, yargı mensupları ve özel çıkarlar arasında müşteri mantığına dayanan bir sistemin yerleşmesine sebebiyet vermiştir. Günümüzde GDA'daki yargı organı, diğer güç erkleri kadar etki altında kalmaya açıktır. Kendisini kamu sorgulamasından ve bunları mümkün kılan politik ayarlamaları muaf tutabildiği noktada, rant peşinde olan yargı mensuplarını denetleyecek çok az mekanizmanın varlığından söz edilebilir.

<sup>4</sup> GRECO – Group of States against Corruption (Yolsuzluğa Karşı Ülkeler Birliği).

Tahmin edileceği gibi, halk da yargı sistemine saygı duymamaktadır. SELDI'nin *Yolsuzluk Denetleme Sistemi*, yargı mensuplarının bölgede en çok yolsuzluk yapan kamu görevlileri olduğunun düşünüldüğünü ortaya koymuştur. Şeffaflık ve hesap verebilirlik eksikliğinin, bu sonucu etkileyen önemli bir faktör olduğu düşünülmektedir. Tüm SELDI ülkelerinde, 2001 yılından bu yana **yargı mensupları arasında yolsuzluğun yaygınlığının değerlendirilmesinde somut bir kötüleşme** olduğu ortadadır.

Bölgedeki yargı organının yolsuzlukla mücadele mevzuatını uygulama konusundaki yetkisi, özellikle de siyasi alandaki yolsuzluklar ile ilgilenmesi, etkileri eklenerek artan birtakım sorunlar ile karşılaşmıştır:

- Özellikle yargının bağımsızlığı ve hesap verebilirliği arasındaki dengeyi sağlamaya yönelik anayasal meseleler;
- Yolsuzluk suçu işleyen kişilerin, özellikle de siyasetçilerin, yargılanması sürecinin karmaşıklığı ve zorluğu;
- Profesyonelliğin seviyesinin düşük olması, fazla iş yükü ve bunların beraberinde getirdiği iş birikimi ve yönetimi ile başa çıkma konusunda yeterli kapasitenin bulunmaması.

Bu SELDI araştırmasının yargının rolüne dair ortaya çıkardığı diğer bir önemli bulgu ise, halkın veya siyasa yapıcılarının yargı erkinin yolsuzlukla mücadele mevzuatının hayata geçirilmesindeki etliğini ve verimliliğini değerlendirmeleri için başvurabilecekleri bir **geribildirim mekanizmasının bulunmuyor olmasıdır**. Hiçbir GDA ülkesinde mahkemelerin çalışmalarına dair istatistiklerin toplanma, değerlendirilme ve halka açık hale getirilmesini sağlayan güvenilir, sistematik ve kapsamlı bir mekanizma bulunmamaktadır.

## Yolsuzluk ve Ekonomi

Güneydoğu Avrupa'daki ülkelerde hükümetlerin ekonomik alana dikkat çekici bir ölçüde dâhil olmaları, kamu kurumları ve iş dünyası arasında oluşabilecek birtakım potansiyel çatışmaları da beraberinde getirmektedir; bununla beraber, yolsuzluk riski de ortaya çıkmaktadır. Bu risk özellikle enerji ve sağlık sektörü gibi ağır sanayi kollarının özelleştirme, kamu ihaleleri ve imtiyazları alanlarında oldukça yüksektir. İlaveten, bölgedeki bazı ülkeler iş girişimlerini engelleyen zorlukları aşmada önemli adımlar atmış olsa da özellikle kayıt, lisans ve izin rejimlerindeki yüksek seviyedeki regülasyon sebebiyle, piyasaya yeni giriş

yapanlar bazı engellerle hala karşılaşmakta ve iş yapmanın yüksek maliyeti devam etmektedir. Ancak, gözetim ve uyum mekanizmaları düzgün risk ve maliyet-kazanç değerlendirmesi yapmadan kontrol ve ceza alanlarına odaklandıklarından, hala piyasalara olumsuz bir etki yapmaktadırlar. Bu durumla özellikle iş dünyasına karşı kullanılabilecek önemli bir baskı aracı olarak görülen gümrük idaresi alanında sıklıkla karşılaşılmaktadır. Bu husus girişimcileri ya resmi olmayan sektörlerle; ya da onları rüşvet vermeye itmektedir. Bunun sonucunda da daha sıkı bir regülasyon rejiminin ve daha fazla idari engelin koyulması meşrulaştırılmaktadır.

