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Track Record in Fight Against Corruption in Serbia – How to Increase Effectiveness of Prosecution?*

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To improve efficiency in the suppression of corruption and to fulfil international obligations, Serbia adopted the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption in 2016. The law foresees many new solutions that should contribute to the effectiveness of processing of corruption. One of the reasons for the adoption of law was the fulfilment of GRECO's recommendations from the second round of evaluation, as well as the obligations stipulated in the national policy documents, the National Strategy for the Fight against Corruption (2013–2018), the Action Plan for Chapter 23 and the Strategy for Investigating Financial Crimes for the period 2015–2016.

The measures and activities that were foreseen in the Strategy for Investigating Financial Crimes are aligned with European standards and good practice and are transposed in the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption. After six years of implementation of this law, it necessary to analyse the results and impact of its application.

The goal of this research is to provide recommendations for the improvement of both national legislation and the practice of public prosecution in the suppression of corruption. In the paper, authors started from the assumption that the effectiveness of its suppression depends on the quality of the legal solutions that regulate the work of the public prosecutor's office, as well as their application in practice. To realize the goal of the research, the dogmatic-legal method and content analysis were used in the paper.

Keywords: public prosecutions, suppression, corruption, efficiency.

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Introduction

The fight against corruption is a central aspect of the rule of law within the EU system, and it is a key requirement in the Serbia EU accession process.¹ In recent years, the EU has introduced interim benchmarks, particularly for Chapters 23 and 24 of the accession negotiations, emphasizing the importance of *reforms* in the judiciary combating corruption. One of the most challenging interim benchmarks for Chapter 23 is for Serbia to establish a track record of efficient and effective investigations, prosecutions, convictions, and asset confiscations in corruption cases, including high-level cases.² While there have been some notable achievements in combating corruption, such as the adoption of laws in key anticorruption areas and change of the institutional set-up, the reforms have not been fully consolidated.³ Implementation gaps remain a challenge, with legislative changes often failing to translate into tangible improvements in practice. As a result, in 2023 Corruption Perception Index Serbia is ranked lowest since 2012.⁴ In 2021, House of Freedom rated Serbia 1 out of 4 according to the effectiveness of protective measures against corruption, stating that, although the number of arrests and criminal prosecutions in cases of corruption increased in

¹ Bazerkoska, J. B. EU Enlargement and Anti-Corruption Standards: From Candidacy to Accession. In: Cooperation and Enlargement: Two Challenges to be Addressed in the European Projects – 2022, Pellat, G., Zafiroski, J. and Šuplata, M. (eds). Springer, 2024, p. 149.

² European Union Common Position, Chapter 23: Judiciary and fundamental rights, Brussels, 8 July 2016, AD 20/16.

³ The current legal framework aimed at combating and preventing corruption was adopted or amended to address recommendations and requirement of international and regional bodies. The most relevant recommendations provided GRECO in its Evaluation reports, MONEYVAL, UNCAC, etc. The main laws relevant for regulation of the prevention and fight against corruption are: the Criminal Code, the Law on the Organisation and Competence of the State Authorities in Suppression of Organized Crime, Terrorism and Corruption, the Law on Agency for Prevention of Corruption, the Law on Whistleblowers protection, the Law on the Financing Political Activities, the Law on Liability of Legal Persons for Criminal Offenses, the Law on Seizure and Confiscation of the Proceeds from Crime and the Law on Prevention of Money Laundering and Financing of Terrorism, but also Criminal Procedure Code. Although some laws are not directly related to the corruption, they are relevant to anti-corruption policy and establishment of anti-corruption environment, like Law on Free Access to Information and Law on Public Procurement. The Criminal Code of the Republic of Serbia has been amended several times to, *inter alia*, better comply with international requirements, however, frequent amendments could cause challenges in investigation and prosecution of corruption cases. See: Stojanović, Z. Da li je Srbiji potrebna reforma krivičnog zakonodavstva? [Does Serbia need criminal legislation reform?]. Crimen, No. 2, 2013, pp. 119–143.

⁴ Serbia was in the 104th place amongst 180 countries. Corruption Perception Index by Countries for 2023. Available: <https://www.transparency.org/en/cpi/2023> [last viewed 05.04.2024].

previous years, verdicts for cases of high corruption were very rare, despite reports that included members of the executive power.⁵

In 2016, the National Assembly of Serbia passed the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption⁶ (hereafter also referred to as the Law). The law aimed to improve Serbia's rating at the Financial Action Task Force (FATF), implement the Financial Investigation Strategy 2015–2016, and address recommendations to strengthen the country's track record in fighting corruption.⁷ Furthermore, the establishment of special departments for suppression of corruption within the public prosecution service is aligned with recommendations No. 5 issued in the Second Round of evaluation by the Council of Europe Group of States against Corruption (GRECO).⁸

Among its provisions, the Law envisaged establishment of four special departments for the suppression of corruption within the Higher Public Prosecutor's Office in Belgrade, Novi Sad, Kraljevo, and Nis, that became operational in March 2018.⁹ Additionally, the law introduced other anti-corruption institutes in accordance with comparative good practice, such as liaison officers in relevant institutions, task forces, and financial forensic experts in public prosecution.¹⁰ The aim of these novelties was strengthening of cooperation amongst the competent authorities in the field of corruption suppression, as well as the improved efficiency of investigations and criminal prosecutions in that field.