İş dünyası ve kamu görevlileri arasındaki etkileşim çok çeşitli platformlarda gerçekleştiğinden dolayı, yolsuzlukla mücadele stratejilerinin bu alanlar yaklaşımında pek çok faktörü dikkate alarak hareket etmesi gerekmekte, bu da stratejilerin önemli zorluklarla karşılaşmasına sebep olmaktadır. İş alanı tarafından başlatılması durumunda, kanunsuz işler iki ana kategoride incelenebilmektedir – ekstra maliyetlerden kaçınmak ve haksız yere avantaj sağlamak. Birinci kategoride yetersiz veya gereğinden fazla regülasyonun geri tepmesi, kişisel ya da kurumsal yetersizlik; ikincisinde ise vergi kaçırma, kaçakçılık, güvenlik ve sağlık standartlarına uymama vb. dolandırıcılık faaliyetleri bulunmaktadır.

Güneydoğu Avrupa'da kamu ihaleleri, yolsuzluğun ekonomiyi etkilediği temel kanallardan biridir. Bu alandaki yolsuzluk riskleri, birtakım eksiklikler ile ilişkilendirilmektedir: şeffaf prosedürlerin yetersizliği, rekabetçi olmayan prosedürlerin yaygınlığı, zayıf gözetim ve etkisiz yargı teftişi vb. Her ne kadar 2001-2002 dönemi SELDI araştırması bölgede yakın zamanda yasal çerçeveyi güçlendirmek ve AB mevzuatı ile uyumlu hale getirmek için adımlar atıldığını göstermiş olsa da, kamu ihaleleri meselesi kamu idaresi alanındaki en zayıf noktalardan biri olmaya devam etmektedir. Kanunlar iyi tasarlanmış olsa da, siyasetçilerin ve ilişkili iş sahiplerinin bu kanunların etrafından dolaşıyor olabilmesi gerçeği değiştirmemiştir. Kurumsal dağınıklık, kamu ihaleleri kurallarının etkili bir şekilde uygulanmasına izin vermemektedir.

## Yolsuzlukla Mücadelede Sivil Toplumun Rolü

Güneydoğu Avrupa'daki sivil toplum örgütleri, yolsuzlukla mücadele konusunda en önemli itici güçlerden birisidir. Yine de, halkın taleplerini etkili bir biçimde

siyasa yapım sürecine aktarmakta ve yolsuzluğa karşı durmakta tam anlamı ile başarılı olmaları için önlerinde uzun bir yol vardır. Katkıları, **hem gözlemci olarak hem de hükümeti yolsuzluk alanında reform yapmaya itebilme** açısından kapasitelerine bağlıdır. Bölge ülkelerindeki hükümetlerin hala sivil toplumu resmi mekanizmalara angaje etmekte eksik kaldığı; STK'ların yolsuzlukla mücadele konusundaki önem ve potansiyelini kavramakta zorluk çektiği gözlemlenmektedir. Avrupa fonları dâhil olmak üzere uluslararası finansmana olan aşırı bağımlılık ve GDA'da sivil toplumu canlandıracak ulusal politikaların bulunmuyor olması yerel ölçekte önemli işler yapabilecek bu kurumların başarılarına gölge düşürmektedir.