Despite these efforts, continued vigilance and sustained activities are needed to effectively combat corruption in Serbia. It is essential to ensure that the established mechanism and departments function efficiently and that there is firm coordination among relevant institutions to address corruption effectively at all levels. Starting from that assumption, and to make feasible recommendations for improvement in this paper, the authors have applied the dogmatic-legal method to identify the need to improve relevant regulations both in the field of the fight against corruption and those governing the organization and work of the police and public prosecutor's office. In

⁵ GRECO, The Fifth Round of Evaluation. Preventing corruption and improving integrity within central government bodies (at the highest executive functions) and law enforcement authorities. Evaluation report, Serbia. Adopted by GRECO at the 90th Plenary Meeting (Strasbourg, 21–25 March 2022), GRECO, Group of States against Corruption, Council of Europe, p. 7. Available: <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a7216d> [last viewed 05.04.2024].

⁶ The Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption, Official Gazette of the Republic of Serbia, No. 94/2016, 87/2018-another law and 10/2023.

⁷ Matic Bošković, M. Results of repressive response to corruption – performance of specialized anticorruption prosecution departments. In: The Role of Society in the Fight against Corruption, Kostić, J., Stevanović, A. (eds). Belgrade: Institute of Comparative Law and Institute of Criminological and Sociological Research in Cooperation with the Judicial Academy, 2020, pp. 63–77.

⁸ Joint First and Second Evaluation Round, Evaluation Report on the Republic of Serbia, adopted by GRECO at its 29th Plenary Meeting, Strasbourg, 19–23 June 2006, p. 34. Available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca2c7> [last viewed 05.04.2024]. See also: Johnson, J. Anti-Corruption Strategies in Fragile States – Theory and Practice in Aid Agencies, Edward Elgar Publishing, 2016.

⁹ Article 13 of the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption.

¹⁰ More about the role of financial forensic experts see in: Mirić, F., Ranaldi, V. The Role of financial forensic experts and Europol in combating financial crime. In: Institutions and Prevention of Financial Crime, Thematic Conference Proceedings of International Significance, Kostić, J., Stevanović, A. and Matic Bošković, M. (eds). Belgrade: Institute of Comparative Law and Institute of Criminological and Sociological Research in cooperation with the Judicial Academy, 2021, pp. 63–75.

addition, to propose options for improvement, the authors have also analysed the data from various reports, which is important for reaching a conclusion about the results of the work of special departments for suppression of corruption, as well as the quality of cooperation with other competent authorities and institutions in the fight against corruption.

In the first part of this paper, the authors will characterise the content of European standards in the field, with a special reference to those related to the activities of the public prosecution, then proceed to analyse the national legislation, while the final part of the paper presents an analysis of the content of relevant national reports to gain an insight into the results of the competent authorities in the field of corruption suppression.

1. European standards on role of public prosecutor in suppression of corruption

European standards in the field of the fight against corruption recognize the importance of cooperation between the state authorities and the public prosecutor's office, as well as specialization and a multidisciplinary approach.

According to the Criminal Law Convention on Corruption,¹¹ it is necessary to adopt measures at the national level to ensure that state authorities, as well as all civil servants, cooperate in accordance with national legislation with the authorities responsible for investigation and prosecution by informing on their own initiative mentioned authorities or provide them with all the necessary information at their request.¹² The importance of exchange of information, cooperation and organization of consultative meetings is also recognize in the Opinions adopted by the Consultative Council of European Prosecutors (CCPE).¹³

Specialization as an essential prerequisite for the fight against corruption is stated in the Resolution of the Council of Europe (97)24 on 20 guiding principles in the fight against corruption.¹⁴ According to the principle 7, it is necessary to enable the specialization of persons and authorities responsible for the fight against corruption at the national level, as well as to provide them with adequate resources and training in order to realize their competences.¹⁵

The need to improve the efficiency of the public prosecutor's office in combating corruption is highlighted in European standards related to the organization and work of public prosecutors. Point 8 of the Recommendation of the Committee of Ministers from 2000 on the role of the public prosecutor in criminal justice¹⁶ states: to effectively

¹¹ Criminal Law Convention on Corruption, Council of Europe, European Treaty Series, No. 173, Strasbourg, 27.01.1999. Available: <https://rm.coe.int/168007f3f5> [last viewed 05.04.2024].

¹² Article 21 of the Criminal Law Convention on Corruption.