Her ne kadar SELDI bölgesindeki STK'lar uluslararası düzeyde bir kamu-özel sektör ortaklığı inşa etmeyi başarmış olsa da, bu girişimler ulusal kamu kurumları ile etkili bir ortaklığa dönüştürülemedi. Başarılı ortaklıklar kurmak, devlet kurumları ile hem bütünleyici hem de sorgulayıcı birtakım ilişkileri hayata geçirmek ile gerçekleştirilebilir. Örneğin, işbirliği ve gözlemele işlevlerinin bir arada yürütülebilmesi, STK'ların yolsuzluk ve yolsuzluk ile mücadele politikalarının denetlenmesindeki profesyonelliğinin artması için izlenen yollardan biri olmuştur.

SELDI ülkelerindeki STK'ların iyi yönetim alanında ne derece etkili olacağı, büyük oranda kendi kurumsal yönetimlerinin de düzenli olmasına bağlıdır. STK'ların belli çıkarlara, yolsuzluğa karışmış kamu görevlileri ya da siyasetçilerin amaçlarına alet edilmesi riski, bölgedeki kar amacı gütmeyen sektörün bazı yönlerden istismara açık olmasından ileri gelmektedir:

- Şeffaflığı sağlayacak zorunlu prosedürlerin eksikliği;
- Finansal düzenlemelere uygunluğun etkili bir biçimde kontrol edilmemesi;
- Hesap denetimi kültürünün oturmamış olması;
- Öz denetim ve koordinasyon girişimlerinin düşük seviyede olması.

Sivil toplumun suiistimal edilmesi ile mücadele, Güneydoğu Avrupa'da yolsuzlukla mücadele gündeminin en üst sırasında ele alınmalıdır.

## Uluslararası İşbirliği

Uluslararası kurumlar ve işbirliği yapılan yabancı ülkeler, Güneydoğu Avrupa'da yolsuzlukla mücadele alanında atılan adımlarda önemli bir rol oynamışlardır. Ulusal siyasetteki aşırı taraftarlık göz önüne alın-

dığında, uluslararası ilişkilerin ve taahhütlerin yerel siyasetçilerin normalde gündemlerine almayacakları reformları gerçekleştirmeyi mümkün kıldığı görülmektedir. Avrupa Komisyonu tarafından hazırlanan ilerleme raporları, AB finansmanı ve eşleştirme (twinning) projeleri çoğu GDA ülkesinin yolsuzlukla mücadele gündemini etkileyen uluslararası faktörlerdir. Yolsuzlukla mücadele meselesi Avrupa Komisyonu ilerleme raporlarının en temel maddelerinden biri olduğu halde, bu raporlar yerelde farklı şekillerde algılanmıştır. AB'ye katılım beklentisi yüksek olan ülkeler raporların bulgularına daha büyük bir dikkatle yaklaşırken, örneğin Türkiye'de raporlar genellikle daha az dikkat çekmiştir.

Uluslararası ilişkiler, bir yandan da gerçekçilikten uzak, yüzeysel ve geçici tedbirlere yol açacak kestirme çözümlere dair beklentilerin oluşmasına sebep olmuştur. Koşulluluk kuralları ve sunulan teşvikler öncelikle yürütme organı kurumlarını etkilerken; yargı, parlamento ve diğer ilgili kamu ile özel sektör kuruluşları süreçlere yeterince dâhil edilmemiştir. Uluslararası bağlılığın sürdürülebilirliği; sivil toplum, medya, meslek kuruluşları, sendikalar vb. pek çok yerel paydaş kurumu süreçlere dâhil etmek ile desteklenmiştir. Yerel muhatapların ve uluslararası ortakların genişletilmesi, ana akım siyasetten soyutlanmış reformist siyasetçilerin, siyasi grupların ve çeşitli sivil toplum aktörlerinin de güçlenmesine yol açmıştır. Bu bağlantıların güçlendirilerek devam ettirilmesi, AB'nin bölgedeki gücünü sağlamlaştırması açısından oldukça önemlidir. Bu açıdan bakıldığında, sadece hükümetler ile Brüksel arasında kurulan bağlantılar yeterli olmayacaktır. Reformist siyasetçilerin ve uluslararası ortaklarla angajmanı sivil toplumun katılımı ve katkısı ile desteklenmeli ve üçlü bir işbirliği hayata geçirilmelidir.

## KİLİT ÖNERİLER

Güneydoğu Avrupa'daki bölgesel yolsuzluk sorununun çözümünde hem yerel hem de uluslararası organların çabasına olan ihtiyaç SELDI ülkelerinin 2001'den beri yolsuzlukla mücadele alanındaki deneyimleri ile görülmektedir. Bu rapor, yolsuzluğu aşma konusunda daha çok yol kaydetmek için neler yapılabileceğine dair önerilerde bulunmaktadır. Bu öneriler arasından bölgedeki ve Avrupa'da özellikle üç alana öncelik verilmesi, orta vadede başarı sağlanması bakımından önemlidir:

**Yolsuzluğa bulaşmış üst düzey siyasetçilerin ve kamu görevlilerinin seri ve etkili bir şekilde yargılanması** yolsuzluğa tolerans gösterilmeyeceğine dair güçlü ve net bir mesaj vermenin tek yoludur. Adı yolsuzluğa ve dolandırıcılığa karışmış politikacıların yargılandığını görmek Hırvatistan ve Slovakya'da yolsuzlukla mücadele alanında verimli sonuçlar vermiştir. Bu yönde başarı elde edilebilmesi için Avrupa Birliği üye ülkeleri başta olmak üzere uluslararası desteğe ihtiyaç vardır.

**Bağımsız bir yolsuzluk ve yolsuzlukla mücadele gözlem mekanizmasının** hem bölgesel hem de ulusal düzeyde oluşturulması bu konuda güçlü bir veri tabanının sağlanmasına ve dolayısıyla analiz kapasitesinin artmasına yarayacaktır. Böylece, yolsuzlukla ilgili doğru teşhislerin konulması ve yolsuzlukla mücadele alanında politika değerlendirmesinin yapılması bir çatı altında birleştirilebilir. Bu mekanizma devlet desteği ve başışı almamalı ve tamamıyla bölgesel ve ulusal sivil toplum örgütleri ve ağlar tarafından yönetilmelidir. Aynı zamanda idari veri oluşturmak için bir araç olarak da kullanılabilir bu mekanizmadaki veri tabanı tamamen halka açık olmalıdır. Kamu hizmeti imtiyazlarının, devlet ihalelerinin, devlet yardımlarının, bütçe transferlerinin, çıkar çatışmasıyla ilgili yasa tasarılarının ve yıllık performans raporlarının vb. veri tabanında halka açık bir şekilde bulunması daha kapsamlı analizlerin ve gözlem olanaklarının ortaya çıkmasına yol açacaktır.

**Enerji sektörü gibi yüksek yolsuzluk ve devlet suiistimali riski taşıyan kritik sektörler öncelikle ele alınmalıdır.** Öncelik verilmesi gereken diğer tedbirler:

- Kamu ihalelerinde rekabeti artırmak;
- Devlete ait yatırımlarda kurumsal yönetimi geliştirmek;
- Büyük çaplı yatırım projelerin idaresini şeffaflaştırmak;
- Enerji sektörü düzenleyici kurumlarının hesap verilebilirlik ve bağımsızlığını arttırmaktır.

**Başta Avrupa Komisyonu olmak üzere bütün uluslararası ortaklar bölgedeki sivil toplum örgütleriyle doğrudan iletişim içinde olmalıdır.** Bu birkaç nedenden dolayı esastır: a) uluslararası destek sonucu meydana gelen reformların sürdürülebilirliği için halkın çoğunluğu tarafından kabul görmesini sağlamak açısından sivil toplum örgütleri büyük önem taşır; b) sivil toplum örgütlerinin dâhil olması devlet birimlerinin hesap verilebilirliğini garantilediği gibi uluslararası organizasyonların öncelik veremediği seçim bölgelerinin

de hesap verilebilirliğini artırır; c) uluslararası destek ve yardımlar sivil toplum örgütlerinin gözlem, analitik çözümlene ve savunuculuk yetilerini kullanarak daha etkili bir şekilde yardım sağlayabilir; d) uluslararası destek kuruluşlarının sivil toplum örgütleriyle direkt kontak halinde olması, sivil toplumun yolsuz ve reform edilmemiş kamu idaresinin kayırmacı networkleri etkisi altına girmelerini önler.