¹³ Item 77 of Opinion No. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of the work of prosecutors, including in the fight against terrorism and serious and organized crime, adopted by the CCPE. Council of Europe, Strasbourg, 18 November 2016. Available: <https://rm.coe.int/16807474b9> [last viewed 05.04.2024].

¹⁴ Adopted by the Council of Ministers on 6 November 1997 at the 101st session of the Council of Ministers, Council of Europe. Available: <https://polis.osce.org/council-europe-resolution-97-24-twenty-guiding-principles-fight-against-corruption> [last viewed 05.04.2024].

¹⁵ Matic, M. Specijalizovana antikorupcijska tela [Specialized Anti-Corruption Authorities]. In: Pravni mehanizmi sprečavanja korupcije u Jugoistočnoj Evropi: sa posebnim osvrtom na sektor odbrane [Legal Mechanisms for Preventing Corruption in Southeast Europe: With Special Reference to the Defence Sector], Rabrenović, A. (ed.). Belgrade: Institute of Comparative Law, 2013, pp. 65–89.

¹⁶ Recommendation Rec(2000)19 The Role of Public Prosecution in the Criminal Justice System, Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000. Available: <https://rm.coe.int/16804be55a> [last viewed 05.04.2024].

prevent new forms of crime, the specialization and training of public prosecutors should be one of the priorities of the justice system.¹⁷ In addition to the establishment of special departments, or the assignment of cases to public prosecutors who have special knowledge and experience in dealing with cases concerning certain criminal acts, specialization should also be understood as further training of employees in competent authorities and improvement of their work.¹⁸

A similar position is contained in Opinion No. 14 (2019) of the CCPE, according to which prosecutors should adapt their activities to the development of criminality.¹⁹ This implies the use of new techniques available to them if they are in accordance with the law, as well as the specialization of public prosecutors and the application of a multidisciplinary approach. Therefore, continuous training of prosecutors dealing with corruption and economic crime should include skills that allow the prosecutor to understand the balance sheet, understand information technologies and work with complex software.²⁰ To that end, lecturers and experts from relevant fields outside the public prosecutor's office should be hired and exchanges of experiences in the fight against corruption between prosecutor's offices should be organized.

2. Legal framework in Serbia – shortcomings of the rules regulating fight against corruption

The Law on the Organization and Competence of Authorities in the Fight Against Organised Crime, Terrorism and Corruption established new mechanisms for the fight against corruption and economic crime through the specialisation of competent state authorities, prosecutor's offices, courts and police.

The current jurisdictional structure of special departments within higher public prosecutor's offices, as defined by Article 2 of the Law, has been subject to criticism and poses challenges in practice. These challenges stem from the superficial division of jurisdiction between the Special Prosecutor's Office for Organized Crime and special departments for suppression of corruption²¹ and the dominance of economic crimes in the workload of these special departments.

¹⁷ *Matić Bošković, M., Kostić, J.* Specijalizacija državnih organa u suzbijanju finansijskog kriminaliteta i korupcije [Specialization of State Authorities in Combating Financial Crime and Corruption]. *Srpska politička misao* [Serbian Political Thought], No. 3, 2019, p. 262. DOI: <https://doi.org/10.22182/spm.6532019.11>.

¹⁸ *Matić Bošković, M., Ilić, G.* Javno tužilaštvo u Srbiji – Istorijski razvoj, međunarodni standardi, uporedni modeli i izazovi modernog društva [Public Prosecution in Serbia – Historical Development, International Standards, Comparative Models and Challenges of Modern Society]. Belgrade: Institute for Criminological and Sociological Research, 2019, p. 67.

¹⁹ Opinion No. 14 (2019) of the Consultative Council of European Prosecutors, the Role of Prosecutors in Fighting Corruption and Related Economic and Financial Crime, Council of Europe, Paris, 22 November 2019. Available: <https://rm.coe.int/opinion-14-ccpe-en/168099399f> [last viewed 05.04.2024].

²⁰ Item 55, Opinion No. 14 (2019) CCPE.

²¹ Special Prosecutor's Office for Organized Crime is the authority to scrutinize criminal offenses committed by public officials, who perform the function on the basis of appointment, appointment or election by the National Assembly, the President, the Government, the general session of the Supreme Court of Justice, the High Judicial Council or the High Prosecutorial Council (HPC). The officials of the executive and judicial authorities, as well as the directors of public companies are included, while the persons elected by the citizens, such as the members of the Parliament, the president of the Republic, councilors, mayors, the heads of the provincial government are in the jurisdiction of the special departments of the higher prosecutors' offices. When it comes to criminal offenses against the economy, the SPO for Organized Crime is competent if the realized property benefit

Professionals advocate for a reconsideration of this jurisdictional structure, proposing that basic forms of offenses currently under the purview of special departments for the suppression of corruption should be shifted back to the jurisdiction of basic prosecutor's offices.²² This reallocation aims to concentrate efforts on high corruption, optimizing attention, time and resources. It is argued that such a change would not only enhance efficiency but also contribute to the professionalization of staff in basic public prosecutor's offices.