## ÖZEL ÖNERİLER

### Siyasa ve Yasal Çerçeve

- Tedbirler ve yasal düzenlemeleri öne çıkarmaktan ziyade, ulusal yolsuzlukla mücadelede ölçülebilir hedefler ve dönüm noktaları belirlenmelidir. Bu husus, belirli hedefler seçerek bunlara uygun müdahale metotları seçmeyi gerektirir. Bu hedefler olabildiğince niceliksel olarak ölçülebilmelidir.
- Bütüne yönelik tedbirler yerine belirli sektörler öncelik verilerek, yolsuzluk çeşitleri, müdahale yöntemleri ve çeşitli yaklaşımlar birbirinden ayrıştırılmalıdır. Yolsuzluk kapsamı geniş bir kavram olup aynı yaklaşımla ele alınması mümkün olmayan çeşitli dolandırıcılık ve sahtekârlık eylemlerini kapsar.
- Politikalar bilgiye dayalı olmalıdır. Ulusal yolsuzlukla mücadele stratejileri çerçevesinde yolsuzlukla ilgili verilere ulaşılmaya çalışılmışsa da hiçbir SELDI ülkesinin yolsuzlukla mücadele politikalarını ölçüp değerlendirebilecek sürdürülebilir bir mekanizması yoktur. Sürdürülebilir bir mekanizma en azında: a) yolsuzlukla mücadele alanındaki (soruşturmalar, davalar, idari tedbirler) çalışmaların güvenilir ve düzenli istatistik verileri; b) çeşitli kamu alanlarında yolsuzluğun yayılışının ve çeşitlerinin düzenli gözlem ve analizini gerektirir. Bu gözetim mekanizmaları devletten bağımsız olmalı ve sivil toplum örgütlerini kapsamalıdır. Bunun yanı sıra, SELDI'nin YDS'si gibi idari amaçlar gütmeyen yolsuzluk gözlem sistemlerinden de yararlanılmalıdır.

### Yolsuzlukla Mücadele Kurumları ve Yasaların Uygulanması

- Yolsuzlukla mücadele alanındaki yasal uygulamalar için geri bildirim mekanizmaları oluşturulmalıdır. Bu mekanizmalar Trento Üniversitesi ve Demokrasi Çalışmaları Merkezi'nin geliştirdiği *Yolsuzlukla Mücadele Entegre Uygulamaları İzleme Araçları (Integrated Anticorruption Enforcement Monitoring Toolkit)*

gibi son yıllarda erişimi daha kolay yenilikçi araçlar düzeyinde olmalıdır. Bu mekanizmalar siyasa yapıcılarının bir devlet dairesinde yolsuzluk riskini daha kolay değerlendirebilmesini sağlamanın yanında bu devlet dairesine tekabül eden yolsuzlukla mücadele alanındaki yasal düzenlemelerin de ne kadar etkili olduğu ölçülebilir. Böylece en çok etki gösteren çözümlerin neler olduğu belirlenir.

- Bu konuyla ilgilenen devlet birimlerinin kurumsal kapasiteleri – ulusal denetim kurumları, yolsuzlukla mücadele ve gözetim birimleri vb. – personeli, olanakları ve bütçeleri yüksek seviyelerde tutulmalıdır. Alternatif olarak ise, daha sınırlı yıllık ve yarıyıllık programlar hazırlayarak, öncelikli müdahale alanları kapsamında çalışabilirler.
- Ulusal denetim kurumları, baskı gücünü arttırmalı özellikle daha yüklü yaptırımlar uygulayabilme yetisine sahip olmalıdır. Hem milletvekillerinin hem de denetlenen kurumların bu birimin hazırladığı raporları okumaları zorunlu hale getirilmelidir. Ulusal yetkililer tarafından idare edilen Avrupa Birliği hibelerinin kullanılmasını ve yönetimini de bu resmi denetim kurumları denetlemelidir. Performans denetleme işlevi henüz daha gelişmemiş olduğundan, bu alandaki kapasiteleri geliştirilmelidir.
- Kamu görevlilerinin işe alımlarında siyasi görüşlerinin ve bağlantılarının etkisini ortadan kaldırmak için yeni tedbirler alınmalıdır.
- Yolsuzlukla mücadele çalışmalarında devletin birimleri arasında eşit görev dağılımı yapılmalıdır. Yasal suçlamaların çeşitliliğinin genişlemesi yolsuzlukla mücadele alanında bütün kamu organlarının kapasitelerinin de geliştirmesi ile dengelenmelidir. Sorumluluğu polis veya yargıya atmak yerine kamu kuruluşlarına kendi birimlerindeki yolsuzlukla başa çıkmaları için idari yetki verilmelidir. Kamu idari organları genel anlamda, yönetsel kapasitelerinin yettiği kadar, yolsuzluk davası ile uğraşarak ceza adalet sisteminin bekçileri olarak görev almalıdır. Bu da en azından etkili çalışan bir şikâyet yönetimi mekanizmasını gerektirmektedir.
- Yolsuzluk olaylarında kanuni olmayan yollardan edilen malların geri iadesi yolsuzlukla mücadele ajandasının bir parçası olarak geliştirilmeli ve genişletilmelidir. Yolsuzluğa bulaşmış kamu idari birimlerinin durumunda sanığın haklarını ve kamu yararları ve çıkarlarını dengelemeye özen gösterilmelidir. Mal ve mülke haciz gelmesini şart koşan cezai hükümler caydırıcılık özelliği taşımasına rağmen Güneydoğu Avrupa ülkeleri tarafından kanunlaştırılmamıştır.
- Kendi kendini yöneten yargı birimlerinin çoğunluğunun yargı mensupları arasından seçilmediği ül-

kelerde oy kullanma gücünü artıracak reformların hayata geçirilmesi gerekir. Diğer ülkelerde ise, "bir yargıç/hakim-bir oy" prensibi uygulanmalıdır.

- Yargı kotası seçimlerinde olabilecek en yüksek temsiliyet sağlanmalı, asliye mahkeme hâkimlerin dâhil edilmesine özen gösterilmelidir. Dikkatli incelemelerle, mahkeme başkanının mevkii ile kendi kendini yöneten yargı birimlerine üyeliğinin uyuşup uyuşmadığı kontrol edilmelidir.
- Adli kovuşturma ve mahkemelerin aynı organa bağlı olduğu ülkelerde, bu kurum iki alt birime ayrılmalıdır: hâkimler ve savcılar. Savcılar ve hâkimler, sırasıyla, bu alt kurumlara seçilmelidirler.
- Başta disiplin yönetmenliği kararları alanında olmak üzere, devlet bakanlarının (tipik olarak adalet bakanının) özerk yargı kurumlarındaki rolleri tamamıyla kaldırılmalı veya minimuma indirilmelidir.
- Mal varlığı beyanlarının soruşturulduğu mekanizmalarda yargıçlara öncelik verilmelidir.
- Adli soruşturmalarda müfettişlerin bağımsızlığı ve tarafsızlığı sağlanarak soruşturmaları rahatça yürütmeleri için uygun ortam yaratılmalıdır.
- Yolsuzlukla mücadele uygulamaları için yargıçlardan da destek alarak geribildirim mekanizmaları oluşturulmalıdır. Bu mekanizmalar SELDI ülke-lerinde ya kısıtlıdır ya da hiç yoktur. Bu boşluk yolsuzluğun baskı yönünü sabote etmekte ve yolsuzluk ithamlarının işlevselliğini kısıtlamaktadır. Hala yazım ve geliştirilme aşamasında olsa da örnek alınabilecek en iyi uygulama yerel bir sivil toplum örgütü tarafından hazırlana Kosova'nın Yolsuzlukla Mücadele İstatistikleri Platformu'dur. Böyle bir mekanizma idari, disiplin, yargısal, hukuksal soruşturmalar ve yolsuzluk suçlarının cezaları hakkında düzenli ve güncel bilgilere sahip olmalıdır.