Furthermore, the omission of tax evasion from the catalogue of crimes under the jurisdiction of special departments is seen as negatively impacting efficiency, especially in cases of money laundering where tax evasion is a common predicate offense. Specialization in handing tax crimes is expected to expedite legal proceedings and change the overall approach and attitude toward tax evasion as a significant social issue.²³

To ensure an effective fight against corruption, professionals recommend amending the Law with the aim to concentrate the competence of special departments for the suppression of corruption on all the criminal acts including corruption, while excluding the lightest criminal offenses against the economy from their jurisdiction.²⁴

The Law envisages the possibility of establishing a financial forensic service in the public prosecutor's office for organized crime and special departments of higher public prosecutor's offices for suppression of corruption, with the aim to support public prosecutors in the assessment of financial flows and financial transactions.²⁵ However, a financial forensic officer is employed only in the Special Public Prosecution Office for Organized Crime, while the special departments for suppression of corruption of higher public prosecution offices still do not have such a service. Although the financial forensics service is important for the work of special departments, there are obstacles to its establishment due to its legal position.²⁶

A financial forensic expert is a civil servant who has special professional knowledge in the field of finance, accounting, auditing, banking, stock exchange and business operation, and who completed specialized training at the Judicial Academy in the field of criminal law.²⁷ In all stages of the criminal procedure, the financial forensic expert

value is over 200 000 000 dinars, and over 800 000 000 dinars when it comes to the value of public procurement (Article 3 of the Law on the Organization and Competence of Authorities in the Fight Against Organised Crime, Terrorism and Corruption).

²² There are proposals to return to the jurisdiction of basic prosecutor's offices the following criminal offenses: Article 227, para. 1 of the Criminal Code (abuse of the position of a responsible person, Article 359 of the Criminal Code (abuse of an official position) and 364 of the Criminal Code (embezzlement). Information about the positions of the prosecutors was obtained during the meetings with the public prosecutors of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices from Niš, Kraljevo, Novi Sad and Belgrade.

²³ *Kostić, J., Pavlović, Z. Poreski delikti u zakonodavstvu Savezne republike Nemačke* [Tax Offenses in the Legislation of the Federal Republic of Germany]. *Strani pravni život* [Foreign Legal Life], Vol. 64, No. 1, 2020, p. 150.

²⁴ Information about the positions of the prosecutors was obtained during the meetings with the public prosecutors of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices which were held in September 2023.

²⁵ Article 19 of the Law on the Organization and Competence of Authorities in the Fight Against Organised Crime, Terrorism and Corruption.

²⁶ *Škulić, M. Organizacija i nadležnost državnih organa čija je funkcija suzbijanje koruptivnih krivičnih dela* [Organization and jurisdiction of state bodies whose function is to suppress corrupt criminal acts]. In: *Finansijski kriminalitet* [Financial Crime], *Kostić, J., Stevanović, A.* (eds). Belgrade: Institute of Comparative Law and Institute of Criminological and Sociological Research in cooperation with the Judicial Academy, 2018, p. 30.

²⁷ Article 19, paragraph 4 of the Law.

prepares documents that are based on the collected evidence in the form of analysis of documentation and financial flows in the pre-investigation phase, and reports in the phase of the investigation.

Defining a financial forensic expert as a civil servant gives rise to several doubts and challenges in practical implementation. The high requirements set for a financial forensic expert, coupled with defining the position as a civil servant, have led to a lack of interested experts willing to work in public prosecution. Consequently, the special departments are not adequately supported by financial forensic experts, raising concerns about the effectiveness of the Law. This situation underscores the need to reassess the requirements and conditions for the position of financial forensic experts to attract qualified professionals and ensure the proper functioning of special departments.

Due to the non-competitive salaries in some special departments for suppression of corruption, forensic experts employed in some other legal entities and institutions are mainly retained on the basis of service contracts. In addition, there is no special educational programme for financial forensics, – the prospective specialists generally undergo training that may not provide an adequate level of knowledge in all necessary areas, so it seems that to act in certain cases, it would be necessary to engage persons who possess very specific knowledge and experience in a particular field.

The Law on the Organization and Competence of Authorities in the Fight Against Organised Crime, Terrorism and Corruption establishes a dual position for the special departments of higher prosecutors' office for the suppression of corruption. Public prosecutors in these departments are responsible to the head of the higher prosecutor's office, even though they operate within the jurisdiction of the appellate court. Additionally, the Special Prosecutor's Office for Organized Crime is tasked to coordinate the work of the special departments.²⁸

The significance of the head of the higher prosecutor's office to the work of public prosecutors in special departments lies in their authority to assign public prosecutors to work in special departments through the annual schedule, as well as exercise other hierarchical competences.²⁹ However, the Law does not specify the coordination role of the Special Prosecutor for Organized Crime. To ensure the efficiency and autonomy of the work of special departments, there is a need to reassess the current organization structure and identify a feasible solution. One option is to strengthen the link between special departments for the suppression of corruption and the Special Prosecutor's Office for Organized Crime by integrating special departments as part of the Special Prosecutor's Office. This integration could enhance coordination and streamline operations within the framework of combating corruption.³⁰

A good solution envisaged in the Article 20 of the Law, which has also given certain results in practice is obligation of 13 institutions to appoint a liaison officer

²⁸ Article 15 of the Law on the organization and competences of state authorities in the suppression of organized crime, terrorism, and corruption.