### Yolsuzluk ve Ekonomi

- Yolsuzluk riski taşıyan devlet yardım politikaları yıllık olarak denetlenmeli ve bu risk minimum seviyeye indirilmelidir. Bunun için, Avrupa Birliği'nin devlet yardımı alanındaki sıkı politika uygulamaları benimsenmeli ve bağımsız ulusal devlet yardımı düzenleyici kurumlarının kapasitesi artırılarak, bu kurumlara yaptırım gücü verilmelidir.
- Anti-tekel yasal uygulamalar geliştirilmeli ve rekabet ortamı sağlanmalıdır. Tekelciliğin baskın olduğu ve ruhsatlanma alanında sıkça kısıtlamalarla karşılaşılan sektörlerle yoğunlaşarak ve özel uygulamalar getirilerek büyük şirketler ile siyaset arasındaki muhtemel danışıklı işin önüne geçilmelidir.
- Henüz yapmamış olan ülkelerde, finansal riskleri azaltmak ve kamu maliyesi yönetimine olan güveni



sağlamak amacıyla, başta kamu şirketlerinde olmak üzere tüm kamu malvarlığında varlık ve borçların yönetimi için kurumsal mekanizmalar kurulmalıdır. Devletin teşekkülleri sıkı kurumsal yönetim ve raporlama şartlarını yerine getirmeli (ör. OECD kuralları) ve sermaye piyasalarına açık şirketler ile bir tutulmalıdırlar. Bu kurumlar internet sitelerinde üç ayda bir değerlendirme raporları yayımlamalıdırlar.

- İşveren resmi yetkililerin kamu alımları ile ilgili raporlamaları ihmal etmeleri, sürekliliği sağlayamamaları, yolsuzlukla mücadele düzenlemelerini uygulamamaları ve yanlış veya eksik veri sunmaları durumunda yaptırımlar uygulanmalıdır.
- Özel sektör kamu ortaklıklarının yönetimi ve kontrolü için yasal ve kurumsal bir çerçeve tanımlanmalıdır.
- Geniş kapsamlı kamu alımı yapan kurumların (devlet teşekkülleri ve gaz, su, elektrik şirketlerinin) tedarik işlemlerinin verimlilik şartlarını karşılaması ve usulsüzlükler yaşanmaması amacıyla denetimler güçlendirilmelidir.
- Kamu alımlarını sadece belli bir kanala mahkum kılan düzenlemeler gözden geçirilmeli, rekabet ortamı sağlanmalıdır. Aranabilir veri tabanı formatında kontratlar, ihaleler, ilanlar, ön-ilanlar, belgeler ve raporlar internette erişime açılmalıdır.
- Avrupa Birliği aday ülkeleri, AB'den alınan hibeler ve mali yardımların uygulamasında merkezî olmayan bir yürütme sistemine sahip olmalıdır. Bu sistem alınan hibelerin ve mali yardımların dağıtımını ve görev dağılımı uygun bir hukuki ve idari sistem tabanına oturtulmalıdır. Gözetmenler bağımsız ve merkezi bir uygulama biriminde faaliyet göstermelidirler.
- Kamu alımlarının değerlendirilmesinde kalite anlayışı yürürlüğe sokulmalıdır.