²⁹ *Bzenić, M.* Osnivanje i funkcionisanje posebnih odeljenja za suzbijanje korupcije u višim javnim tužilaštvima [Establishment and functioning of special departments for combating corruption In: Higher Public Prosecutor's Offices]. In: *Represivne mere u borbi protiv korupcije, primena u praksi i predlog za unapređenje* [Repressive measures in the fight against corruption, application in practice and proposal for improvement], Belgrade: Association of Prosecutors and Deputy of Public Prosecutors of Serbia, Royal Norwegian Embassy and the Balkan Trust for Democracy, 2019, p. 28.

³⁰ *Ibid.*, pp. 29 and 30.

to facilitate cooperation and enhance the exchange of data.³¹ Additionally, upon the request of the competent public prosecutor, liaison officers may also be appointed in other bodies and organizations. The introduction of liaison officers has elevated cooperation between various stated bodies to a higher level. Prior to the establishment of liaison officers, cooperation among different state authorities was more formal and relied on written correspondence following different procedures, which often hindered efficiency. With the appointment of liaison officers, cooperation has become more informal, fostering greater efficiency through direct personal contact between the public prosecutor and the liaison officer. The specialized knowledge possessed by civil servants in various state bodies is invaluable to prosecutors, aiding in defining requests and determining the most efficient means of obtaining evidence.

The same applies to the possibility of forming task forces, composed of experts from various fields who are employed in different state bodies and institutions, and who may possess adequate knowledge and experience of importance for the detection and prosecution of crimes that are the subject of the work.³² Having in mind the complexity of cases in which joint task forces are formed, the ability of the public prosecutor to manage the task force and coordinate the work of all members is crucial.³³ The need for training public prosecutors in management techniques is important due to the leading role and importance of prosecutorial expertise in coordinating the efforts of the task force.

Eradication of the crimes involving corruption requires adequate and timely cooperation between the prosecution and the police. However, such cooperation is absent in practice. The prosecutors believe that it would be more effective if there were a prosecutor's police that would answer to the prosecutors for their work. In addition, prosecutors do not receive a sufficient number of criminal reports from the police, but mostly from internal control and inspections, and the largest number from citizens. However, due to a lack of knowledge, criminal reports filed by citizens are not adequate quality and most of them refer to activities that do not have elements of a criminal offense.³⁴

³¹ Tax Administration – Tax Police, Customs Administration, National Bank of Serbia, Administration for Prevention of Money Laundering, Agency for Economic Registers, Central Registry of Securities Depository and Clearing, State Audit Institution, Republic Geodetic Institute, Agency for Suppression of Corruption, the Republic Fund for Pension and Disability Insurance, the Republic Fund for Health Insurance, the Republic Directorate for Property of the Republic of Serbia and the Office for Public Procurement.

³² The possibility of forming a task force is provided by Article 21 of the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism and Corruption.

³³ The need for a multidisciplinary approach existed before. Article 96 of the Law on International Legal Assistance in criminal matters, Official Gazette of the Republic of Serbia, No. 20/2009 mentions joint investigation teams. Therefore, we agree with the opinion of the authors, who believe that instead of term “task force”, the term “prosecution teams” is more acceptable. Listed according to *Pavlović, Z. S.* *Institucionalni kapaciteti Srbije za suprotstavljanje organizovanom kriminalu, terorizmu i korupciji* [Institutional capacities of Serbia to counter organized crime, terrorism and corruption] In: *Finansijski kriminalitet* [Financial Crime], *Kostić, J.* and *Stevanović, A.* (eds). Belgrade: Institute of Criminological and Sociological Research and Institute of Comparative Law in cooperation with the Judicial Academy, 2018, pp. 64–65.

³⁴ Information about the positions of the prosecutors was obtained during the meetings with the public prosecutors of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices which were held in September 2023.

When it comes to cooperation with the police, it seems that the results of that cooperation are mixed. The 2011 Criminal Procedure Code³⁵ established the leading role of public prosecutors in the investigation phase, yet there are procedural challenges hindering the exercise of this role. According to the Code, police officers are required to adhere to the instructions of public prosecutors. However, as the police fall under the jurisdiction of the Ministry of Interior, many prosecutors have reported instances where police officers fail to comply with their order. Moreover, the Criminal Procedure Code lacks an effective mechanism that would empower public prosecutors to enforce their leading role and compel police officers to adhere to their orders.³⁶ This discrepancy poses significant challenges to the effective coordination between prosecutors and law enforcement agencies during the investigation phase.

In addition, the responsibility for prosecuting corruption is considered to be shifting between different prosecutors, who have generally felt that the police did not provide enough evidence in cases of high corruption.³⁷ The reason for this may be the fact that according to the law, the police first submits the report to the Ministry of Internal Affairs, and then to the prosecutor, which affects the possibility of adequate management of the investigative procedure by public prosecutors. Therefore, one of the possible solutions is the establishment of a special prosecutor's police, which would be accountable exclusively to the public prosecution.³⁸

The specialization of judicial bodies makes sense only if they have adequate powers and resources with the improvement of financial responsibility, independence of the judiciary and the media, the existence of campaigns to raise awareness, civil activism, etc.³⁹ In addition, one of the basic prerequisites for an effective fight against corruption is independence in the work of judicial office bearers. When it comes to public prosecutors, the new Law on Public Prosecutions from 2023 introduced protective measures that should lead to more autonomy in processing of cases, such as complaint to the High Prosecutorial Council on the annual schedule, complaint to the High Prosecutorial Council against the obligatory instruction of the superior prosecutor, abolishment of the obligation to report on a case to the head of public

³⁵ Criminal Procedure Code, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, 62/2021.

³⁶ Škulić, M., Ilić, G. Novi Zakonik o krivičnom postupku Srbije – Kako je propala reforma, šta da se radi? [The New Criminal Procedure Code of Serbia – How the Reform Failed, What to Do?]. Belgrade: Prosecutors Association of Serbia, IRZ, 2012, p. 134.

³⁷ GRECO, Fifth Round of Evaluation. Preventing corruption and improving integrity within central government bodies (at the highest executive functions) and law enforcement authorities, evaluation report, Serbia, p. 7.

³⁸ Policy Note, How to Strengthen Independence in the Work of Public Prosecutors and Improve the Processing of Corruption Cases, Belgrade: Prosecutors Association of Serbia, 2024, p. 25. According to the survey results 94% of public prosecutors believe that changings in regulating cooperation between police and public prosecutors will contribute to the efficiency of the fight against corruption. Majority of public prosecutors are advocating establishment of prosecutorial police.

³⁹ Matić Bošković, M. Efekti borbe protiv korupcije – nužnost analitičkog pristupa [Effects of the fight against corruption – the necessity of an analytical approach]. In: Represivne mere u borbi protiv korupcije, primena u praksi i predlog za unapređenje [Repressive measure in the fight against corruption, application in practice and proposal for improvement], Belgrade: Association of Prosecutors and Deputy of Public Prosecutors of Serbia, Royal Norwegian Embassy and The Balkan Trust for Democracy, 2019, p. 7.

prosecutor's office, and limitation of possibility for temporary transfer of public prosecutors.⁴⁰

3. Results of fight against corruption in Serbia

In the annual report on Serbia, the European Commission assesses track record in fight against corruption. In the 2023 Report, it is concluded that the Republic of Serbia could additionally improve its results in investigations, criminal prosecution and making legally binding court decisions in cases of high-level corruption, as well as the seizure and confiscation of property acquired through the commission of a criminal offense.⁴¹ The European Commission recognized a slight increase of new investigations and final verdicts in high-level corruption cases, but the number of new indictments decreased. Furthermore, during 2022, there have been no new cases of final confiscation of property recorded, for which records are necessary. European Commission identify establishment of an efficient coordination mechanism as a tool to operationalize the goals of prevention and eradication of corruption. As a positive development, the European Commission states that there has been a slight increase in the number of final verdicts for high-level corruption compared to 2021. The Commission emphasised the need for a resolute political will to effectively solve the issue of corruption, as well as a strong criminal justice response to high-level corruption.⁴²

The special departments have faced challenges from the outset, leading to ongoing struggles with efficiency and effectiveness. Despite being in operation since 2018, their overall clearance rate has barely exceeded 100%, and the backlog of pending cases in increasing, contributing to an increasing delay in clearance of cases. Although there are variations in performance among the special departments in the four cities, the majority of the problems appear to be systematic rather than individual. It is essential to address these systemic issues before delving into more specific individual challenges. This approach is crucial for enhancing the overall effectiveness and efficiency of the special departments in combating corruption and related offenses.⁴³

⁴⁰ *Nenadić, S.* Šta nam donosi novi Zakon o javnom tužilaštvu? [What does the new Law on Public Prosecution bring us?]. Belgrade: Prosecutors Association of Serbia, 2023. See also: *Tonry, M.* Prosecutors and Politics in Comparative Perspective, Crime and Justice, University of Chicago Press Journals, Vol. 41, 2012, pp. 1–33.

⁴¹ EU Commission, Staff Working Document, Serbia 2023 Report accompanying the document Communication from the Commission to the Euro Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on EU Enlargement policy, Brussels, 08.11.2023 SWD(2023) 695 final, p. 32. Available: https://neighbourhood-enlargement.ec.europa.eu/document/download/9198cd1a-c8c9-4973-90ac-b6ba6bd72b53_en?filename=SWD_2023_695_Serbia.pdf [last viewed 05.04.2024].