### Sivil Toplum

- Sivil toplum örgütlerinin kapasitesini artırarak yolsuzluk denetleme ve devlet dairelerindeki yolsuzlukla mücadele operasyonları hakkında ilk elden bilgi toplama ve raporlama kabiliyetleri geliştirilmelidir. Bunun yanı sıra, yolsuzluğun yayılması ile ilgili araştırmalar yaparak bunun hakkında önlemler alabilme, kurumsal değerlendirme ve rapor hazırlama kapasitelerinin artırılması önem taşımaktadır.
- Çıkar çatışmalarını kapsayan yasal düzenlemeler başta devletin idari programları, Avrupa Birliği ve devlet bütçesinden yardım alan kar amacı gütmeyen kurumları da kapsamalıdır.
- Hem yerel hem ulusal devlet dairelerinin sivil top-

lum örgütlerine sağladıkları kamu fonları ile ilgili kural ve uygulamalar şeffaf ve açık bir hale getirilmelidir. Sadece kamu menfaatleri için hizmet veren STK'ların kamu fonu almasına izin verilmeli ve bu kuruluşlar daha sıkı raporlama ve bilgi verme şartlarına tabi tutulmalıdır.

- Avrupa Birliği ve diğer bağışçı kurumlar bağışlarının daha büyük bir kısmını sivil toplum ve kamu kuruluşları arasında işbirliği kurmayı hedefleyen iyi yönetim programları projelerine yönlendirmelidir. Bu programların sivil toplum kuruluşlarının çeşitli çıkar grupları tarafından suiistimal edilmesini önleyecek koşulları olmalıdır. Bu programların etki gücünün yüksek olabilmesi için uzun-dönem (10 sene ve üstü) ve sürdürülebilir olmaları gerektiği özellikle belirtilmelidir.
- Sivil toplum örgütlerinin şeffaflık ve hesap verebilirliği daha çok benimsemeleri gerekmektedir. Bu, düzenli bir şekilde hesaplarının incelenmesi, mali durum tablolarının açıklanması, şeffaf kurumsal yönetim prosedürleri ve kişisel çıkarların önlenmesi için alınan tedbirler ile sağlanmalıdır.
- Avrupa Birliği üyesi olmayan Güneydoğu Avrupa ülkeleri AB Yolsuzlukla Mücadele Raporu'nda sunulan bilgi ve uzmanlıktan yararlanmalıdır. Bu rapor, ülkelere yolsuzluğun yaygınlığının değerlendirilmesi ve yolsuzlukla mücadele politikalarının şekillendirilmesi açısından yol gösterici olacaktır.

### Uluslararası İşbirliği

- Yabancı destek programları, uluslararası ve bağımsız yerel değerlendirmeleri daha iyi yansıtacak şekilde düzenlenmelidir. Bunu gerçekleştirmek için, destek programları daha duyarlı ve esnek olmalı, dizayn ve sonuçlar arasında geçen süreler kısaltılmalıdır.
- Yolsuzlukla mücadele alanında ulusal hükümetlere sunulan uluslararası destek programları sivil toplumun daha güçlü bir rol oynamasını öngörmelidir. STK'ların uygulama ortağı olarak süreçlere katılması, gözlemci ve kaynak sağlayan kurumlar olarak bu süreçlerde yer alması, özellikle destek programlarının etkisini değerlendirmek adına önemlidir.
- Desteklerin etkisi, etki değerlendirme metodlarından faydalanılarak periyodik olarak değerlendirilmelidir. Kalite ölçümlerinin sağlanmasının yanı sıra – özellikle kamu finansmanının kullanıldığı durumlarda – başarılı olan programların devamı sağlanacak; başarısız olan programlar ise sonlandırılacaktır. Bu değerlendirmenin bağımsız olması ve sivil toplum kuruluşlarının deneyimlerinden faydalanması mecburidir.

- Destekler, ortak sorunlar ile ilgili ülkeler arası programları teşvik etmelidir (mesela sınırlar arası suçlar). Bulgaristan'ın kamu ve özel sektör işbirliği ile hazırladığı organize suç ve yolsuzluk arasındaki bağları inceleyen analizinden bölgedeki tüm ülkeler faydalanmalıdır.
- Avrupa Komisyonu'nun düzenli raporlarının bulgularının yerel politika yapımı ile daha iç içe geçmesi amacı için raporların hazırlık aşaması dahil yerel sivil toplum ve iş dünyasından daha çok yararlanılmalıdır.





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