⁴² EU Commission, Staff Working Document, Serbia 2023 Report accompanying the document Communication from the Commission to the Euro Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on EU Enlargement policy, p. 5.

⁴³ Calculation is made based on data available in the Annual Report of the Supreme Public Prosecutor's Office for 2019, 2020, 2021, 2022. Annual Report of the Supreme Public Prosecutor's Office for 2019. Available: http://admin.rjt.nlnet.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf [last viewed 05.04.2024]; Annual Report of the Supreme Public Prosecutor's Office for 2020. Available: http://www.rjt.gov.rs/docs/rad_javnih_tuzilastava_2020_0421.pdf [last viewed 05.04.2024]; Annual Report of the Supreme Public Prosecutor's Office for 2021. Available: rjt.gov.rs/docs/rad-javnih-tuzilastava-nasuzbijanju-kriminaliteta-i-zastiti-ustavnosti-2021.pdf [last viewed 05.04.2024] and the Annual Report of the Supreme Public Prosecutor's Office for 2022. Available: http://www.rjt.gov.rs/docs/Izvestaj_Republika_Srbija_Republicko_javno_tuzila%C5%A1tvo_mart2023.pdf [last viewed 05.04.2024].

The overall number of cases received by special departments across the four public prosecutor's offices ranged from 5427 in 2019 to 4228 cases in 2022.⁴⁴ Individually, special departments received approximately 800 to 2000 cases each year, varying depending on the specific year. As anticipated, Belgrade reported the highest share of incoming case, accounting for 38 percent of the total in 2022. Efficiency of the special departments gives rise to concern. The Belgrade special department experienced a significant 44% decrease in clearance rate in 2022 compared to previous year. This drop was primarily driven by a 29% increase in incoming cases and a 14% decrease in resolved cases, which had an impact on the overall national outcome. The total number of unresolved cases across all special departments increased from 6152 in 2019 to 7055 in 2022. Additionally, the calculated disposition times indicate that it took over a year and a half, from 2020 to 2022, for a case to be resolved on average. In 2022, no cases of final confiscation of property were recorded, compared to one in 2021 and three in 2020.⁴⁵

Seizure of assets is one of the requirements of the established track record. According to special departments, financial investigations, conducted in parallel with criminal investigations as defined by the Law on Confiscation of Property Derived from a Criminal Offence⁴⁶ pose challenges. Leading both types of investigations simultaneously is perceived as a duplicative effort by public prosecutors, yet it is currently counted as a single case. Financial investigations require specialized knowledge of various regulations and specific skills.⁴⁷ This complexity suggests the need for special prosecutors dedicated to financial investigations. However, separating criminal and financial investigations may not necessarily bring benefits to the special departments. An alternative solution, such as designating one prosecutor to lead parallel criminal and financial investigations, as seen in Belgrade, could be more effective. Furthermore, the lack of support from financial forensic experts remains a critical issue for financial investigations.

A prevalent issue regarding human resources in the special departments is the persistent absence or shortage of personnel. Since their establishment, these departments have encountered shortages of prosecutors, prosecutorial assistance, financial forensics experts, and administrative staff. While there were initial intensive training efforts, they have diminished over time. Moreover, there is currently no specialization of prosecutors, although some have identified successful models from other jurisdictions.⁴⁸ Addressing these staffing issues and implementing specialized training programmes could significantly enhance the effectiveness of the special departments in combating corruption and related crimes.

⁴⁴ Data are collected from the Annual Report of the Supreme Public Prosecutor's Office for 2020, p. 70; Annual Report of the Supreme Public Prosecutor's Office for 2021, p. 67. and the Annual Report of the Supreme Public Prosecutor's Office for 2022, p. 70.

⁴⁵ EU Commission, Staff Working Document, Serbia 2023 Report accompanying the document Communication from the Commission to the Euro Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on EU Enlargement policy, p. 33.

⁴⁶ The Law on Confiscation of Property Derived from a Criminal Offence, Official Gazette of the Republic of Serbia, No. 32/2013, 94/2016, and 35/2019.

⁴⁷ The threshold for conducting of the financial investigation for the crime of receiving a bribe of 1 500 000 RSD (~13 000 EUR) should be lifted, since low number of criminal acts fulfil this criterion. As a result, only few financial investigations could be conducted in the practice.

⁴⁸ Information about the positions of the prosecutors was obtained during the meetings with the public prosecutors of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices which were held in September 2023.

An additional challenge for establishment of the track record in fight against corruption is the structure of the criminal cases assigned to the special departments for suppression of corruption. According to the public prosecutors working in the departments around 80% of cases are against economy, mostly – criminal offences of embezzlement, abuse of the position of a responsible person, and abuse of official position. This structure of cases cannot contribute to the fight against corruption in Serbia, hence the special departments should, in cooperation with police and other relevant institutions, focus and invest efforts into resolving classical corruption cases.⁴⁹

4. Recommendations for improvement of track record

To improve the track of the special departments for suppression of corruption, it is necessary to make additional efforts to strengthen legislative framework and to ensure full implementation in practice.

One of the main challenges in practice is represented by the limited human resources. To improve efficiency of criminal investigation and processing of corruption cases, it is crucial to increase the number of public prosecutors, prosecutor's assistants, and administrative staff. This requires the engagement of additional financial resources to increase the salaries of public prosecutors working in special departments and the employment of additional support staff.

An adequate support of financial forensic experts is of particular importance for the track record of public prosecutors. To attract this profile of experts to work in special departments of public prosecutor's offices for suppression of corruption there is a need to strengthen their position by law. Defining the position of a financial forensic expert as a civil servant due to inadequate remuneration discourages experts who possess specific knowledge in the financial field to work in the special departments.

To eradicate corruption, adequate and timely cooperation is needed between the prosecutor's office and the police. However, in the practice there are many challenges that prevent effective cooperation. According to the national legislation, public prosecutors lead the investigation, but there are no effective mechanisms in place to ensure that the police will follow the public prosecutors' orders in a timely and adequate manner. Furthermore, police officers are responsible for their work to the Ministry of Internal Affairs, and they have to implement orders issued by their superiors. Therefore, the possibility of establishing a special prosecution police should be considered as one of the options that could contribute to the efficiency of investigation.

To improve track record, the jurisdiction of the special departments for suppression of corruption should be revised. It seems that the criminal offense of tax evasion has been unjustifiably left out of the jurisdiction of special departments for suppression of corruption. Bearing in mind that public prosecutors act in cases against perpetrators of the crime of money laundering where tax evasion is a predicate crime, it seems justified that tax evasion should also be under the jurisdiction of special departments, while, for instance, the criminal offense of embezzlement, which is easier to prove, could be under the jurisdiction of the basic public prosecutor's offices.

Leading of financial investigations requires special knowledge in various fields and specific skills. In addition, parallel proceedings in criminal and financial investigations take a lot of attention. Therefore, the possibility of appointing one

⁴⁹ Information obtained during the meetings with the public prosecutors of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices held in September 2023.

prosecutor to lead those investigations in parallel with the conduct of criminal investigations in the same case by another public prosecutor should be considered. However, in financial investigations, the support of financial forensics would be especially important. Therefore, their position in criminal proceedings against perpetrators of criminal acts with a corrupt element should be improved in the most efficient manner and in due time.

The Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Terrorism, and Corruption prescribes that work of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices is coordinated by the Special Prosecutor's Office for Organized Crime. However, the Law does not specify modalities of coordination. In addition, the Law prescribe that public prosecutors from special departments for suppression of corruption are responsible for their work to the Senior Public Prosecutor, specifically head of higher prosecutor's office. Head of higher prosecutor's office has jurisdiction to adopt annual schedule on work of public prosecutors and transfer public prosecutors from special department to work on general crime within the higher prosecutor's office. Therefore, the possibility of integrating special departments for suppression of corruption into the Special Prosecutor's Office for Organized Crime as its special organizational units should be considered, since it could strengthen autonomy of work of public prosecutors, contribute to the more secure position of prosecutors working of corruption cases and improve coordination in the fight against corruption.

Summary

In the coming period, it is necessary to improve the efficiency of the special departments for suppression of corruption of the Higher Public Prosecutor's Offices. This implies an increase in the number of public prosecutors, prosecutors' assistants and administrative staff. Due to the importance of financial forensic experts, there is a need to improve their position by changing the provision that stipulates that they have the position of civil servants. In addition, it is necessary to foresee financial incentives that would attract adequate personnel.

Of particular importance for the effective suppression of corruption is establishment of adequate and timely cooperation between police officers and public prosecutors. Bearing in mind the problems that exist in practice, which are conditioned by the inadequate legal solution, the possibility of establishing a special prosecution police could be considered. In addition, the position of special departments for suppression of corruption should be improved. It appears to be an unacceptable solution that the public prosecutors acting in those departments are accountable to the Senior Public Prosecutors, and that their work is coordinated by the Public Prosecutor for Organized Crime. Therefore, it seems that an adequate solution for the aforementioned departments is to act as separate organizational units of the Special Prosecutor's Office for Organized Crime.

It could be more effective if the criminal offense of tax evasion was placed under the jurisdiction of the special departments for suppression of corruption of the Higher Public Prosecutor's Office, because the prosecutors from these departments are already acting in those cases when tax evasion is a predicate crime in the money laundering cases. Having in mind that financial investigations require the possession of special knowledge and skills, and that leading them in parallel with criminal investigations by one person is very time-consuming, the possibility should be considered that

the financial investigation is led by a public prosecutor specialized in that field in parallel with the criminal investigation led by another public prosecutor at the same time.

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